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Religion and Justice

Patrick Vance Señga Nogoy, SJ

Loyola School of Theology

RELIGION AND JUSTICE

PATRICK VANCE SEÑGA NOGOY, SJ

Religion and Justice
by Patrick Vance Señga Nogoy, SJ

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First edition August 2024.

Loyola School of Theology
Katipunan Avenue, Loyola Heights, Quezon City 1108 Philippines
https://lst.edu/; https://publications.lst.edu/

RELIGION AND JUSTICE

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MONOGRAPHS

© 2024 LOYOLA SCHOOL OF THEOLOGY
QUEZON CITY, PHILIPPINES

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A thesis submitted in fulfillment of the requirements for the degree of Doctor in Philosophy

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12 June 2023

DECLARATION

I, Patrick Vance Senga Nogoy, confirm that the work presented in this thesis is my own. §2.2 is substantially adapted from my MPhil thesis *Religion beyond Equality* (2019). Where information has been derived from other sources, I confirm that this has been indicated in the thesis.

PATRICK VANCE SENGA NOGOY

ABSTRACT

How should a liberal state treat its citizens who subscribe to religion and enjoy its component goods? This thesis explores the possibility of reconciling religion and justice. It argues for (1) a proper understanding of religion and the kind of good it constitutes; (2) the possibility of a liberal theory of justice which takes fully into account the claims of believers; and (3) an arrangement of social institutions which protects the engagement of citizens with faith with the goods of religion.

There have been several recent liberal approaches to the question which promise to accommodate the claims of believers in societies characterized by pluralism. They aim at the coexistence of citizens with faith with other citizens who are either non-adherents or even opposed to religion. However, so this thesis argues, these approaches are not successful. In particular, they fail to establish more than a mere doctrine of non-discrimination against believers. As a result, these liberal frameworks fail to address the central question of how liberal justice ought to treat religious goods. In reaction, some theorists of religion have claimed that there is a deep incompatibility between liberalism and a proper understanding of what a life devoted to religion is. In contrast, this thesis proposes a novel approach which starts from a unified view of religion, and proceeds to develop a liberal framework to accommodate the claims of believers. It argues that whilst non-discrimination is obviously necessary and fundamental, a more ambitious, proper understanding of religious goods and religious needs can contribute to a more coherent liberal strategy towards citizens with faith. It could also help motivate social policies and institutions to treat believers and non-believers in a just and fair manner.

IMPACT STATEMENT

The research explores the various aspects of the problem of reconciling religion and justice. The main subject of the critical examination of the research is the set of liberal approaches which claim to have accommodated believers. This also implicates the way in which various liberal frameworks understand religion and its component goods. The research is aimed at making a helpful contribution in clarifying issues surrounding citizens who have faith and share a political society with others, some of whom are non-adherents or even opposed to religion. It examines the relevant debates and suggests new angles for thinking about the role of religious reasons in public reason, the justice claims of believers, and the fair arrangement of social institutions which includes an understanding of religious goods in a coherent way.

People from within academia and outside of it might benefit from the critical exploration of this study of the issues relevant to the compatibility of religion and liberal justice. Many countries in the world have to address the needs of citizens who have faith and belong to faith communities. There are societies with a majority of citizens who subscribe to religion (e.g. Islam, Christianity, Judaism, and Hinduism). There are countries that implement some social policies which curtail some religious practices of believers (e.g. *laïcité*). Part of the crucial task in treating this segment of citizens with fairness is the appropriate understanding of religion and its component goods. The research is a modest philosophical contribution which hopefully can aid academic researchers and the public in general in examining how states can treat justice claims involving goods related to religion with fairness, and studying the extent to which believers can reasonably exercise religious freedom, which is regarded as a fundamental human right.

ACKNOWLEDGEMENTS

This thesis would not be possible without the close supervision, guidance, and strong interest of Veronique Munoz-Dardé. The sessions I had with her go beyond the usual evaluation of arguments, selection of cases, and curation of articles and sources. At the heart of it is having the stamina to stay with the question and the debates surrounding it, and the relentless thinking and re-thinking of the ways in which we understand justice, religion, and fairness. I am extremely lucky to learn under her wing and grow as an analytic philosopher.

I thank Dr. Patrick Riordan, SJ and Dr. Peter Gallagher, SJ who gave me helpful feedback on some of the chapters. Their friendship and philosophical acumen encouraged me to push the boundaries of the question and its implications to religion and distributive justice. Likewise, I have profited from the engaging discussions I had with Prof. Tim Crane, Prof. Thomas Pink, Dr. Robert Simpson, Dr. Han van Wietmarschen, Dr. Amanda Greene, Dr. Joe Horton, and Dr. Sarah Richmond.

I thank Richard Edwards for the administrative help and support I needed throughout my stay in the program. To my MPhil Stud 2019 cohort and the UCL PhD community, I thank you for providing the energetic academic environment which enabled me to appreciate and grow in the practice of analytic philosophy, which I confess is not my first and even preferred philosophical method.

I thank my brother Jesuits who have provided me with the fraternal care and support throughout my MPhil and PhD research stay. It is an undeserved gift to grow roots in a foreign land which I can now call home, and that is due, in large part, to the care I have received from and the belongingness I have experienced with the different communities I stayed with in London especially during the Covid lockdown period.

AM+DG

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‘A *Good Life*, in which consists not the least part of Religion and true Piety, concerns also the Civil Government: and in it lies the safety both of Men’s Souls, and of the Commonwealth.’

John Locke
Letter Concerning Toleration, p. 46

‘The catalogue of virtues will therefore include virtues required to sustain the kind of households and the kind of political communities in which men and women can seek for the good together and the virtues necessary for philosophical enquiry about the character of the good.’

Alasdair MacIntyre
After Virtue, p. 219

1

INTRODUCTION

1.1 Religion and justice: a problem of reconciliation

In a letter to a friend, John Locke suggests the principle of toleration as a solution to end the violent conflicts between the church and the state. He draws jurisdictional boundaries between religion and the state such that each, assigned to their own sphere of power, would help establish a society where diverse moral and ethical worldviews are permitted and each citizen is assured of a set of liberties and access to basic temporal goods. His theory secures individual liberty at three levels: (1) the institutional level (the separation of church and state), (2) the personal level (liberty of conscience), and (3) the political level (state neutrality). A Lockean state offers a range of permissible religious and non-religious beliefs, it does not permit religious accommodation (i.e. neutrality is understood as strict separation between church and state), and it protects the domain of individual choice from unjust interferences of church and state. He thought that his theory would settle the question of the relationship between state and religion.

However, even after many years, the relationship between religion and the state continues to remain a live question. The debates surrounding it have only grown more heated, and polemics have become sharper. The question involves themes of religious freedom, secularism, and the appropriate role of religion in public-political life (Cohen 2016, p. 1). Advocates of religion reject liberal approaches that are largely based on Lockean principles (e.g. strict and comprehensive neutrality, and the normative priority of individual choice). For them,

these frameworks privilege the privatisation of religion (Cohen 2016, p. 1). In contrast, liberal theorists are suspicious of the growing demands for religious accommodation in law, access to group rights that make religious groups immune to state scrutiny, and the recognition of the authority of religious groups to enforce their own moral code in key social domains (e.g. family, marriage, and education) without state assistance (Cohen 2016, p.1). They interrogate the assumption that religion is a distinct good that requires special and unique protection in liberal states and human rights regimes (Cohen 2016, p. 3).

It is very difficult to deny the staggering number of people with religious affiliation. Tim Crane notes that around 6 billion of the world's current 7.16 billion people (i.e. 80% of the world's population) are identified as members of a religion (Crane 2017, p. 2). It is not surprising, therefore, that religion is one of the fundamental terms embedded in the constitutions of some countries (e.g. United States, Philippines) and supranational institutions (e.g. European Union). This is a source of serious problems for important justice claims. For example, the First Amendment in the US Constitution contains establishment and free exercise clauses that can either expand or limit the practice of one's religion. These clauses are invoked to adjudicate claims related to religious liberty, which often implicate liberal concerns of equality, non-discrimination, and fair access to goods.

The problems with religious claims remain acute, mainly because *religion* refers to a phenomenon that is very challenging to define (i.e. it is hard to create a list of normative features which all religions share),[1] contested (i.e. what is sacred versus what is secular), and

[1] 'Any use of qualifying characteristics in a definition is likely to exclude a number of recognized religious or faith traditions at the outset. A definition premised on monotheism, for instance, will leave out polytheistic and nontheistic religions (e.g. liberal Quakers, Humanistic Judaism, Buddhism, Taoism) whereas a definition that anticipates scripture-based tenets will leave out non-scriptural, orally based religions (e.g. Native Americans, North African religions) and a definition that expects systematic expositions of beliefs will exclude certain non-creedal religions or spiritual belief systems (e.g. Unitarian Universalism)'(Bittker et al. 2015, p. 339).

too diverse.[2] To appeal to a comprehensive conception of religion to settle justice claims compromises the limits of state competency. The important and topical question continues to be relevant and is the main object of our philosophical enquiry: How should a liberal state treat its citizens who profess faith in God and adhere to a faith community? In other words, how should the state deal with citizens who subscribe to religion and enjoy its component goods?

I approach this question from the standpoint of a believer who has to live together with other citizens who belong to different and sometimes opposing faiths and with those who are not part of any faith community. The theoretical enterprise will not be concerned about the truths of any specific doctrine or practice of particular religions, or the truth of religious beliefs in general. Although at some points it touches upon the nature of religion, the philosophical investigation is limited to the features of religion which are relevant in the political domain. It will not delve deeper into the nature of a religious practice, attempt to prove the existence of God, or enquire whether some religions are true. The main focus of the philosophical enquiry is the set of normative implications of the treatment of believers in the public-political sphere.

Cécile Laborde posits an interesting strategy as a response to the main question. She suggests a theory of restricted neutrality, which identifies two dimensions of religion that have historically and socially run into conflict and disagreement with the modern liberal state (Laborde 2016a, p. 424). The institutional (i.e. historically hegemonic, organised community with claims to political rule) and the justificatory (i.e. the appeals to divine command as a basis for coercive state action) dimensions of religion are the targets of the

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[2] Boris Bittker quotes the philosopher John Caputo, '*religion*, in the singular, as just one thing, is nowhere to be found; it is too maddeningly polyvalent and too uncontainably diverse for us to fit it all under one roof. There are Western religions, Eastern religions, ancient religions, modern religions, monotheistic, polytheistic, and even slightly atheistic religions; too many to count, too many to master, in too many languages to learn' (Bittker et al. 2015, p. 338).

application of neutrality (Laborde 2016a, p. 424). She argues that beyond these theocratic dimensions, the liberal state can be non-neutral to religion (Laborde 2016a, p. 424). She insists that apart from the two dimensions, there is nothing special about religion that entails it being singled out by the state (Laborde 2016a, p. 424).

Laborde rejects a conception of neutrality which is the total separation between religion and the state. The concept that grounds her application of neutrality is equality through non-discrimination, which is a core liberal value. In this view, each citizen is worthy of protection and deserves equal respect and concern (Talisse 2016, p. 23). For her, religion does not raise distinctive issues, and thus most of its claims can be effectively categorised and regulated by the main elements of standard liberal rights (Laborde 2016a, p. 429). In her model, the state need not employ an understanding of religion because it can be disaggregated in a range of plural goods which can be regulated by broader and generic categories of liberal rights (Laborde 2016a, p. 430). Religion is as protected as any other conception of the good. It need not demand exceptional treatment.

Although Laborde's proposal is sensitive to the social dimensions of religion, her strategy of disaggregating religion elicits serious objections from critics. Absent the notion of religion, she substitutes equality and non-discrimination as the main concepts that do normative work to ground the treatment of believers and religious goods. Although her framework advances ways and means of not marginalising believers, the dimensions of religion are defined by the elements of liberal rights. From the standpoint of a believer, there is serious worry that a religious practice such as the public wearing of the *hijab*, would be exclusively defined by other concepts such as personal identity, equality, or freedom without reference to the tradition and history of the meaning and value of wearing the *hijab* in Islam. It is treated like any other headgear (e.g. turban, baseball cap), which is significant to a person's identity. Critics argue that believers want more than a theory that protects them from instances of marginalisation.

Laborde's theory is an important contribution to the ongoing discussion of the state's treatment of religious citizens. Her approach is a plausible attempt to reconcile religion and the liberal state, in spite of the many theorists who have pronounced the grim judgment that religion and liberal justice are irreconcilable. Some advocates of religion are convinced that believers do not need to be liberals. If they hope to be so, they face dim prospects of success. The problem of reconciliation remains open, vibrant, and topical. One of its attendant issues is less explored: distributive justice. To this, I turn in the next section.

1.2 Religious goods, equality, and the distribution question

'A more daunting challenge for liberals', according Laborde, 'is to explain how to treat religious and secular citizens equally' (Laborde 2017, p. 132). Consider the following distributive justice claims: 'Should the state deny subsidies to religious groups that provide social services such as healthcare on the same basis as non-religious groups? Should the state apply to churches the same legal regime of control and taxation that it applies to businesses and other private groups?' (Laborde 2017, p. 132). The complex and vexed issues surrounding the fair distribution of goods involve at least two normative premises: (1) liberal justice embraces some form of egalitarian commitment in distributive policies, and (2) the distribution of goods where believers are disadvantaged is a violation of the state's egalitarian commitment.

A survey of political societies yields abundant evidence supporting the claim that there are widespread inequalities, some of which exhibit perverse forms (e.g. wide gap between the rich and poor). It is not surprising that liberal theorists identify equality as a necessary liberal principle. One of its implications is the treatment of religion and its component goods. Believers need to mount a serious case for the goods associated with their commitment. They have to demonstrate convincingly that claims for state support of some religious goods are reasonable and that they do not place unfair burdens on non-adherent citizens.

Religious commitment is often at odds with egalitarian principles. For example, some core doctrines and social practices that impose differential treatment on vulnerable segments of society (e.g. women, children, and people who are gender-diverse) qualify for liberals as objectionable inequalities. Dress codes, dietary laws, and equal access to marriage or ministerial roles are some examples that egalitarians flag as breaches of equality.[3] The often-suggested approach to resolve this from a liberal point of view is through an appeal to substantive ideals such as rights to health care, gender equality, fairness in the distribution of costs, and freedom of religion to do the normative work (Laborde 2017, p. 103). Egalitarian approaches play an important role in determining practical outcomes. This is accomplished either by levelling up or levelling down strategies that aim to equalise welfare among citizens. In the case of religion, liberal egalitarians often employ different iterations of the liberty of conscience.

Liberty of conscience is a dominant concept because it protects a person's capacity for self-determination. It also ranges over religious and non-religious ethical commitments. If applied to justice claims, health care procedures which involve religious beliefs (e.g. alternative blood treatments for Jehovah's Witnesses) could be admitted as part of public health care based on the sincerity of individual beliefs. Or the state subsidy of faith schools could be grounded partly on the basis of sustaining personal identity. This ensures a level of equality because the distribution of benefits and burdens is resolved from an objective standpoint. Religion is protected compared to its non-religious analogues.

Although they accommodate religious claims for goods, egalitarian approaches are limited by their comparative approach. Roger Trigg supports this claim. He asserts that part of the mainstream approach is to conduct publicly funded activities without sensitivity to religion,

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[3] Some religious practices involve bodily harm and are performed before the age of consent. This includes circumcision (e.g. Judaism, Islam) and refusal of blood treatments for children in cases of surgery or hospital care (e.g. Jehovah's Witnesses).

or to subject religion wholly to civil law, in which individual rights seem to trump religious accommodation (Trigg 2012, p. 119). The conception of impartiality arising from egalitarian approaches is too individualistic and neutral, to the extent that the claims of believers for justified exemptions are ruled out.[4] It seems that in egalitarian frameworks, the attention to equality achieves a state of affairs that is most important at the cost of maintaining a diversity of goods in society.

For a critic, the comparison of religious goods with their non-religious equivalents delivers practical outcomes at the expense of religion as a unified good. These costs are largely cashed out in an individualistic view of religion: private belief, individual choice, adaptive preference, or a personal conception of the good. Take, for example, T.M. Scanlon's claim which explains that the state ought to rule out cases in which tastes or preferences of slight relevance or those that are simply acquired by chance are compensated for by the state. He points to the fact that citizens with a *special interest* or an *unusually refined taste* cannot be satisfied without incurring high expenditure (Scanlon 2003b, p. 74). He doubts that a claim from a citizen who sacrifices a decent meal for the sake of building a church has the same level of strength as a claim for aid for a citizen who is desperate for a decent meal, assuming that the level of burden required by others to meet such claims is the same (Scanlon 2003b, p. 74). In Scanlon's view, religious goods are considered mere preferences which egalitarians can compare with non-religious equivalents. For example, a person's claim to wear the *hijab* in public could be justified by identifying it as preference or a special interest. The strength of her claim is the same as a person who considers wearing a baseball

[4] Brian Leiter, for example, opts for a strict neutral approach where no exemptions are granted, religious or otherwise, unless those exemptions do not burden or harm others. This is the most reasonable approach, Leiter claims, in order to prevent the bad outcomes which can result from the dangers of religious beliefs. He has a sceptical view of the normative features of religious beliefs vis-à-vis non-religious equivalents: religious beliefs involve categorical demands and they are insulated from scientific and logical scrutiny (Leiter 2013, pp. 4, 33–34).

cap part of his personal identity. In this pairwise comparison, it is the relevance of the goods to the person which is most important than their meaning and value of goods in religion. Proponents of religion are alarmed by liberal approaches which are insensitive to religion as a multidimensional good. These frameworks, they argue, tend to confine religion to its individualistic dimension.[5]

Religion is not regarded as special under an egalitarian lens. It is one among many individual preferences, personal commitments, or individual identities which do not generate unique distributive claims. For liberal egalitarians, religion produces benefits only for believers; thus, non-discriminatory distribution schemes should treat it like any association, social club, or chosen conception of the good. Against this, some theorists, such as Tariq Modood, highlight religion as a potential public good, which the state can, depending on circumstances, assist in realizing general benefits (Modood 2016, p. 183). He enumerates religion's public benefits: direct benefits, such as contribution to education and social care through autonomous church-based organisations funded by the taxpayer, or indirect benefits, such as the production of attitudes that create economic hope or family stability (Modood 2016, p. 183). Other public benefits which may have their source in religion relate to national identity, cultural heritage, ethical voice, and ceremonies of the state (Modood 2016, p. 183).

This puts pressure on finding a plausible approach to reconciling religion and liberal justice. On the one hand, most liberal theorists

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[5] For instance, Vincent Phillip Muñoz highlights the strong intuitive appeal of individual autonomy defence approaches which undergird an egalitarian theory of religious freedom. In this framework, the *telos* or end of religious freedom is not religion but rather, the person's capacity to search for life's ultimate meaning and to organise her life according to it. For example, Martha Nussbaum, Jocelyn Maclure, and Charles Taylor argue that it is the person's conscience which is worthy of state protection. The concept of individual autonomy is an expansive range which includes non-religious equivalents of religion. Cécile Laborde extends this approach to cover religious practices. In their frameworks, religion is largely a function of individual meaning (Muñoz 2016, p. 378).

are unconvinced that religion raises distinct distributive claims. They assert that religion can be supported and protected like any other conception of the good, individual choice, or adaptive preference. Beyond this, the state risks compromising liberal principles like equality, individual freedom, and neutrality. On the other hand, defenders of religion have strong doubts about the compatibility of religion and liberal frameworks. They assert that protecting religion requires the abandonment of some egalitarian principles and liberal tenets. For them, liberal approaches tend to reduce religion to an individual ethical commitment. As a result, goods related to some religious practices are interpreted apart from their meaning and value in religion.

The implications of the construal of religious goods push liberal theory to its limits in accommodating religious citizens. The quest to find a plausible theory for trying to reconcile religion and liberal justice requires a re-examination of the wealth of conceptual tools in a liberal tradition.

1.3 Political liberalism and religion

Most contemporary liberals have offered approaches which are versions of *political liberalism.*[6] Political liberalism[7] is a framework

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[6] For example, Laborde defends that her limited neutrality and disaggregation strategy as being part of a family of reasonable conceptions of justice under political liberalism (Laborde 2017, p. 201). Jonathan Quong suggests a reading of political liberalism that favours a strict neutrality approach (Quong 2010, p. 5). Other theorists have identified an element of political liberalism and developed it as a political theory of state action. For instance, Charles Larmore proposes a model of liberal legitimacy based on a conception of respect for persons as a result of his critique of Rawls's conception of what is reasonable (Larmore 2020, p. 148). Political liberalism has a strong theoretical appeal. Despite various challenges and objections, many theorists consider political liberalism a convincing approach to the issue of the fair treatment of citizens.

[7] Hereafter and throughout the thesis, I will use abbreviations to refer to the works of Rawls: **TJ** for *A Theory of Justice*, **PL** for *Political Liberalism*, and **JF** for *Justice as Fairness: A Restatement*

developed by John Rawls as a reply to a question of justice: 'Is it possible to have a stable political society given the fact that citizens have different and sometimes opposing comprehensive doctrines?' (PL §1). He calls this a fact of reasonable pluralism. It demands a limited and practicable notion of justice because an appeal to metaphysical conceptions will not win enough endorsement from the mass of citizens and secure their commitment to uphold the terms of justice. He makes it clear that this issue of justice only applies to the domain of the political – constitutional essentials and the arrangement of social institutions (PL §1). Beyond this, citizens are welcome to appeal to their own moral and ethical worldviews in civil society.

In addition, Rawls argues that the principles of justice should be capable of enlisting support from citizens who hold different conceptions of the good. To achieve this, a principle of justice should be *publicly justified* (i.e. it is guided by rules and procedures recognized by all citizens, and the ideas are taken from common public-political culture) and *free-standing* (i.e. it is not predicated on any ethical doctrine and thus, it can command an overlapping consensus among citizens) (PL §1). As an outcome, his vision of a well-ordered society is one in which (1) all citizens agree to uphold the principles of justice, (2) the arrangement of social institutions which regulate liberties and frames the distribution of goods is evaluated according to the principles of justice, (3) citizens comply with institutions because they are just, and (4) social union is secured without insisting on complete agreement about ultimate ends (PL §1). He also hopes that the political conception does not conflict too sharply with citizens' comprehensive worldviews and that each citizen can be assured of equal liberties and all-purpose means.

In political liberalism, religion is considered as part of the range of *reasonable comprehensive doctrines*. By *reasonable*, Rawls understands that these doctrines (1) recognize that people hold different comprehensive doctrines as a result of the limitations of human nature as defined by the *burdens of judgment*, and (2) do not endorse the use of political power to suppress or deny those who hold different comprehensive doctrines (provided that these

are also reasonable ones) (PL §II). They are comprehensive because these doctrines prescribe a complete view of human life based on a tradition of doctrine and ranking of values (PL §II). For instance, religion expresses an understanding of the world, our place in it, and how we should relate to each other based on our faith in God or the transcendent. Many forms of religion are not individually construed. They have social norms, moral codes, and system of beliefs that go beyond their individual members' views and practices. Rawls takes a step in the right direction with the introduction of reasonable comprehensive doctrines to highlight a category of conceptions of the good. He assumes that the conceptions of the good are not the same in content, scope, and theories of justice.

Sceptics are not easily convinced that religion is sufficiently accommodated in political liberalism. They offer serious challenges and objections. A critic would highlight that religion plays a limited normative role in determining the principles of justice. For example, parties in the original position cannot appeal to religious reasons in finding principles of justice. Since religious worldviews are not shared by all citizens, parties are limited to principles and forms of political arguments that eschew reference to religion. Religious precepts and social practices, if taken as grounds for principles of justice, risk compromising impartiality, which, in turn, endangers the assurance of equal liberties and temporal goods for citizens, some of whom are either opposed to religion or do not include it as part of their conception of a good life.

For an advocate of religion, the epistemic abstemiousness of political liberalism results in principles of justice that are indifferent to kinds of goods and meaningful options available and thus offers a thin political morality. To a large extent, the congruence between the principles and one's comprehensive doctrine is unclear. This has little appeal for believers.

Opponents of political liberalism object that religion is only supported insofar as it is an ethical doctrine. I agree with Laborde's observation that for many Catholics and Muslims, as well as other

Christians, Jews, Hindus, and Buddhists, religious experience is fundamentally about exhibiting the virtues of the good believer, living in community with others, and shaping one's daily life in accordance with the rituals of the faith. These rituals are meaning-giving and are connected to believers' sense of moral integrity (Laborde 2017, p. 66). Shared rituals like common worship or personal devotions such as the wearing of the *hijab* and *burka,* are not only moral prescriptions. These religious practices comprise a different category. They are means for believers to realize their relationship with the transcendent via social norms, proper engagement with goods, and activities with fellow practitioners. Religious practices help make religion concrete as a distinct good. To account for this, some theorists have proposed that the state employs perfectionist principles. To this I turn to the next section.

1.4 Perfectionism and religion

An alternative framework of political freedom offers liberal conclusions from non-individualistic premises (Raz 1988, p. 2). Joseph Raz offers a liberal view which underscores the value of individual choice whilst maintaining the normative importance of the social dimensions involved in making a choice. He explains that liberty is only valuable if it is spent pursuing valuable projects and relationships (Raz 1988, p. 173). This means that the value of individual freedom rests largely on a person's engagement with a range of valuable goods and meaningful options in a liberal polity. This implicates state responsibility: the state can create conditions under which citizens can enjoy greater liberty (Raz 1988, p.173). For example, drug addiction diminishes the liberties of a person engaged in it. It also weakens her capacity to develop and exercise self-determination, given the ill effects of drugs. In contrast, there are meaningful options which enhance the freedom of a person. Music, arts, culture, and even religion can enrich personal autonomy. In Raz's approach, the state remains liberal in its commitment to support a variety of goods and a range of valuable options, so long as it is oriented towards an ideal of individual autonomy. His theory is part

of a family of perfectionist views which ground justice in a larger doctrine of a good life (Nussbaum 2011b, p. 5).

Although most liberals agree with Raz about the value of personal autonomy, some worry about his proposed strategy. For instance, Rawls is concerned about the employment of a perfectionist strategy because (1) the state would unavoidably rely on a ranking of values, (2) conceptions of justice would aim to maximise the total of intrinsic values, (3) equal liberties would not be assured and would depart from the difference principle, and (4) perfectionist criteria are imprecise and their application to public questions is bound to be disputable even if they are reasonable (TJ §50). Rawls does not permit the subsidy of social goods such as arts, universities, and cultures on grounds that they are intrinsically valuable institutions and that those engaged in them ought to be supported at some significant expense to others (TJ §50). The subsidies could only be justified as promoting the social conditions that secure equal liberties and as advancing the long-term interests of the least advantaged in an appropriate way (TJ §43 and §50).

In addition, the employment of an ideal of personal autonomy clashes with conceptions of the good that do not hold individual autonomy as the highest organising value. Or with those like religion which proscribes an ideal of individual autonomy. Some religions require the sacrifice of some personal freedoms for the sake of shared ends, as embodied in their rituals, social practices, or moral codes. Some cultures hold love for family and friends as having intrinsic value (Nussbaum 2011b, p. 10). Furthermore, notice that Raz interprets pluralism as a range of meaningful options that are assumed to be autonomy-enhancing. This has negative implications for the state's fair treatment of believers because not all religions are autonomy-enhancing. In such cases, the state renders ethical judgment on which religious practices and moral beliefs are permissible and even worth supporting.

Advocates of perfectionism face the main challenge of justifying the range of valuable options which the state is obliged to support.

Furthermore, they must present a plausible framework in which state competencies are safeguarded against the threats of intuitionism cashed out in cases involving the ranking of values and the maximisation of intrinsic value. There is a corollary peril of offering a narrow range of religions which meets the standards of the ideal of individual autonomy as interpreted by the state. It puts the state in a risky position in making ethical judgments that can result in the marginalisation of citizens who hold opposing conceptions of the good.

As a response, part of offering a theory that maintains the compatibility of religion and the liberal state requires that the state consider and provide ample room for a range of goods that sustains different conceptions of the good its citizens pursue. From the standpoint of a believer, it is insufficient to have access to a universal set of basic liberties and goods. Religion is a multidimensional good. Its component goods, such as religious practices, preserve it as a meaningful way of life. This implies the need for state assistance when necessary. Reference to a descriptive view of religion combined with a less substantive account of reasonableness and the appeal to needs as the concept to ground distributive approaches might offer a promising route.

1.5 A thin account of political liberalism and a needs-based distributive approach

I propose a minimal version of political liberalism as an alternative approach. Call this the *thin account*. It retains the basic elements of political liberalism which set the standards of what is reasonable. In a thin account, citizens could draw reasons and views of justice from religion and offer them as part of their arguments in public reason. Consider the case of the Catholic conception of the common good as a candidate for being a principle of justice. Although this view is largely defined by faith premises and includes scriptural references, part of its vision of society is a just arrangement of social institutions and the fair exercise of state power which ensures that the conditions of social living (i.e. rights, goods) are such that citizens can live flourishing

lives (Lewis 2019, p. 237).[8] It is a principle which requires the state to protect citizen freedoms and assure fair opportunity so that all citizens can pursue meaningful lives, whatever that turns out to be. Freedom and equal opportunity are principles which non-adherents can embrace. They might even accept the Catholic conception of the common good as a principle of justice.

I suggest that citizens rely on a range of ideas of the good. Some ideas of the good are helpful for believers in expressing their arguments and views of justice in public reason. The badness of torture, the wrongness of murder, or the goodness of maintaining social conditions that preserve a range of conceptions of the good are some of examples of ideas of the good which non-adherent citizens uphold. Laborde argues that in political liberalism, appeals to partial ideas of the good are not ruled out. For example, citizens can broadly agree that the life of addiction is bad even if they have different reasons for holding such a view (Laborde 2017, p. 101). She suggests that the *thin* liberal theory of the good implicit in political liberalism can incorporate ethically salient goods such as family commitments and religion (Laborde 2017, p. 103). I agree with this part of Laborde's proposal. I shall develop it as one of the main elements of a thin account of political liberalism.

Furthermore, in my proposal, the state could employ a descriptive view of religion which contains features relevant to treating its component goods coherently. I appeal to Tim Crane's descriptive

[8] The Catholic vision of common good includes an ultimate end (God) and an instrumental account which is sensitive to the sum of conditions (not a sum of personal goods or happiness) which are important and sometimes necessary for the pursuit of the fulfilment of each citizen. State responsibility and authority are defined in reference to an instrumental account of common good (Lewis, 2019, p. 238).

view[9] and Alasdair MacIntyre's concepts of tradition, practice, and internal goods. Crane's view provides a schematic understanding of the core elements of religion. However, this needs to be supplemented by MacIntyre's concepts in order to (1) highlight the intimate link of these features with each other, which then (2) helps the state understand the implications of its policies in treating religion as a unified good. For instance, tradition is composed of practices, beliefs, and social norms (Mulhall & Swift 1992, p. 90). It includes a particular mode of understanding the importance and worth of component goods and it is transmitted across generations (Mulhall & Swift 1992, p. 90). In relation to this, internal goods are particular goods that are achieved by engaging in a practice (Mulhall & Swift 1992, p. 83). For example, a member of a symphony orchestra derives particular internal goods as a musician by performing with an orchestra following certain norms and meeting standards of excellence.

If applied to religion, believers follow social norms in performing religious practices to enjoy the internal goods of religion. There are also standards of excellence for believers who desire to be the best believers they can be. Religious practices such as the wearing of religious dresses, participation in common rituals or festivals, and embarking on pilgrimages are performed following social norms. Some religious practices implicate fair access to goods. For example, common worship requires believers to appeal for access to land and buildings. They must follow zoning laws and obtain permits. Other practices such as the public wearing of religious dress and religious symbols like the cross are already controversial cases of employment involving regulations on staff uniforms. For some indigenous religions, land is considered sacred and should not be treated exclusively as an economic resource. It is crucial for the state to rely on a descriptive view of religion and MacIntyre's concepts, (a) to estimate properly the

[9] '*Religion*, as I am using the word, is a systematic and practical attempt by human beings to find meaning in the world and their place in it, in terms of their relationship to something transcendent. This description has four essential elements: first, religion is *systematic*; second, it is *practical*; third, it is *an attempt to find meaning*; and fourth, it *appeals to the transcendent*' (Crane 2017, p. 6).

burden to religious freedom when involved in justice claims, and (b) to treat religion as a unified and multidimensional good, (c) without compromising fairness. What I propose is a loose or 'thin' reference of religion in contrast with the 'thick' or strict definitions of religion frequently employed in the legal sphere.

On the distributive issue, I advance an individual and collective conception of needs to ground distributive approaches. I claim that religious goods are part of a person's range of needs in her pursuit of a meaningful life. For those who practise religion, the essential components of religion make it an actual good for believers to pursue. This is contrary to the dominant understanding of religion as part of a person's set of preferences. In addition, believers belong to a faith community. This means that they pursue religion in a collective manner: sharing norms, beliefs, and social practices. For example, common worship, pilgrimages, and the wearing of religious dress are practised by believers following certain norms based on shared history and authoritative interpretation of tradition. In this case, the needs of believers are understood not only in an individual sense. Some religious goods address the collective needs of believers. In a multidimensional conception of need, a liberal polity can consider distributive approaches which can accommodate religion as a unified good.

A needs-based account is compatible with Rawls's idea of primary goods – a set of liberties and all-purpose means which each citizen needs to exercise her two moral powers (PL IV §3). I shall offer a wide interpretation of primary goods. In addition, I seek to develop David Wiggins's needs framework to accommodate religious goods. This includes a reliance on a descriptive view of religion to specify the needs of religious citizens and help draw a reasonable limit to state responsibility.

I recommend that religion be protected to a large extent as a distinct good like the arts, music, culture, or sport. Although citizens need not engage with religion, just as they are not obliged to adopt a particular kind of music or invest in the arts as part of their

conceptions of the good, part of state responsibility is to maintain the conditions of fairness which allows some citizens to engage with these goods. I shall provide an account that does not treat religion as a mere preference, but as one of the meaningful and valuable options that people can engage with – as they can with art. And that it is a need for us all to have meaningful options we can engage with. This does not mean that the state is obligated to preserve religious goods because they are intrinsically valuable or that they amount to a superior good. My suggestions do not support a strong perfectionist position. Furthermore, they are compatible with political liberalism because they are aligned with its core elements, broad aim to maintain fairness among citizens, and its focus on responding to the question of how citizens with varying reasonable comprehensive doctrines could live well together. In my approach, believers can be full participants in the exercise of public reason without being required to leave aside all religious reasons when they so participate.

1.6 Aims of the thesis and chapter summaries

The main goal of this thesis is to evaluate liberal approaches which respond to the normative question: 'How ought the liberal state to treat citizens who subscribe to religion and its component goods?' This question of justice involves (1) examining the extent to which some liberal approaches claim to accommodate religion, and (2) determining whether it is plausible for a liberal state to support religious goods without compromising fairness. I propose novel ways to resolve important issues surrounding religion and liberal justice. These proposals are made with the hope that this philosophical enterprise can make a useful contribution to the growing literature which evaluates diverse approaches to the issue of how religion and liberal justice can coexist. I believe that such a philosophical contribution could provide a practical impact on enhancing the fair treatment of believers.

The thesis has two major parts: (1) a critical assessment of some liberal approaches and a proposal for a thin account of political liberalism as an alternative strategy, and (2) a philosophical evaluation

of needs and, among them, religious goods. This evaluation will include a recommendation for a distributive approach based on an individual and collective conception of needs.

Chapter 1 introduces (1) the research question – how a liberal state ought to treat its religious citizens, (2) a critical examination of a conciliatory position between religion and liberal justice (e.g. neutrality, political liberalism, and perfectionism) in general and as applied to the problem of the distribution of goods in particular, (3) the scope, limitations, and standpoint of the philosophical enquiry, and (4) a preview of my recommendations.

In Chapter 2, I discuss whether neutrality is a necessary liberal principle in general, and its implications to religious commitment. Most neutralists do not employ a coherent understanding of religion. They regard it as politically irrelevant. Some of them merely lump religious and non-religious worldviews into a general category of conceptions of the good as basis for justifying state impartiality. Against this, advocates of religion (e.g. Thomas Pink) conceive religion as a good which lies beyond the competencies of the state. For them, religion and liberal justice are incompatible. I argue that liberals can rely on plausible approaches other than neutrality to accommodate religion. I defend this claim against challenges and objections. This chapter concludes by offering alternative theoretical routes.

Chapter 3 examines the main elements of political liberalism and their normative implications for religious commitment. I advance the claim that political liberalism, in general, offers wider compatibility with religion compared to the dominant conceptions of neutrality. The notions of a *reasonable comprehensive doctrine*, the political conception of a person as reasonable and rational, and the ideal of public reason are some of the main elements of political liberalism which, on closer examination, enable the state to be non-neutral with respect to religion. I defend my interpretation against political liberals who understand Rawls's theory as an archetype of strict neutrality. For instance, Quong's reading of political liberalism supports a commitment to neutrality which is partial against religion.

I highlight some limitations of political liberalism and their implications for the state's treatment of believers in Chapter 4. Some theoretical requirements of Rawls's conception of reasonable appear to be too demanding. Some of the implications of this for a believer are (1) the very limited role of religious reasons in public reason, and (2) the likelihood of achieving overlapping consensus without attention to the coherence of the principles of justice to a person's comprehensive doctrine. To address this, I propose an alternative reading to the main elements of political liberalism. My suggested interpretation opens the possibility of a version of political liberalism which believers might accept. I end the chapter by replying to challenges and objections to my reading of political liberalism.

In Chapter 5, I argue for the plausibility of a thin account of political liberalism based on the reading I have offered. I maintain that religion can provide foundational support of liberal principles and political values (e.g. tolerance, liberty of conscience) (Waldron 2021, p. 102). The foundational support is largely accomplished by the employment of some ideas of the good that can combine with political values. I employ MacIntyre's ideas (e.g. tradition, internal goods) together with Crane's arguments to capture what a religion standpoint is and how it can be reasonable. In this way, believers could offer arguments and views of justice in public reason partly grounded on religion.

I examine the plausibility of the concept of needs in helping the state accommodate religious goods in Chapter 6. I shall advance a three-pronged claim: (a) it is plausible to construe religious goods as part of the category of needs, (b) in opposition to preference satisfaction proponents who count religious goods as part of individual preferences, and (c) this has important distributive implications.

In Chapter 7, I offer a construal of religion as a collective good in order to address claims arising from the social dimension of religion. I highlight the limitations of appealing to the notion of associational goods in order to accommodate religious goods. I appeal to Crane's descriptive view of religion as part of my defence of employing the

idea of collective good as the proper understanding of the goods related to the social dimension of religion.

In Chapter 8, I propose a distributive framework based on my suggested conception of need. My recommendation aligns with Rawls's idea of primary goods, understood in an expansive way. The distributive approach I endorse relies on and complements Wiggins's theory of needs, with a special focus on religious goods. Through this approach, my hope is that religious goods are accommodated in a unified and coherent way. This does not entail that believers would enjoy special treatment from the state, which political liberals and non-adherent citizens fear.

I offer conclusions to the issue of reconciling religion and liberal justice in Chapter 9.

PART I:
RELIGION AND LIBERALISM

2

LIBERAL NEUTRALITY AND RELIGION

Neutrality is a concept most liberal theorists employ to secure moral aims like the respect for individual autonomy and fair exercise of state power. A neutral state exercises epistemic restraint by not appealing to any conception of the good in framing its policies and action. Without undue influence from the state, each citizen is free to pursue her own conception of a good life.

The principle of neutrality underpins an *egalitarian theory of religious freedom* (hereafter, ETRF). In ETRF, religion is understood as 'a subset of a broader category called *conceptions of the good* and it does not generate claims to unique exclusive treatment' (Laborde 2016b, p. 249). Religious and non-religious citizens are treated on an equal plane because no conception of the good is favoured (Laborde 2016b, p. 249). ETRF is a dominant framework because an appeal to it allows the state to (1) employ liberal rights (e.g. conscience, association) to normatively interpret the dimensions of religion in a justice claim; (2) doing so will secure conditions of equality and non-discrimination, and (3) the state extends the protection it offers to religion to non-religious conceptions of the good (Laborde 2016b, p. 250).

The main task of the chapter is to unpack the concept of neutrality by exploring what it is, why it is applied, where, and by whom. I claim that, although neutrality has practical benefits, the adoption of neutrality as a necessary liberal principle is unfairly restrictive of religion. Part of the problem is that most neutralists do not employ a coherent understanding of religion. They regard it as politically

irrelevant. Some of them hold that the dimensions of religion are reducible to its non-religious analogues. Against this, Tom Pink asserts that religion is a good to which the state cannot be neutral. I argue that liberals can rely on plausible approaches other than neutrality to accommodate religion. I defend this claim against some challenges and objections. I conclude with a broad sketch of approaches which the state can employ, other than the frameworks based on the principle of neutrality.

2.1 Why neutrality?

In this section, I examine the concept of neutrality. I maintain that liberal neutralists rely on certain concepts which motivate their commitments to neutrality. In other words, the conceptions of neutrality are underpinned by a value which liberals find necessary to protect. For example, Ronald Dworkin suggests that liberals are committed to protect the value of ethical independence. I do not propose to examine his account exhaustively. I cite it as part of explicating my claim which maintains that liberals need not adopt neutrality as a necessary principle.

2.1.1 What is neutrality?

What is involved in cases in which neutrality is invoked? Jeremy Waldron explores the understanding of neutrality as applied in international law. In instances of conflict, Waldron explains, neutrality is a strategy in which the range of actions available to the third party (i.e. party that is not involved in the conflict) enable her to maintain a non-partisan status (1993, p. 145). Any action that would affect the outcome of the conflict significantly would render her non-neutral (Waldron 1993, p. 145). There are many reasons why a state would choose to remain neutral in conflicts (e.g. preservation of its own interests, non-escalation of conflict, to mediate and broker peace among the conflicting parties) as well as motivations to remain non-neutral (e.g. threats, economic interests, among others) (Waldron 1993, p. 145). The important thought here, he highlights, is that neutrality is not a self-justifying concept (Waldron 1993, p. 147). This means that neutrality is not applied for its own sake; it is heavily reliant

on a set of reasons for its justification. These reasons form the basis for a conception of neutrality which draws the line between involvement and non-involvement of a third party in a conflict (Waldron 1993, p. 146). In other words, a person is motivated by non-neutral reasons for adopting a neutral status. It would be crazy, as Waldron explains, to have neutral reasons for the sake of neutrality (Waldron 1993, p. 146). The third party is neutral for *a* reason.

A critic might wonder whether neutrality is important in the absence of conflict. In reply, proponents of neutrality argue that conflicts can be interpreted in different ways and that the range of cases which demands the application of neutrality is wide. Take the case of choosing whether to allocate resources to building a football stadium or to renovate a historical site. In such instance, it is hard to identify which one is superior over the other. The relevant third party ought to be neutral because her support would tip the results in favour of a claimant. Here, a third party is someone who has powers to determine the course and outcome of a conflict, and she[10] supplies the reasons for employing a conception that best expresses her neutral status.

Analogously, liberal neutrality is a principle which requires that, in a plural society, the state ought not to favour or take sides between conceptions of the good (e.g. moral, philosophical, or religious) (Klosko and Wall 2003, p. 6). The state is the relevant third party because of the coercive powers it wields. The effects of state policies can result in favouring or hindering a citizen's pursuit of a conception of a good life over others. Dworkin explains that legislators and state officials ought to be neutral on the question of a good life because citizens have different conceptions of it and that the state would not treat them equally if it supports one conception over the other, either because they believe that one is superior over others or that one conception is held by the majority (Waldron quoting Dworkin 1993, p. 144). His suggestion is underpinned by several assumptions: (1) by virtue of the capacity to choose, citizens pursue different and sometimes opposing conceptions of a good life, (2) the state, through

[10] Any unnamed hypothetical person I refer to as 'she' for gender inclusivity.

its officials and legislators, is the relevant third party whose exercise of powers influences significantly a citizens' pursuit of a conception of a good life, and (3) the conflicts arising from different conceptions of a good life are relevant cases where neutrality should apply. For Dworkin, the adoption of neutrality as a necessary liberal principle is grounded on the protection of the person's *ethical independence*: the capacity of an agent to choose and pursue her conception of a good life (Waldron quoting Dworkin 1993, p. 144). In Dworkin's recommendation, the state maintains the conditions of freedom of choice through justified non-interference. Citizens ought to be free as far as possible from state influence in determining the course of their lives.

Some proponents of liberal neutrality share Dworkin's assumptions. For example, Allan Patten employs fair opportunity for self-determination (hereafter, FOSD) as a regulative principle in determining equal treatment of conceptions of the good (Patten 2014, p. 118). His theory considers strategies (e.g. even-handed support, regulation, and privatization) as non-departures from neutrality so long as they allow equal opportunities for citizens to pursue their own conceptions of the good. By being neutral in its treatment of citizens, a state remains impartial in its exercise of its powers.

The employment of neutrality to protect a person's right of self-determination has several advantages. First, the conditions of fairness of social policies are maintained by strategies that either support all conceptions of the good (e.g. even-handed, compensation) or none (e.g. privatization). This normatively expresses *equal* access of citizens to resources. It is also a fair accommodation of available conceptions of the good in society. Second, a neutral state abstains from making ethical judgments on conceptions of the good, religious or non-religious. If applied to religion, a neutral state avoids entanglement with religion because the justification of policies and state action are not predicated on a religious view. Believers are free from objectionable state interference because religion is not singled out by the state. Neutrality also helps the state to stay within the limits of its competency and avoid setting itself up as an expert in religion.

Despite its perceived advantages, there are several concerns whenever a state is committed to the principle of neutrality. To this I turn in the next section.

2.1.2 Problems with neutrality

The adoption of neutrality as a necessary principle yields some theoretical worries. First, it is unclear what conception best expresses a commitment to neutrality.[11] If a state employs neutrality of effects, then it faces the *demandingness objection*. Neutrality of effects require that citizens with a particular conception of the good should not benefit (or suffer) compared to others in a given state policy. This is determined by looking at a particular state policy and guarding against unequal effects to citizens' various conceptions of the good (Patten 2014, p. 112). If this is the case, then it appears too demanding for the state to secure equal chances for its citizens to pursue their conceptions of the good (Klosko and Wall 2003, p. 8). Some conceptions of the good are more expensive to sustain than others. Even if the state tried to compensate for the non-neutral effects of a state policy, such compensation would still be vulnerable to unequal outcomes. This is, in large part, due to the complexity of a citizen's conception of the good.

A conception of the good, broadly construed, is a person's view of what constitutes a good life. This includes different goods, values, and interests which are difficult to estimate in terms of the non-neutral effects of a social policy. Given the impractical costs of neutrality

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[11] Neutrality frameworks are commonly distinguished in three conceptions (Arneson 2003, p. 193):

(1) *Neutrality of aims* demands that no state action or policy should aim at promoting (or hindering) a particular conception of the good over others.

(2) *Neutrality of justification* requires that any state action should be grounded on reasons that are independent of any appeal to a particular conception of the good.

(3) *Neutrality of effect* warrants that state action should not benefit (or hinder) a particular conception of the good in comparison with others.

Patten adds another version of neutrality (Patten 2014, p. 106):

(4) *Neutrality of treatment* prohibits the state from being more accommodating to a particular conception of the good over others.

of effects, a liberal neutralist may concede and amend her position. Some of them endorse the *neutrality of justification* as an alternative conception. Briefly, neutrality of justification demands that the reasons for social policies should not be grounded on a particular conception of the good. For example, policy *P* can have non-neutral effects to some conceptions of the good, but it is accepted by citizens because it is not supported by reasons which are grounded on a particular ethical or moral doctrine. By employing neutral reasons, social policies are justified as impartial even if they have non-neutral effects.

However, the proponents of neutrality of justification face a version of the demandingness objection because of its strict rule of not appealing to any ideas of the good. Take for example, Satanists, practitioners of witchcraft, terrorists, or fundamentalist religious groups who hold conceptions of the good which can be harmful. The state could address this threat by grounding its policies on the value of toleration. However, a neutral state cannot avoid appealing to ideas of the good to justify the boundaries of toleration. For example, some religious practices (e.g. infant sacrifice, public orgies) are offensive and infringe on basic rights. The state has to explain why those practices are impermissible, and this requires an appeal to moral conceptions or ideas of the good.

Patten agrees that neutrality of justification admits a broad range of policies that are non-neutral in nature (Patten 2014, p. 113). This is demonstrated in accommodation cases in which exemptions from general laws are granted to a particular religion. He suggests that these cases are examples of objectionable state partiality even if its justification or aim is neutral (e.g. for reasons of stronger acceptance of authority and legitimacy from citizens) (Patten 2014, p. 113). He prefers other conceptions of neutrality that would limit accommodation cases that favour religion over other conceptions of the good. For him, neutrality of justification is not strict enough to sustain a total commitment to neutrality.

Another common objection to the principle of neutrality is that it privileges individualistic conceptions of the good. To this I turn in the next section.

2.1.3 The threat of individualism

Most critics, Waldron explains, point out that a liberal neutralist fails to distinguish between the different kinds of conceptions of the good. The notion of a good life that a liberal neutralist often privileges is a very individualistic account (Waldron 1993, p.163). The emphasis, following Waldron's exposition, has been the 'individual planning on his *own* life, shaping it into a meaningful whole *for himself*, choosing *for himself* what is to count as a motivating consideration' (Waldron 1993, p. 163). Critics argue that conceptions of the good that are 'oriented to the coherence of a community, congregation, or nation' are not treated equally in a neutral state (Waldron 1993, p. 164). Behind the employment of neutral approaches, it appears that the state is actually non-neutral.

There is wisdom in Waldron's argument. A conception of the good can also take communal forms in which individuals share a way of life like religion or culture. It is not only limited to an individual's idea of a good life. Without making this conceptual distinction, Waldron cautions, the principle of neutrality tends to be framed by individualistic frameworks (Waldron 1993, p. 165). This means that a neutral state treats conceptions of the good exclusively on individual terms. For example, Dworkin's ethical independence approach identifies religion as a private commitment. The social dimensions of religion are not recognized as normatively relevant in the political sphere. Other conceptions of the good which are communal in nature (e.g. culture, religion) are ruled out and might not even be tolerated (Waldron 1993, p. 165). A believer might worry that religion is only understood as an individual life plan and therefore could be treated like any personal project or ethical commitment.

I do not discount the importance of applying neutrality to maintain the fair conditions of self-determination. The serious concern I highlight is the failure to consider the features of some conceptions

of the good (e.g. culture, religion) which would be difficult to realize within an individualistic account. For example, a state motivated exclusively by the value of ethical independence is not being fair in its treatment of communal conceptions of the good (e.g. religion) (Waldron 1993, p. 164). There are conceptions of the good which are jointly pursued by citizens. If only interpreted in individualistic concepts, there is a danger of relativizing the social dimension of religion for example, which is crucial in their distinctiveness as goods.[12] If the state is non-neutral to other conceptions and neutral to others, it has to provide sufficient reasons to justify its exercise of coercive power.

From the foregoing, neutrality to a large extent depends on a reason. Its explanatory force is derived from a particular value that underpins it. Most liberals want to protect the value of ethical independence: a person's capacity for self-determination as exercised in her pursuit of an idea of a good life. Although that is important, it is unclear, however, (1) which conception of neutrality satisfies such a non-neutral reason, (2) why neutrality is applied comprehensively to the question of a good life, and (3) whether neutrality is a fair approach because its conceptions exclude communal conceptions of the good.

In the next section, I explore the implications of neutrality to religious commitment and evaluate Cécile Laborde's theory of restricted neutrality.

2.2 Neutrality and religion

I argue that a state's adoption of neutrality as a necessary principle tends to privatize religion commitment. As a remedy, Laborde attempts to accommodate the other dimensions of religion through a framework that employs a restricted application of neutrality. Her theory retains some practical benefits of neutrality whilst accommodating the social dimension of religion. I agree with her aims. However, her approach subsumes the dimensions of religion to an array of liberal rights which results in a partial and incoherent view of religion and its component goods.

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[12] I shall explain this further in Chapter 7.

I begin with a discussion of the implications of neutrality to religious commitment.

2.2.1 Religion as a private commitment

Liberals who hold neutrality as a necessary principle argue that the best conception of it is the one in which the state is neutral without exceptions. For example, Patten offers neutrality of treatment. Briefly, a liberal state violates neutrality of treatment if its policies are more accommodating of some conception of the good than others without equally compensating its rivals (Patten 2014, p. 115). His approach identifies state policies as non-departures from neutrality insofar as they allow equal opportunities for citizens to pursue their own conception of the good. He prefers the privatization strategy as the one that best realizes neutrality of treatment (Patten 2014, p. 122). The privatization method directs the state to refrain from adopting policies that assist or hinder any good or activity involved with a particular conception of the good (Patten 2014, p. 119). For example, the state should not subsidise goods or arrange public institutions to favour particular religions (Patten 2014, p. 120). It should not also impose special taxes or prohibit the use of goods that are important to particular religions (Patten 2014, p. 120) For Patten, the state should remain neutral among conceptions of the good in order to maintain impartiality among citizens.

The main problem of adopting Patten's conception of neutrality is the impossibility of treating conceptions of the good equally because of their complexity. Individual conceptions of the good admit various goods, values, and multiple scales. For example, if the state decides to invest in infrastructure of public transport and not in roads, and restricts car access (e.g. London's congestion charge), then it favours citizens who have some views of a good life and disadvantage those who see their freedom essentially as the freedom to drive BMWs fast on good roads. In this case, should not the car drivers be compensated? It is too demanding for the state to respond to this issue using the criteria of neutrality that Patten suggests. If applied to the case of religion, his neutrality of treatment appeals to a general and objective

criteria based on some normative features that religious and non-religious goods share. This results in unfair comparisons because religion is a good which is different from sports, music, and the arts. They may share some normative features, but it would not generate sufficient reasons to meet the standards of equal treatment of citizens because of their substantive differences as goods.

In addition, Patten's suggestion implies a rivalry between religious and non-religious goods. There can be concrete cases in which religion is in conflict with or would pose as a serious rival to others. There are instances when believers aim to co-opt state power to further their political agenda. This is also expressed in an outright appeal to a moral doctrine to justify social policies, or in subtle forms where some policies subsidise or support religion for its own sake. In this case, the state can be neutral. However, it is far from clear whether religious goods and non-religious goods are rivals all the time.[13] Some

[13] Rivalry is a complex notion. For example, Nick Martin offers three conceptions of rivalry. Incompatibility rivalry (r1) arises when there is deep and irreconcilable difference between the content of two or more goods. In contrast, intra-domain rivalry (r2) occurs when there is plurality of goods within the same domain or category of good. For example, there are classical, rock, and punk within the domain of music, and no one of them is reducible to the others. But, unlike the case of religion, no type of music claims ultimate authority over others; thus one is not incongruous if both classical and rock music are preferred. Lastly, state power rivalry (r3) ensues when state power is used between two or more goods, whether they belong to the same domain or not. The simplicity of r3 shows a wider coverage that includes r1 and r2. Furthermore, the application of state power to a particular good can bolster r1 rivalries. For example, if a liberal state decides to subsidise Islam faith schools, it elevates Islam's standing as a good relative to other goods. As long as state power is used to influence the standing of a good relative to another, a liberal state should understand rivalry in the lens of r3. It is important to note that r1 can happen within the same domain (i.e. r1 entails r2) or across goods (i.e. r1 without r2). For example, a religion with strict dietary laws would render eating certain animal meat incompatible with its moral code. Or, as Martin cites, in the history of Catholic tradition, certain types of music or books were placed on an Index as repulsive or incompatible with its moral teaching (Martin 2017, pp. 147–49).

conceptions of the good are incommensurable. This means that one cannot be reduced to the other. For example, Christianity cannot be reduced to Islam just as softball cannot be reduced to basketball even if both goods belong to the same category (i.e. Christianity and Islam are examples of religion, softball and basketball are sports). It is also the case that softball cannot be reduced to Christianity. The reality of plural goods does not necessary mean that they are always in conflict or incompatible. For example, I can be both Christian and a softball player, or a Muslim and a painter. It seems that, in Patten's view, plural goods are always in conflict.

Patten does not offer a conception of rivalry. This makes it very difficult for the state to determine the range of cases where neutrality of treatment is applicable. Against his suggestion, the state need not apply neutrality of treatment all the time. Or, following Waldron's arguments, a state can deploy a neutral approach in cases of rivalry arising from an outright appeal to a particular ethical or moral worldview.[14]

Second, individual choice is an important value that most liberals want to protect through the principle of neutrality. The main worry in a neutral approach is that, in understanding religion as a subset of ethical independence or a personal belief, the state may find it very difficult to consider the other aspects of religion which can ground legitimate state support. For instance, if one adopts Dworkin's idea of ethical independence and Patten's FOSD, religious commitment is narrowly viewed as a function of ethical independence or self-determination. As an implication, the other dimensions of religion

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[14] I suggest that a liberal state should only be concerned with cases of contested justice claims that would highly risk the non-imposition norm (NIN). The NIN is focussed on precluding any exclusive appeal to a specific doctrine of a conception of the good because it disparages citizens who hold different or even opposing conceptions of the good. Here, the concept of rivalry would be helpful in tracking the conditions of fairness since state power is not exclusively justified by an appeal to a specific doctrine. This type of rivalry is an example of Martin's notion of r3 or state power rivalry. However, this does not necessarily entail a total application of neutrality.

are not normatively relevant in the political domain. Since the state is not (and need not be) sensitive to what religion is, then it fails to consider the other aspects of religion that do not necessarily upset social stability or generate political conflicts. A neutral state is unconcerned about the truth of one's particular doctrine. In fact, even if such doctrine is true, it is *epistemically unsuited for public life* (Raz 1995, 2012, p. 62). However, the truth about one's religion does not necessarily entail that the state remains neutral to it all the time. Nor is it limited to adopting neutral approaches in order to secure a person's freedom of self-determination.

Religion has distinct normative features. One of them is that believers view and relate to the world according to their faith in the divine. This entails, according to Crane, dividing the world into the sacred and profane (Crane 2017, p. 107). Put crudely, the notion of the sacred helps believers achieve a religious ideal (e.g. following God's commands, being united with the divine). Anything (e.g. rock, tree, or stone) can be considered sacred according to the norms and system of beliefs of a religion (Crane 2017, p. 107). For instance, the wearing of the cross or religious dress helps a believer connect with the divine and express this relationship to others. Believers also follow social norms in treating these sacred objects, such that a *hijab* or the cross is not entirely subject to a person's control or whims. If the state does not refer to the meaning of a religious dress or symbol, it can be too restrictive in allowing public expression of a core religious practice, for example. The wearing of religious dress like the *hijab* is prohibited in public in France, following a total ban on religious headscarves.[15] It is an example of a social policy based on neutrality which turns out to

[15] I will employ the *hijab* case and refer to some aspects of the case in several chapters to support my arguments and interrelated claims about the normative importance of the features of religion in the political sphere. I will not give a full treatment of it in a particular section. For example, in 2004, the French parliament passed a bill into law which proscribes overt religious symbols in public schools. This includes wearing a religious dress and headscarves in public schools. For a full treatment of the history of such law and its legal justifications, see Kılınç 2020, pp. 61-83.

be a means to push religion out of the public-political sphere. Here, the state treats religion as an entirely private endeavour.

I am not arguing for a total abandonment of neutrality. However, the state need not adopt neutrality as a necessary principle. Waldron explains that it is some deep concerns that motivate a liberal to adopt neutrality and endorse some of its conceptions (Waldron 1993, p. 166). For Dworkin, the deep concern is ethical independence. For Patten, the state ought to assure fair opportunity for individuals to exercise self-determination. He even concedes that neutrality is normally weighed against, and in certain cases appropriately gives way to, other liberal values and political considerations (Patten 2014, p. 106). If a liberal campaigns for neutrality as a necessary liberal principle, she has to explain the concerns that animate her commitment to it. In particular, the state needs to examine its reasons why and when it is neutral to religion. Some states have a notorious and difficult history of religious conflicts that warrant an application of neutrality to secure public order. Other states have enjoyed a history of the positive benefits of religion to public life and they are non-neutral to it. In some liberal states, the maintenance of a diverse range of choices for individuals is an important element for its citizens' exercise of their right to choose.

Laborde is aware of some challenges in employing neutrality. She is dissatisfied with a liberal's adoption of neutrality as a necessary principle. She agrees that Dworkin's idea of ethical independence is not a sufficient reason for a state to be neutral to religion without exception. As an alternative, she proposes a framework where neutrality is restrictively applied.

2.2.2 Disaggregating religion

Laborde observes that proponents of neutrality (e.g. Patten, Dworkin) adopt a broad definition of a conception of the good as a core assumption upon which they build their theories (Laborde 2016b, p. 250). This means that ETRF proponents have actually defined the *good* substantively in their attempts to manage the salient dimensions of religion in justice claims (Laborde 2016b, p. 250). Laborde argues

that this loose analogy between religion and conception of the good creates problems for liberal neutralists because a conception of the good, broadly construed, admits compatibility with religion in general, and this seriously conflicts with their uncompromising endorsement of neutrality (Laborde 2016b, p. 250). There are cases in which there is no incompatibility between religious and non-religious goods in content and across domains.

What demands serious attention, according to Laborde, is the justificatory conditions of the exercise of state power. For instance, state power, if applied to favour or reject a religion, creates rivalry among citizens. This requires careful nuancing. The state needs to determine what constitutes *favouring* or *hindering*. For example, permitting a mosque to be built on a given public space does not necessarily mean privileging the Muslim community if they lack a place for common worship. Nor does it clearly hinder non-adherent citizens in exercising their own beliefs and worship if they already have their own spaces or that they are not interested in the location itself. In this case, the justification of state power together with the circumstances surrounding the claim are crucial elements in evaluating whether state action is unjustly partial to a conception of the good like religion.

As an alternative, Laborde recommends a restricted application of neutrality. Her *proviso* includes: (1) state action should be grounded on and regulated by general rules of public justification, (2) if religious identity is a marker for social vulnerability, this identity should not be endorsed by state citizens, and (3) in cases in which religion acts as comprehensive ethics, neutrality should be applied robustly (Laborde 2017, p. 150). She maintains that the state can be non-neutral to the dimensions of religion which are not controversial. In her proviso, the state need not adopt a conception of religion. It only needs to identify the dimensions of religion salient in a justice claim and then employ the main elements of the relevant liberal right(s) to normatively define those dimensions. For example, a justice claim about tax exemptions for the Catholic church involves a normative interpretation of the church in its institutional dimension. An appeal to the elements of

the freedom of association would help the state adjudicate the case as to whether the Catholic church acting as an institution merits tax exemption. Her approach aligns with ETRF proponents who hold that religion does not generate unique claims to justice.

A critic might wonder why neutrality is employed by the state and applied selectively following Laborde's framework. For Laborde, the liberal value which motivates the application of selective neutrality is equal treatment: 'religious and non-religious worldviews should be treated on an equal plane and all citizens deserve equal concern and respect' (Laborde 2016b, p. 249). Behind this is an assumption that believers are treated unequally, either that they gain undue advantage or that they have been subjected to objectionable inequalities. She cites cases of religious accommodation which are instances of unjust partial treatment of religious citizens (Laborde 2016b, p. 249). To resolve this, she offers a theory that recognizes and protects the social dimensions of religion, whilst maintaining equality. As an example, her argument against a policy that targets the wearing of the *hijab* under a total ban of religious headscarves is based on (1) the unequal treatment of religious citizens, and (2) the wearing of the *hijab* being a religious social practice that is not, strictly speaking a duty of conscience, and therefore, it is not an element of a comprehensive ethics in which the state should be neutral (Laborde 2017, p. 34).

Compared to Dworkin (ethical independence) and Patten (fair opportunity for self-determination), Laborde's strategy of restricted application of neutrality is motivated by her concern for equality and a conception of it as non-discrimination. This is well motivated because equality is an important liberal value. In addition, it aligns with the protection of ethical independence or right to self-determination of citizens. In her strategy, the state is concerned with tracking justice claims that implicate one or more dimensions of religion. Her nuanced approach identifies the dimensions of religion which merit an application of neutrality. Beyond those normative features, the state need not be neutral to religion.

Laborde offers an ETRF model which is more sensitive to the social dimension of religion. However, a closer examination of it reveals a set of challenges which makes Laborde's approach less attractive to religious citizens.

2.2.3 A disaggregated religion

There are several theoretical concerns in adopting Laborde's approach. First, a critic might be concerned with Laborde's epistemic avoidance of religion. Recall that in her theory, a liberal state need not refer to religion. In place of religion, the state substitutes the normative elements of liberal rights to interpret the dimensions of religion salient in justice claims. If rights are at issue, then the dimensions of religion which are normally compatible may end up contradicting each other because they were normatively defined by elements of different liberal rights. For example, the application of anti-discrimination laws may unfairly flag core doctrines that exercise differential treatment as cases of wrongful discrimination (e.g. ministerial exception, religious garb, and male infant circumcision). Some policies might have negative effects on the collective integrity of faith communities by forcing believers to reform or abandon core doctrines that are assessed as acts of wrongful discrimination to women, children, or people who are gender-diverse. Without consideration of these features of religion, the state is liable to reduce religion to a collection of beliefs and practices which can be compared with and treated like their non-religious equivalents.

Laborde could still argue for the irrelevance of employing a conception of religion in determining equal treatment. For her, a unified view of religion is unnecessary because it is the category of respect-worthy beliefs and practices that would perform the normative work. An understanding of religion would play some role in terms of supplying the content of the value of the practice or the belief. For example, the claimant can ground her argument for wearing the *hijab* in public based on its relevance to her personal integrity. Religious significance is part of the explanation why personal integrity is at stake, given the policy of the state to ban the wearing of religious dress

in public. Here, religious reasons play a secondary and limited role because it is the value of personal integrity which the state protects.

Although Laborde distinguishes between conceptions of good and even points to the conceptual mistake ETRF proponents make with its loose definition of conception of the good (Laborde 2016b, p. 250), it is surprising that she insists on not relying on any unified view of religion. Laborde's appeal to the main elements of liberal rights needs to be supplemented. In other words, the state still needs to refer to features of religion in order for it to make a fair assessment of justice claims. For example, cases which involve the estimation of the burden to religious freedom require the input of meaning and value of the practice in question to religion. Laborde's substitute category of respect-worthy beliefs and practices treats religious commitment like any other personal choice or preference.

Furthermore, in Laborde's approach, it is equal treatment through non-discrimination that motivates the interpretation of liberal rights and ergo, religion. This overlooks the distinctiveness of religion as a good, because it is a conception of equal treatment or an acceptable level of non-discrimination which determines the treatment of conceptions of the good. Thus, religion ends up as a disaggregated good because its dimensions are interpreted by liberal rights towards achieving a desired state of equality or non-discrimination.

Pink observes that religion is increasingly understood apart from its supernatural roots and instead, as a subset of respect-worthy beliefs and practices, personal commitments, a type of group or cultural identity, or conception of the good on par with non-religious worldviews (Pink 2012, p. 17). The perils of misconstruing religion in this way are seen in the treatment of believers based on the fundamental value of equal concern for all citizens. Pink cautions that the secularization of religious liberty has resulted in instances of government interference that compromise religious exemptions from equality and gender laws, for example, with the aim of securing equal treatment (Pink 2012, p. 18). This removes the distinctiveness of religious liberty (and its safekeeping) because religious commitment is

conceived of and treated like any other natural good that falls within the general jurisdiction of the state, such as sports, hobbies or other modes of collective cultural affirmation (Pink 2012, p. 22).

Raymond Plant raises similar concerns. He points to contested claims in the Human Rights and Equality Act in which identity-constituting beliefs and practices are normatively interpreted by liberal values and strategies and therefore, can be limited, restricted, or sometimes even justified as infringements of the rights of others (Plant 2013, p. 13). Without recognising the basic features of religious practices, a liberal ends up confusing them as identity-constituting beliefs which can easily be overridden by interests of equality and non-discrimination. These conflicts are not simple epistemic obstacles. They are deep, controversial, and inconclusive because the range of cases involves religious practices which rely on a coherent view of religion for their meaning and value. When legal approaches conflict with the values and behaviour of people who belong to faith communities, it remains unclear whether believers would keep their duties of justice because of the state's insufficient or worse, lack of understanding of religious commitment and its normative demands. A reference to religion is necessary in some cases to estimate properly the effects of policies and the adjudication of claims involving religious freedom.

I agree with Laborde's diagnosis of the problem and her recommendation of eschewing a commitment to neutrality as a necessary principle. However, her proposal suffers from the limitations of ETRF theories. In particular, her approach of providing protection to the social dimensions of religion does not cohere with her insistence to do it without a unified view of religion. This results in the unfair treatment of believers, because it misunderstands features of religion which are crucial in maintaining the collective integrity of their faith communities and personal integrity as a believer. This partly contributes to the problem of reconciling religion and liberal justice.

2.3 A problem of reconciliation

In what follows, I discuss some problems as part of the complex topic of reconciling religion and liberal justice. First, I claim that the

principle of neutrality limits the state in treating religion fairly because the state ends up relying on an individualistic conception of religion comparable to non-religious commitments, or it does not rely on a coherent view of religion in determining social policies which involve religious liberty. Second, I explain the position of critics who find the liberal project incompatible with the protection of religion as a distinct good. I find this position untenable because it only intensifies the rivalry between religion and state. Last, I outline some steps in overcoming this problem.

2.3.1 The limits of neutrality

Laborde offers an ETRF model which can yield practical outcomes that are more sensitive to the social dimensions of religion. However, this comes at the cost of dissolving religious commitment as normatively comparable to non-religious equivalents. This occurs because beliefs and practices are understood apart from their religious roots. They are evaluated on the general normative features they share with non-religious conceptions of the good or in external conceptual categories which are based on individual rights. Although believers enjoy a level of protection against state interference driven by anti-religious sentiments or political intrusions arising from the theocratic zeal of some religions, a neutral view of religion does not carry a conception appropriate to it as a distinct good. At best, it can be retained as part of a liberal state's practical strategies in response to its political and social climate. For instance, certain societies which have a troubled history of religious conflicts implement neutral approaches grounded on toleration with the aim of maintaining public order.

The problem of reconciling religion and liberal justice remains acute because religion and its component goods suffer from unfair comparative assessments under the ETRF focus. Conceptions of the good are treated equally through a non-discriminatory approach that favours individualistic accounts of a good life. ETRF theories also aim at achieving a level of equal treatment, non-discrimination, or neutrality at the cost of sensitivity to the diversity of goods in society. In particular, religion, a communal conception of the good,

is recognized and treated as an individual commitment which can be compared to other ethical views and far from its supernatural roots.

Neutrality has practical political benefits. It can, to a large extent, prevent the exacerbation of conflict in justice claims because the state refrains from appealing to any comprehensive doctrine. In Patten's defence of neutrality, it is a principle that helps preserve a citizen's right to autonomy through restricted state interference. Laborde highlights the fact that neutrality allows a liberal state to eschew any conception of religion in its attempt to render fair treatment of its citizens. This enables the state to avoid exceeding the limits of its competencies in its exercise of its powers. Despite these perceived theoretical advantages, neutrality based on ethical independence or equal treatment of citizens alone is only compatible with the individual dimension religion. Some liberal theorists argue that this insufficient understanding limits the extent to which believers are treated fairly.

Defenders of religion claim that religion deals with spiritual goods which exceed the competencies of the state. They seem to increase the tension between state and church authorities when they argue religion as a conception of the good is over and above state regulation. Although religion serves as a means for people to achieve spiritual goods, not all people choose religion as part of their conception of the good. In addition, the immunity from state scrutiny of religion is an exception which leads to a rivalry among citizens. I discuss the implications of this in the next section.

2.3.2 Religion and state

Pink presents an alternative picture that underscores religion as a distinct good. He states that religion is 'a genuine good in its own right, and as a good that transcends the authority of the state' (Pink 2012, p. 9). Understood in this way, religion retains its normative power. In his view, the free exercise and non-establishment clauses of the US, for example, are normatively interpreted as defining the limits of state interference with regards to religion. I agree with part of his argument which states that religion is a unique good. Its system of beliefs and moral code ground a range of obligations which believers are bound

to keep. Moreover, religious practices derive their meaning and value in helping believers realize religion as a conception of a good life. However, to defend the claim that religion transcends the authority of the state implies that religion merits total exemption from state scrutiny. This poses a problem since believers are also citizens who are part of a corporate body from which state power emanates and to whom state action ought to be justified. If believers defend religion as lying beyond state authority, then this creates a rivalry among citizens.

I agree with Laborde's argument that the complexity of a good, like religion, does not entail that it is totally exempted from state scrutiny (Laborde 2017, p. 595). Against Pink, although religion is a communal conception of the good, this does not mean that it should be immune from the effects of social policies and state action. First, believers share a political society with non-believers. As a corporate body, they help determine the terms of justice which citizens are expected to uphold, regardless of their conceptions of the good. Second, some religious practices and claims for certain goods can conflict with others who do not have a religion. To co-opt state power to advance a religious agenda is a serious cause of division. For instance, Pink's position is incompatible with the view of citizens as equal stakeholders in a political society. Although they have different moral and ethical worldviews, citizens should regard each other as political equals in finding terms of justice. The task is to find ways to account for religion as a distinct multifaceted good without compromising fairness.

In the next section, I outline some ways to respond to this complex issue.

2.3.3 Liberal justice and religion

Despite its practical advantages, other principles apart from the principle of neutrality will be required to achieve political goals. We want to explore a position where a liberal state can rely on non-neutral approaches so long as it does not outrightly favour or single out some citizens because of the conceptions of the good they pursue. Some conceptions of the good are identity-conferring. They bind members

into a particular community and way of life like religion. A state which employs a nuanced non-neutral approach is more sensitive to particularities arising from a citizen's conceptions of the good, than a liberal neutral state is.

Let me outline some plausible alternative steps. First, following Waldron's arguments, liberals can identify some conceptions of the good which do not entail a comprehensive application of neutrality or where neutrality is not warranted at a theoretical level. Some liberal theorists have demonstrated sensitivity to this in their frameworks. For example, Rawls considers religion as a *reasonable comprehensive doctrine*. Briefly, a reasonable comprehensive doctrine has five normative features: (1) it offers a coherent and intelligible view of the different aspects of human life, (2) these particular views of human life rank different values and estimate them, following their own moral or ethical standards in cases of conflict, (3) it has an active (i.e. not fixed) and stable tradition of thought and doctrine, (4) it accepts the fact of reasonable pluralism arising from the burdens of judgment, and (5) it does not endorse the use of political power to suppress or deny those who hold opposite comprehensive doctrines (provided that these are also reasonable ones) (PL §II). In addition, reasonable comprehensive doctrines play a significant normative role in determining the terms of justice. Rawls's conception of a reasonable comprehensive doctrine is compatible with religion as a unified and coherent good, whilst retaining some conditions of the application of neutrality when necessary.

Second, the liberal narrative tends towards the protection of individuals. Liberal frameworks recognize the separateness of persons; they emphasise that individuals are the bearers of rights. This helps liberals avoid positing ontological realities such as communities or spiritual goods as a basis for terms of justice. Religion may be valuable to some but not to all citizens. This does not mean, however, that a liberal should ignore or reject social or communitarian values, or that liberal approaches are only limited to privileging individualistic notions of the good. Part of the task of reconciling religion and liberal justice includes understanding, in a coherent way, a citizen's

commitment to religion and not simply by bits conceived as examples of ethical independence or individual choices or preferences. For example, Raz offers a conception of individual autonomy as engaging with valuable options. In his theory, the value of a person's capacity of choice is largely dependent on a diversity of valuable options available for a person to choose from and how her life would turn out because of the engagement with those options (Raz 1988, p. 204). In his theory, religion is understood as a meaningful option that can enhance one's exercise of liberties. An attractive feature of his framework is the normative importance of the availability of goods for the exercise of the right to self-determination. A liberal then cannot be indifferent to the plural goods in society because without those goods, citizens are severely impaired in realizing their conceptions of a good life. The state cannot be totally neutral because the protection of liberties demands, in large part, the availability of goods which make meaningful options exist as concrete choices. Unlike Dworkin's theory, Raz's interpretation of personal freedom does not support neutrality as a necessary liberal principle. His theory provides a favourable framework to accommodate religion in a more complex way whilst remaining a liberal approach.

Third, Pink's argument posits religion and state as rivals. This rivalry can pull citizens apart. His vision seems to support a claim that the liberal approaches in general are incompatible with religion. Against this, the exploration of liberal approaches does not entail that a neutral approach is the only or the best way to resolve this rivalry. *Contra* Pink, the accommodation of religion as a distinct good does not merit immunity from state scrutiny. The advantage of some liberals is that they see the competition between state and religion through a pragmatic lens. Waldron argues that, based on some value or concerns, a liberal would mark certain conflicts that merit an application of neutrality (Waldron 1993, p. 166). Part of what this means is that a qualified application of neutrality allows a liberal state to be non-neutral to religion.

However, the state also needs to qualify a non-neutral relationship with religion: *'Is the non-neutral relationship partly based on a*

motivation to accommodate religion as a distinct good?' 'Does it cohere with policies that do not marginalise non-adherent citizens?' Rawls's[16] and Raz's approaches are some examples of liberal frameworks which try to accommodate religion as a unified good without compromising fairness.

2.4 Conclusion

A liberal's commitment to neutrality invites critical examination because neutrality is not a straightforward concept. A liberal should evaluate why neutrality is invoked, what its parameters are, when it is applied, and by whose authority. The liberal doctrine of neutrality requires the state to be non-partisan. It ought to be neutral by not appealing to any conception of the good in its exercise of state action. This is principally out of respect for its citizens who have the capacity for self-determination. A closer inspection of the principle of neutrality reveals serious ambiguities as to (1) which conception of neutrality satisfies such non-neutral reason, (2) why neutrality is applied to the question of a good life comprehensively, and (3) whether it is always a fair approach because it does not fully make space for conceptions of the good that are communal in nature.

Religion is one of the targets of the application of neutrality. In examining several liberal positions that endorse either a partial or total application of neutrality, it appears that the basis for the adoption of neutrality and a conception of it are particular values. Some liberal motivations include ethical independence, fair opportunity for self-determination, or equal treatment. Religion and its dimensions are subject to normative interpretations of these concepts. Laborde suggests that the state can do without reference to religion in achieving equality. This poses problems because most liberals are unconvinced of the reasons as to why they have to treat religion as a distinct good and not compare it with non-religious equivalents. They fear that working with a unified conception of religion either concedes too much to believers. I have argued that an adequate response to the

[16] I will examine Rawls's approach in detail in the succeeding chapters.

concerns of the liberals cannot be supplied by appealing to neutrality alone. Liberals have to consider alternative theoretical routes which allow them to treat believers fairly, viewing religion as a unified and distinct good.

3

POLITICAL LIBERALISM AND RELIGION

Rawls offers political liberalism as a framework for citizens who are 'profoundly divided by reasonable religious, philosophical, and moral doctrines' (PL §1) to find justifiable principles of justice. These principles will, in turn, determine the terms of social cooperation and evaluate the arrangement of social institutions. Some liberals like Jonathan Quong interpret the elements of political liberalism as entailing neutrality. *Contra* Quong, I shall argue that the justificatory framework in political liberalism does not aim at a conception of neutrality. Although some cases and policies might demand the state to be neutral, this is so because of the requirements of justification. In other words, the elements of political liberalism help the state achieve impartiality among citizens who hold reasonable comprehensive doctrines and not towards securing a neutral terrain where citizens' religious, ethical, and moral views are politically irrelevant. This is also related to what Rawls identifies as *unreasonable* citizens— those who want to use state power to impose their moral or ethical doctrines.

In this chapter, I shall explore the central ideas of political liberalism, what their normative implications are for religious commitment, and why political liberalism, in general, offers greater compatibility with religion than neutrality approaches. The notions of the reasonable comprehensive doctrine, the political conception of a person as reasonable and rational, and public reason are some of the main elements of political liberalism which can be interpreted as accommodating to citizens who belong to a religion.

In addition, key amendments allow him to propose a qualified application of neutrality which accommodates important aspects of religion and secure impartiality among citizens who hold reasonable comprehensive doctrines. I defend this claim against political liberals who view his theory as an archetype of neutrality. In particular, Quong's interpretation of the elements of political liberalism imposes a conception of neutrality which, as I shall argue, believers would not fully support.

3.1 Religion as a reasonable comprehensive doctrine

Quong claims that a liberal state ought to be indifferent on the issue of a good life and should limit itself to establishing terms of justice that would affect citizens' pursuit of their own beliefs and ideas of a good life (Quong 2010, p. 2). His suggestion of a comprehensive neutral position is an outcome of his reading of political liberalism. I challenge part of Quong's reading. In particular, he overlooks Rawls's construal of religion as a *reasonable comprehensive doctrine*. A closer inspection of what a reasonable comprehensive doctrine is does not entirely support Quong's understanding of political liberalism which entails his conception of neutrality. It also helps political liberalism partially escape the charge of individualism, which is a common objection to neutral approaches.

3.1.1 What is a comprehensive doctrine?

One of the sources of the misunderstanding of political liberalism as a neutral approach is the insufficient attention given by some political liberals to Rawls's idea of a *reasonable comprehensive doctrine*. Rawls introduces a significant conceptual amendment in political liberalism, which identifies a category of conceptions of good as the proper subject of his framework of justice. What exactly is this category and its normative properties? First, he enumerates three main features of what he calls *comprehensive doctrines*: (1) they offer a coherent and intelligible view of the different aspects of human life, (2) these particular views of human life estimate and balance different values following their own moral or ethical standards in cases of conflict, and (3) they have an active (i.e. not fixed) and stable tradition of thought

and doctrine (PL II §3). Comprehensive doctrines can be religious or non-religious so long as they possess the three main features. Comprehensive doctrines are important elements in a person's overall conception of the good. For example, a citizen might have in her conception of the good a comprehensive doctrine (e.g. utilitarian) and career outlook (e.g. lawyer, painter). Rawls's conceptual change suggests that the establishment of the terms of justice ought to be amenable to citizens who are committed to a comprehensive doctrine.

Why is this so? Comprehensive doctrines, following Rawls, are moral and ethical prescriptions that are not entirely individually shaped and chosen. For instance, religion prescribes how believers ought to live life and relate with others. The individual believer is called to the faith. If she accepts it (as expressed in some form of ritual), then she becomes part of a community of believers who subscribe to a system of beliefs, moral norms, and social practices. This in large part regulates her conception and pursuit of a good life. Although a believer has room to exercise individual choice and a personal living-out of some religious practices, she is already bound to a religious ideal. This ideal is achieved through a set of shared standards, practices, and moral norms. This commitment, Rawls realizes, is fundamental: a believer is a person who is not simply swayed by fervour, sentiment, or spiritual awe. Her commitment to religion is the standard that disciplines her inclinations and wants, frames her life and relationship with others, determines what is right from wrong, and evaluates her reasons for action.

A liberal might disagree with Rawls's conceptual modification. It is unnecessary, she would argue, for Rawls to introduce a sub-category of conceptions of the good for political liberalism to work. She privileges a reading of political liberalism as embodying the principle of neutrality. In a neutral approach, the liberal state ensures that the terms of justice are fair because no conception of the good is favoured. I find this as a narrow reading of Rawls's aim. What theorists seem to ignore is his important condition which states that any public conception of justice ought to also account for *our most firmly held convictions* (Rawls 1985, p. 228). Even if the conception of justice is

not grounded on any comprehensive doctrine, it should nevertheless be, as he asserts, *in accordance with our considered convictions* if any conception would be acceptable to citizens.[17] In other words, a conception of justice should not conflict sharply with people's comprehensive doctrines. If it does, then citizens would be torn apart by the rivalry between the obligations to keep the terms of justice and those arising from comprehensive doctrines. Citizens would be placed in an unavoidable position in which they would likely forego one over the other. Rawls is sensitive to this set of negative implications. He introduces this subcategory to correct his mistake when some critics point out that his theory of justice is grounded on Kantian philosophy, a comprehensive doctrine.[18]

In sum, the notion of comprehensive doctrines is an important category which is part of a conception of the good. The normative features (e.g. worldview, particular weighing of values, and active tradition) of comprehensive doctrines generate ethical demands which are not totally determined by the individual. In introducing this category, Rawls corrects a mistaken interpretation about the aim of a political conception of justice. Any conception of justice, in order to be accepted by many citizens, should also be supported in part by their comprehensive doctrines.

Not all comprehensive doctrines are included in political liberalism. Rawls makes a further qualification: the subject of the terms of justice only include *reasonable* comprehensive doctrines. An evaluation of this distinction supports a reading of his employment of neutrality as a qualified application. It makes his position distinct from political liberals who advocate for comprehensive neutrality.

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[17] The task of each citizen is to evaluate the acceptability of a conception of justice. Part of this is to understand how a proposed conception of justice fits as a module of her comprehensive doctrine in the level of generality and in reflection. Rawls calls this process the *reflective equilibrium*. See TJ pp. 48–51.

[18] See PL, p. i.

3.1.2 Reasonable comprehensive doctrines and neutrality

For Rawls, reasonable comprehensive doctrines have two distinguishing elements: (1) they recognize that people hold different comprehensive doctrines as a result of the limitations of human nature as described by the *burdens of judgment*, and (2) they do not endorse the use of state power to suppress or deny those who hold opposite comprehensive doctrines (provided that these are also reasonable ones) (PL §II). The concept of the burdens of judgements explains why citizens arrive at different beliefs and conceptions of the good at a given time. Rawls recognizes this as a natural result of their exercise of the capacity for self-determination and the limitations of human judgment. It is also a permanent fixture in political life because citizens, at any point in time, can modify their beliefs because of their exposure to information, experiences, and interaction with others who hold different worldviews.

On the other hand, the qualified use of state power recognizes the importance of persons to act in public in ways framed by their comprehensive doctrines (Scanlon 2018, p. 10). State power can limit the scope of a citizen's exercise of her liberties: the person may be provided with a set of certain liberties, but state action and policies can restrict the exercise of those liberties for a reason. For instance, the ban on the wearing of the *hijab* in French schools qualifies as a case of unreasonable exercise of state power. Even if they enjoy religious liberty, the Muslim women who want to wear the *hijab* are only permitted to do so in non-public spaces.

Rawls recognizes that not all forms of religion accept the validity of other doctrines and believers of some of them, through subtle and overt ways, desire to proselytize non-adherent citizens. Similarly, some secular comprehensive doctrines are anti-religious, unbelieving of believers' capacity to be reasonable, and they are suspicious of the power of religion to manipulate its members and subject them to objectionable discrimination. Even among reasonable citizens, according to Rawls, disagreements run deep, in part, because some insist their beliefs alone are true and not only because they happen to have them (PL II, §3). Rawls does not count this segment of citizens

as unreasonable. For him, unreasonable citizens are those who are open to using state apparatus and power to impose their own beliefs on others who hold opposing doctrines. This minimal criterion, Rawls claims, is appropriate for the aims of political liberalism (PL II, §3).

Quong would be amenable in adopting this interpretation. He would suggest that the best way to implement this is to understand Rawls's elements of the burdens of judgment and qualified use of state power as supporting a conception of neutrality. Part of what this means is that ideas of the good that promote particular values of a good life are not permissible because they ground state action on a particular doctrine. For instance, Quong explains that the notion of the burdens of judgment affirms that people would disagree in deep and irresolvable ways about religious, philosophical, and moral issues. In order to secure common ground between citizens, it is necessary that the principles of justice are neutral to conceptions of a good life and social policies are grounded on non-perfectionist reasons (Quong 2010, p. 195).

I do not have reservations with Quong's reading of the burdens of judgment as recognizing the fact of reasonable pluralism: rational people who hold different moral comprehensive doctrines are bound to disagree. A successful attempt at offering a theory of justice has to be *free-standing* – it ought not to ground itself entirely on a comprehensive doctrine. Rawls explains that 'justification is addressed to others who disagree with us' and thus, it must proceed from 'premises that citizens recognize as acceptable in order to establish a working agreement' on the claims of justice (1998, p. 229). A free-standing principle of justice is framed by premises which citizens can accept as basis for public deliberation. However, I disagree with Quong's conclusion that this necessarily entails adopting neutrality as indifference to conceptions of the good. Free-standing implies that each reasonable comprehensive doctrine could ground principles of justice as its political conception. From the point of view of a believer, a free-standing principle of justice means that it is not totally in conflict with and could be supported by the normative sources of religion, for example. This makes the principle *neutral* in the sense that it can be

adopted by many citizens who hold reasonable doctrines.[19] But this does not mean that the state ought to be indifferent to religion or other comprehensive doctrines.

If applied in the case of a policy which bans the wearing of the *hijab* in public, a neutral state would justify such a policy as securing impartiality among citizens, some of whom are non-religious or who harbour anti-religious sentiments. The policy of disallowing the wearing of the *hijab* in public also prohibits forms of proselytization in the public sphere. From the point of view of a Muslim, such a policy is not impartial because it prevents her from exercising her choice to wear religious garb in public. The ban of the wearing of religious headscarves in public is very concerning for the reason that it removes an option that is particularly central to Muslim women that no substitute good can satisfy. Their practice of religion is restricted unfairly because the state fails to understand the value of wearing the *hijab* as part of their religious commitment. In contrast, Rawls's notion of reasonable comprehensive doctrines yields principles of justice which could accommodate the wearing of the *hijab* in the public sphere. The principles would only rule out laws that would force non-adherent citizens to wear the *hijab*. A Muslim could still proselytize by persuasion: inviting others to join their community or in common worship.

To sum up, Rawls's consideration for moral conceptions of the good reveals an understanding of religion as (1) a reasonable comprehensive doctrine to which (2) political liberalism is not neutral. Rawls's framework of justice is free-standing largely as a result of his sensitivity to the normative demands of reasonable comprehensive doctrines. An outright appeal to a doctrine or tenet of a moral comprehensive doctrine as basis for terms of justice would not generate acceptance among many citizens. It also disrespects a believer as a partner in

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[19] Rawls argues that neutrality is an unfortunate term and he refuses to use it because some of its connotations are highly misleading and some of its conceptions (e.g. neutrality of effects) suggest impracticable principles. See PL V §5 for a discussion of his position on neutrality.

forming terms of justice and is an infringement on her capacity for self-determination. As a crude example, a policy ban on the wearing of the *hijab* in public can be a form of disrespect to Muslim women who have the capacity to choose.

In the next section, I discuss why an understanding of religion as a reasonable comprehensive doctrine helps political liberalism partially escape the charge of individualism.

3.1.3 Not an individualistic account of justice

Forms of religion can be counted as part of political liberalism so long as they are not antagonistic and inflexible to the extent that believers would take recourse to co-opting state power to further their interests. Citizens who adhere to reasonable religions accept that people have different views of what is best for human life. This is a natural outcome of the limitations of human judgment. Even within their own faith communities, believers struggle with the vagueness of some concepts and interpretations of their beliefs and doctrines. Some of them have personal experiences of conversion that lead to the loss of sufficient reasons to keep their religious commitment. By accepting human limitations of judgment, the ability of individuals to determine the course of their lives is given due recognition and protection. The danger, however, is for some political liberals to prefer individualistic accounts of justice.

One of the implications of securing the freedom to choose a way of life is the development of a critical attitude towards religions and other forms of belief (Larmore 2020, p. 128). Beliefs and forms of life are only valuable if they are chosen from a position of critical detachment, and our liberties and political principles should reflect this attitude (Larmore 2020, p. 129). Larmore cautions that this results in supporting comprehensive and neutral accounts of liberalism which place too much emphasis on the value of individual choice. Although the value of self-determination is important, individualistic accounts of justice interpret the person as *prior from* and *independent of* the social elements (e.g. common history, family, culture, and religious faith) to which she is inextricably linked.

Most conceptions of neutrality are alleged to privilege individualistic conceptions of the good (e.g. individual autonomy, ethical independence). Quong's reading of the burdens of judgment favours neutral approaches. Without the concept of a reasonable comprehensive doctrine, Quong's neutral state is partial against religion because it is understood and treated as an individually chosen conception of the good. Rawls recognizes the danger of this charge of individualism to his proposal.

The concept of a reasonable comprehensive doctrine accommodates religion in a wider way than how most liberal neutralists understand it. Although some would argue that religion is a personal spiritual journey, an exclusive understanding of faith as a personal commitment neglects the social dimensions of religion. For most believers, the living-out of faith is situated in being part of a community. The membership of a faith community provides the believer with a particular social context which shapes the narrative of her life and the religious ideal which her life aims at. It provides resources for her rational decision-making and supplies reasons of value to shared practices and rituals. It is also primarily by the standards of religion understood as a tradition (its best understanding of itself) that she evaluates her pursuit of a good life (Mulhall & Swift 1992, p. 91). This does not mean that all religions are static. Changes in the interpretations of doctrines and some practices[20] occur over time. Rawls highlights this as a basic feature of reasonable comprehensive doctrines. The openness of believers and their interpretation of their faith to change support his claim that religion can be reasonable.

Through the category of reasonable comprehensive doctrine, political liberalism gives enough room for religion to provide reasons for believers. This complements Rawls's notion of reasonableness which I will discuss in the next section.

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[20] For example, Rawls cites as an example the Second Vatican Council of the Roman Catholic Church which declares a view of religious liberty as grounded on human dignity. Rawls confirms this as a reasonable doctrine. See PL, pp. 58–62.

3.2 Reasonable religion

A large part of the normative work in political liberalism is performed by Rawls's conception of *reasonable* and *rational*. I shall highlight the main elements in his construal of reasonable and rational in relation to religion as a reasonable comprehensive doctrine. I argue that religion understood as a reasonable comprehensive doctrine enables believers to be participants in political liberalism. What political liberalism prohibits, following Stephen Macedo's arguments, are citizens who advance social policies based on an outright appeal to contestable comprehensive doctrines (Macedo 1995, p. 477). In addition, political liberalism offers a less restrictive space for religious citizens compared to neutral approaches.

3.2.1 What is reasonable?

Rawls builds his political conception, in large part, upon the concepts of reasonable and rational, following W.M. Sibley's conceptions.[21] Sibley develops a particular conception of reasonable which fits aptly with Rawls's political conception of justice. For Rawls, a reasonable person is someone who (1) proposes and selects

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[21] A rational person, according to Sibley, has informed awareness of her ends, and part of this includes (1) the significance of one's ends to herself and its implications on others' well-being and (2) the preference for an end that she judges to be more valuable than the rest (Sibley 1953, p. 555–56). A rational person takes into account other people's interests but only as part of circumstances or factors that would affect the advance of her own interests (Sibley 1953, p. 557). In contrast, a reasonable person takes into account the interests of others in a rather disinterested way, putting them *on par* with her own interests (Sibley 1953, p. 557). For Sibley, a reasonable person displays a moral disposition that is genuinely concerned with others' interests that pushes her to adopt moral objectivity (ibid.). From this moral objective standpoint, a reasonable person evaluates the matter of justice from *the other's point of view* (i.e. to discover how each one would be affected by possible actions and alternatives) (ibid.). Sibley argues that a reasonable person would justify her conduct using a principle from which all parties can reason in common and from which the possible harms of a particular action to another is seriously considered (ibid.). Sibley explains that reasonable and rational are complementary dispositions (ibid., p. 560).

principles as fair terms of social cooperation, and (2) upholds these principles with an assurance that others would do the same (PL II §1). He defends the argument that reasonable persons are not altruistic or solely concerned with ensuring mutual advantage understood in a self-interested way (PL II §1). Reasonable persons desire a social world in which free and equal persons cooperate with each other under the terms of justice they can accept and in which each profits along with others (PL II §1). This moral sensibility complements a rational agent who is more concerned with the deliberation and evaluation of her interests and the means to achieve them.[22] In a Rawlsian society, a citizen is both reasonable and rational: merely reasonable agents lack the ends they would pursue given the terms of justice, and merely rational agents fail to consider the independent validity of others' claims (PL II §1).

In addition, Rawls insists that a reasonable person only affirms reasonable comprehensive doctrines. Recall that a reasonable comprehensive doctrine does not prescribe co-opting state power to further one's agenda. It also recognizes the fact of ethical pluralism as framed by burdens of judgment. This complements his idea of a reasonable person who is morally disposed to cooperate with others in fair terms. She believes that others would do likewise in spite of the differences in ethical beliefs. Believers are recognized as having the moral disposition to engage with non-adherents to form a fair system of cooperation in which each would benefit. In exercising the capacity to be reasonable, believers are assumed to be sincere in their cooperation (i.e. not public pretence) and they are expected to uphold the terms of justice even if circumstances do not suit their interests (PL II §1). This kind of political morality does not demand much from a person who is committed to a religion which is a reasonable

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[22] Rawls clarifies that rational agents are not merely self-absorbed (i.e. they only pursue interests that would benefit themselves). He agrees with Sibley that most theorists make the mistake of having a narrow understanding of rational agents as egoists. Rawls employs a broad notion of interests that includes personal attachments to communities (e.g. family, friends, close associates) or places (e.g. love of country, concern for nature). See, PL II §1.

comprehensive doctrine. It is morally demanding, however, for those who hold unreasonable comprehensive doctrines. They are not expected to be sincere in cooperating, or they would only comply with the principles whenever the circumstances suit their interests, even if they affirm the same terms of justice. And if not, they are open to using state power to further their agenda.

The type of religious fanatic who is not allowed by political liberalism is a person who wants to impose her moral beliefs through the employment of state power. Other devout believers could still exercise their strategies of evangelization provided that they recognize the fact of reasonable pluralism and do not co-opt state power to further their agenda. An important implication of this, according to Macedo, is the admission of a broader range of religions to converge on a political view and range of values (e.g. liberty, tolerance, peace) that can be shared by reasonable people (Macedo 1995, p. 480).

Although Quong agrees with this, he interprets the qualified use of state power and the acceptance of burdens of judgment as entailing a commitment to neutrality as a principle (Quong 2007, p. 323). For him, the belief in the burdens of judgment restricts the type of arguments that reasonable citizens can offer and accept. Part of this is relying exclusively on political values as independent of a person's conception of the good (Quong 2010, p. 4). A serious problem with Quong's strict interpretation is that this excludes believers who are sincere in finding principles of justice but who need to rely on their religious doctrines to offer arguments in the public deliberation.

Rawls's conceptions of reasonable and rational are accommodating of citizens who subscribe to religion. As basic features of political liberalism, they open the possibility for believers to be less disingenuous in the political sphere. As rational agents, believers rely on sets of reasons, including reasons arising from religion. As reasonable citizens, believers consider diverse sets of reasons as part of their willingness to find fair terms of social cooperation with others who do not share their faith. This helps frames the manner in which

principles of justice would be arrived at. Other elements of political liberalism help accomplish this.

3.2.2 The overlapping consensus and religion

Rawls proposes a conception of justice that is moral and applies exclusively to the domain of the political. He asserts that any conception of justice ought to have a significant degree of compatibility between principles of justice and moral comprehensive doctrines in order for any framework of justice to endure over time (Rawls 1985, p. 247). By opting for a partial and moral conception, the principles of justice can be adopted by a reasonable comprehensive doctrine as its political module. He claims that reasonable comprehensive doctrines should supply sufficient reasons for endorsing the principles in particular and the good of justice in general. The natural outcome is an *overlapping consensus* of different positive answers to the good of justice as framed by a liberal conception (Scanlon 2018, p.10). The idea of the overlapping consensus addresses the question of stability.[23] It is a litmus test for a conception of justice that it ought to command the firm and enduring allegiance of many citizens who hold reasonable comprehensive doctrines.

Quong claims that Rawls made a mistake by placing the overlapping consensus at the last stage of the justificatory framework in political liberalism (Quong 2010, p. 10). Quong insists that the proper subject of overlapping consensus is the political values, norms, and forms of argument which serve as the common framework and tools for each reasonable citizen to employ in offering principles or conceptions of justice (Quong 2010, p. 185). The advantage of this, according to Quong, is that citizens already begin with common ground – shared values, norms and criteria, and proper political conduct – to

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[23] Rawls explains that any conception of justice must be stable for the right reasons. This means that it can endure over time and it commands allegiance of reasonable comprehensive doctrines. *Right* reasons refer to the fact that each comprehensive doctrine accepts the conception of justice from its own point of view and not simply for prudential reasons (e.g. political compromise). See PL xli.

ensure a higher probability of reasonable agreement. This provides citizens with conclusive reasons to accept the principles and accord them normative priority over non-political values (Quong 2010, p. 185). It also ensures the theoretical consistency of the framework of justice following the elements of political liberalism. His suggestion does not assume that there would be any fit between comprehensive doctrines and the permissible conception of justice arising from his view (Quong 2010, p. 187).

I do not purport to examine in detail Quong's alternative view.[24] Instead, I highlight two conceptual dangers in adopting his proposal in relation to religion: (1) by replacing the subject of the overlapping consensus, citizens would be vulnerable to the threat of conceptual inconsistency between their comprehensive doctrines and the proposed terms of justice; this is an unnecessary burden; and (2) his strict criteria are based on a conception of reasonableness which imposes reasons independent of and even normatively superior to those supplied by comprehensive doctrines. This generates a serious level of scepticism about the permissibility of reasons arising from a citizen's comprehensive doctrines. In the effort to impose a common justificatory framework, his revised overlapping consensus generates more problems for believers in maintaining compatibility between religion and conceptions of justice. His alternative view of overlapping consensus is motivated largely by the goal of securing conditions of reasonable agreement. He employs a justificatory framework to act as a filter – permissible reasonable arguments that would form the basis of public policy should be framed only by political values (Quong 2010, p. 219). For Quong, this is best expressed in a principle of neutrality. In addition, the onus is on citizens to find ways to adjust their comprehensive doctrines to meet the standards of reasonableness.

I share Quong's concern in finding the appropriate arguments and norms that would qualify public justification in the political domain. The acceptance of the burdens of judgment explains why justification has to appeal to political values and the norms of public reason are

[24] For his strategy see Quong 2010, pp. 162–91.

followed to ensure reasonable agreement. However, his interpretation imposes a serious burden on believers because he does not address the problem of compatibility between the terms of justice and reasonable comprehensive doctrines. In contrast, Rawls's idea of overlapping consensus as a further test ensures a level of compatibility between reasonable comprehensive doctrines and terms of justice. His notion of overlapping consensus lessens the burden for believers because the terms of justice hopefully do not conflict sharply with religion. The role of reasonable comprehensive doctrines complements rather than conflicts with political arguments. This supports the claim that political liberalism does not aim at finding a neutral terrain because it might not exist. Rather, the overlapping consensus helps citizens find principles which are justified as impartial and can be, to a large extent, supported by citizens' reasonable comprehensive doctrines.

From the foregoing, Rawls's idea of overlapping consensus is framed by a substantive notion of reasonableness and it gives room for religion to play a significant normative role. In addition, principles of justice should not depart far from reasonable comprehensive doctrines. As a result, believers can uphold the terms of justice because the set of principles also cohere with their faith. *Contra* Quong, a conception of justice maintains stability for the right reasons because it is a subject of overlapping consensus of citizens who hold reasonable comprehensive doctrines. Thus, political liberalism could work as an acceptable framework for public justification.

3.2.3 A basis for public justification

Political liberalism aims at the design and evaluation of basic social institutions. The principles of justice serve as public standards for assessing whether social institutions and the structure of basic society in general are fair. They also form the basis in which claims of justice are to be discussed and the disagreements surrounding them are to be resolved (Scanlon 2018, p. 4). The roles that principles of justice perform make it important for them to be accepted by citizens who abide by different moral comprehensive doctrines. When the principles of justice are interpreted as being *compatible with*

reasonable comprehensive doctrines, this refers to their acceptance as the common basis in which citizens would (a) evaluate the fairness of social institutions, (b) resolve conflicting justice claims, and (c) frame the rules and methods of public justification which would express what the principles in fact require (Scanlon 2018, p. 4). It makes sense for citizens to accept and uphold the terms of justice because (1) they do not conflict sharply with their reasonable comprehensive doctrines, and (2) they can share these rules with non-adherent citizens as part of a corporate body of free and equal citizens to whom coercive state power is justified and applied (PL IV §1).

However, the main problem with the principles is that they are abstract. Reasonable disagreements about justice are partly defined by controversies in the interpretation of the principles[25] as applied to justice claims. For instance, citizens can have overlapping consensus on the importance of having freedom of speech, but they can disagree strongly over certain forms and expressions that ought to be free from interference and offence (Scanlon 2018, p. 4). In the case of religious liberty, citizens could agree broadly on the freedom to practice one's religion. However, the interpretation of the extent of religious freedom and how claims related to it are to be balanced with other interests is often a source of disagreement and challenge to state adjudication.[26] For instance, the policy in France of the banning of wearing religious headscarves in public shows that the actual dangers

[25] Rawls recommends justice as fairness as a framework of justice under political liberalism. Its two main principles express access to equal liberties and all-purpose means for each citizen to have in her pursuit of her conception of the good. See JF, p. 20.

[26] For instance, Bittker argues that a broad interpretation of the free exercise clause can unduly hinder the state through allegations of endorsement, material advancement, or unequal treatment. He cites as cases the celebration of Earth Day, the permission of Halloween symbols in public schools, or reading programmes which focus on supernatural beings like giants, wizards, and sorcerers. In contrast, a narrow interpretation of the same clause poses serious concern that some non-mainstream religious beliefs and practices would be intentionally suppressed or wrongfully discriminated against (Bittker et al. 2015, pp. 340–41).

of wearing headscarves are unclear: "Are women who wear the *hijab* a threat to others, to themselves, or both?" "Should the principle and policy also apply to Catholic nuns?" "Should Catholic nuns be asked to remove their veils when they enter public hospitals to perform ministry?" In France, people are culturally sensitive not to ask a nun to remove her veil in public spaces. There may be a principle of *laïcité* embedded in the French constitution, but it does not give the state a neutral way of interpreting it. In these situations, the state cannot avoid appealing to value judgments in addressing questions of justice arising from religious claims whenever it conflicts with other liberties.

For political liberalism to succeed in addressing a wide range of reasonable disagreements, Quong maintains that its elements ought to be interpreted as securing a common basis for citizens to attain agreement (Quong 2010, p. 178). Since principles of justice are abstract and reasonable citizens would likely disagree, public justification should proceed from shared premises, norms and conduct, and common sets of reasons to reach reasonable agreement (Quong 2010, p. 184). Through this approach, citizens will have conclusive reasons in support of the principles of justice. Public policies are then justified as impartial. His version of political liberalism secures a deeper level of agreement among citizens and not because they happen to overlap for reasons supported by their comprehensive doctrines (Quong 2010, p. 179).

Quong's aim of securing the conditions of reasonable agreement is not entirely implausible. His approach does not depart far from Rawls's ideal of public reason. However, it seems that Quong's strategy offers a standard of reasonableness at the cost of rational interests. For him, political liberalism is not concerned with the problems of coherence between moral convictions and political values because political values are sufficient to accommodate the interests of citizens (Quong 2010, p. 185). However, as I have argued in the case of the *hijab*, interpretations of political values are contested. If one works towards reasonable agreement following Quong, then reasons that explain the meaning and the value of a religious practice to religion as a good are necessary practical considerations. Quong's strict criteria

of reasonableness do not allow non-political reasons to be part of admissible arguments in public reason. If applied to religion, the social dimension of religious practices and what they mean to religion as a coherent good is overlooked. These practices would be considered and treated as part of a believer's set of preferences which she could easily adjust or forego and to which the state should remain neutral.

Rawls devises the idea of public reason with a set of values and methods of reasoning that would form the proper basis for settling justice claims (Scanlon 2018, p. 4). The elements of public reason are non-sectarian, and the set of political values is the ground upon which state action would be ultimately justified. This seems to support Quong's reading of political liberalism. However, a closer inspection of Rawls's ideal of public reason will demonstrate that it is not the case.

3.3 Religion and public reason

I advance the claim that reasonable religious citizens are welcome in the arena of public reason. Rawls's ideal of public reason is more inclusive than what Quong thinks. In particular, religious views about matters of justice are considered relevant perspectives in public discourse according to Rawls. I shall highlight some of the main elements to show why Rawls's view of public reason is not neutral to or even partial against religious views as some theorists purport.

3.3.1 Public reason

Rawls understands that citizens who hold different and sometimes opposing reasonable comprehensive doctrines would find it difficult to find an agreement, much less an approach to mutual understanding, because of the irreconcilable differences between their comprehensive doctrines (Rawls 1997, p. 766). To address this, he presents the ideal of public reason as a common justificatory framework for citizens to employ in resolving the questions of justice (ibid.). In the case of religion, he asserts that (1) political deliberation permits citizens to appeal to religious doctrines in combination with proper public

reasons to support certain policies[27] (Rawls 1997, p. 776), (2) public reason is not biased in favour of secular arguments (Rawls 1997, p. 780), and (3) motivated by achieving stability for the right reasons,[28] the norms and content of public reason can be endorsed by believers (Rawls 1997, p. 781). He is confident that, in spite of these features, the nature and content of political justification in public reason are fair (Rawls 1997, p. 784). The primary reason for this is that permissible justifications are determined by a family of reasonable views of justice (Rawls 1997, p. 784).

Consider Kevin, a reasonable Satanist. Suppose he is thinking of a principle which would permit public orgies because this is a standard festival in his religion. Following Rawls's rules of public reason, he would ask whether the religious value of this activity would appeal to proper political values. He can consider religious liberty as a political value which can accommodate his religious practice. However, his claims based on religious liberty are not absolute. They are weighed together with other interests and claims which protect others' liberties. Kevin, a reasonable citizen, might justify the permission of such a religious festival with some concessions (e.g. voluntary and not obligatory activity for non-Satanists, conducive to public order and security, etc.). In this crude example, reasonable citizens can offer reasons that accommodate their rational interests without imposing them on others. Furthermore, religious freedom as a political value enables believers to draw religious reasons as part of the content of their arguments. In appealing to political values and following the

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[27] In a revised form, Rawls adopted a wider view of public reason. By adding a proviso, Rawls permits the use of religious reasons in public deliberation as long as and in due course, state action would be justified by reasons arising from political values. See Rawls 1997, p. 782.

[28] Rawls gives examples of how public reason aligns with an overlapping consensus and not mere *modus vivendi*. He maintains that the rules and content of public reason enable citizens to recognize the limits and dangers of imposing their reasonable comprehensive doctrines on others. They should supply sufficient reasons in support of some principles that would be part of the common terms of justice. See Rawls 1997, pp. 782–83.

norms of public reason, Kevin can still advocate for certain policies. Rawls's ideal of public reason provides enough room for reasonable comprehensive doctrines to supply reasons for believers to employ in offering their arguments in public reason.

Quong might have some doubts on the plausibility of my interpretation of Rawls's public reason. He might be suspicious that in my view, citizens are allowed to appeal to perfectionist ideas. This weakens the conditions for reasonable agreement because perfectionist reasons are predicated on particular doctrines of the good. For an effective practice of public reason, Quong recommends that whenever principles are weighed and ranked in justice claims, citizens ought to appeal exclusively to political values which form the common basis of public justification and not to reasons arising from comprehensive doctrines (Quong 2010, p. 187). He attempts to reduce the probability of disagreement by limiting the range of reasons allowed in public reason.

In the next section, I shall address Quong's claims and explain why the elements in Rawls's public reason are inclusive of citizens who hold reasonable comprehensive doctrines.

*3.3.2 Not neutrality **simpliciter***

Religious views are welcome in public reason but they do not acquire special status in terms of grounding state action. Like others who hold different comprehensive doctrines, believers are bound to follow the rules they accept in order to maintain the possibility of reasonable agreement about constitutional matters and the design of social institutions. The ideal of public reason consists of norms and procedures which citizens comply with in order to resolve in an orderly and fair way constitutional matters and the design of basic institutions. It does not totally exclude religious reasons.

In addition, Rawls's *proviso* enables religious citizens to appeal to their doctrines to help express their political positions as addressed to the public (Rawls 1997, p. 784). There are no prescribed rules in public reasons that would limit the method of expression as long as

they complement it with political values (ibid). In a highly contested political issue, it is wise, according to Rawls, for all citizens to present their views, religious or non-religious, in order for them to explain to each other how their own views support the political values at stake in claims of justice (Rawls 1997, p. 785). Public reason, as Rawls envisions it, aims at public justification with the hope that it would reach reasonable agreement (Rawls 1997, p. 786).

The norms of public reason, though procedurally neutral (i.e. its rules and structure are not based on any comprehensive doctrine), allow for a variety of content and views which make public reason a space in which citizens need not be neutral at heart. The rules and procedure frame the manner in which public justification should proceed: each citizen should use premises that reasonable persons would accept (Rawls 1997, p. 786). The range of premises and the arguments they employ do not exclude appeal to religious doctrines or scriptural references. Combined with political values, reasonable believers could offer arguments which non-adherents can understand and disagree without exercising judgment about the truth or nature of religion. This reduces instances of deep disagreement in part because citizens are focussed on finding the most reasonable approach to a highly contested political issue.

In Rawls's public reason, believers can endorse the most reasonable conception of justice which their religions could also support. Although this provides fewer guarantees for consensus following Quong's view, Rawls's approach is more sensitive to the role of reasonable comprehensive doctrines. It recognizes the political reality where citizens often refer to their comprehensive doctrines in responding to political issues and in framing their political stances. This is not to cede ground to religious citizens like Kevin. Not all believers are admitted in political liberalism. They have to meet standards of reasonableness in offering arguments in public reason.

Through a wider view of public reason, citizens can debate among each other about the principles of justice which are most reasonable for them to adopt despite their conflicting moral and

ethical commitments. This helps parties share common ground in working out principles of justice which they can uphold. It also secures impartiality among citizens. This I discuss in the last section.

3.3.3 Impartiality among reasonable citizens

The elements of public reason also maintain the conditions of impartiality among reasonable citizens. To accomplish this, the ideal of public reason does not limit citizens in appealing to a variety of normative content and ways of expression. Since they ought to offer terms of justice that count others as political shareholders, Rawls allows them to appeal religious reasons to complement their political argument. He recognizes that not all reasonable citizens have the capacity to offer reasons entirely from a political conception, because some reasonable comprehensive doctrine might not have a totally worked-out political conception. Citizens could, through engagement in public reason, adopt a political conception such as what Rawls offers as the political module of their own comprehensive doctrine.

Suppose Kevin, the reasonable Satanist, belongs to a sect that has a rather loose conception of justice. Its module of justice is not a worked-out theory but a collection of reasons that are offered in support of some political stances. In Kevin's engagement in public reason, it could happen that some reasonable conceptions of justice, for example, the Catholic principle of common good (i.e. state responsibility includes attention to the conditions and means of its citizens to attain their ultimate fulfilments), could make an impression on Kevin. He could then adopt this notion as part of a theory of political justice supported by some of his beliefs. Kevin's exposure to public reason allows him to evaluate a free-standing idea within a Catholic conception of common good as reasonable and which his religious belief might also support. This is a different strategy compared to Quong's framework.

Scanlon explains that the design of social institutions and basic structure of society demands a special kind of justification because they affect, in a fundamental way, the lives and opportunities of citizens and their effects goes beyond the consent and influence of each citizen (Scanlon 2003, p. 163). If the justification of the

design and basic structure of society is predicated largely upon a comprehensive doctrine or a set of sectarian values, then reasonable citizens would be hard-pressed to accept a biased political conception. The compatibility between a reasonable person and her reasonable comprehensive doctrine allows Rawls to offer a conception of public reason in which citizens could find common ground and hopefully agree on terms of justice. Impartiality is secured among reasonable citizens without them being asked to make a serious sacrifice of their comprehensive doctrines compared to neutral approaches.

Rawls's *qualified* neutrality can be interpreted in terms of an idea of justice that ensures appropriate interpersonal relations (Cohen and Nagel 2009, p. 11). For Rawls, matters of the right do not maximise the good but rather, they assure respect for persons as separate individuals (TJ §6). The main elements of political liberalism recognize religion in a more coherent way. In the arena of public reason, religious reasons are admissible so long as political values ultimately ground state policies. What exactly the normative roles of non-political values are, like religion in public reason, Rawls has not made explicit. He leaves it open for further exploration. It is clear, however, that permissible arguments in public reason include those which are a combination of non-political and political reasons.

3.4 Conclusion

Rawls's political conception of justice is often interpreted as supporting the claim which elevates neutrality as a necessary liberal principle. The elements of political liberalism are interpreted by some political liberals as largely securing reasonable agreement. I have shown that these claims are largely mistaken. Rawls's qualified use of neutrality plays an important normative role in making political liberalism inclusive of reasonable conceptions of the good like religion. Rawls also maintains that conceptions of justice should also fit as political modules of reasonable comprehensive doctrines.

Political liberalism is a limited moral conception applied to the political domain. Its principles and elements aim at the constitutional essentials and the arrangement of social institutions. The notion of an

overlapping consensus and the elements of public reason help citizens in establishing common ground to find amenable terms of justice, because these elements are non-sectarian. In addition, the arguments citizens offer for the justification of state action and resolution of justice claims are not predicated outrightly on a comprehensive doctrine. Believers are not totally excluded in public deliberation on the matters of justice. They can be reasonable citizens who endorse and accept principles of justice. They can commit to the rules of public reason.

Rawls's political conception offers a wider range of reasons admissible in public reason than neutral frameworks. Like other ethical conceptions, religion is not conferred with special status which allows it to ultimately decide political matters. Believers could still refer to their doctrines to animate and ground their views in the arenas of public reason and ordinary legislation. My disagreements with Quong are not merely exegetical. Rather, they underscore that Quong's conception of neutrality is not what the elements of political liberalism aim at. It also shows that Rawls is not the archetype neutralist which some liberals construe him to be.

4

THE LIMITATIONS OF POLITICAL LIBERALISM AND RELIGION

The main elements of political liberalism, as I have explained, offer room for believers to act in accordance with their religious convictions. Believers are recognized as participating members of a society viewed as a social cooperation that advances each person's good. Rawls hopes that through his theory the compatibility between religion and justice is secured.

However, this is far from a straightforward case. Defenders of religion suggest that some of the theoretical requirements of political liberalism can be too demanding for believers. This results in (1) the very limited role of religious reasons in the public reason, and (2) the likelihood of achieving overlapping consensus only on the basis of reasonableness and not on the congruence with one's reasonable religion. Some theorists consider motives to reject public reason as

the norm of political justification[29] and for a few, political liberalism *in toto.*[30]

In this chapter, I maintain that believers need not entirely reject political liberalism. I suggest an alternative reading of some of the main elements which does not emphasize neutrality, but rather a thin conception of the demands of political liberalism. My interpretation is largely inspired by Leif Wenar's arguments. Although a critic might not consider this as the best construal of political liberalism, the main advantage of my proposal, so I shall argue, is that it opens the possibility of a version of political liberalism which enables reasonable believers to propose terms of justice from within religion. This largely addresses the problem of congruence. To conclude, I reply to some challenges and objections to my reading of political liberalism.

4.1 The standards of what is reasonable

Rawls employs the notion of the reasonable many times in his arguments for political liberalism. What is reasonable can be elusive and notoriously difficult to pin down. For example, he insists that the

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[29] For example, Bernard Williams offers the *basic legitimation demand* as an alternative form of political justification. This category, as Williams puts it, is different from political moralism which assumes that the moral is prior to the political. For Williams, political liberalism is an example of political moralism. Williams's theory addresses the question of the legitimate exercise of state power in a realist approach. Due to the nature of the questions and limitations of the thesis, I do not explore Williams's theory. See Williams 2005, pp. 4–6.

[30] Some liberal theorists have taken different views about the plausibility of some of the theoretical components (e.g. reasonable acceptance, public reason) of political liberalism. Their interpretations lead them to either reject one of its elements (e.g. Gerald Gauss and Kevin Vallier propose an alternative conception of public reason) or political liberalism as a whole (e.g. Joseph Raz, Ronald Dworkin). In contrast, some political liberals (e.g. David Estlund and Jonathan Quong) defend the coherence of these elements. They offer versions of political liberalism that favour neutrality. I do not argue for a total rejection of political liberalism. In addition, the thin account of political liberalism which I shall advance in Chapter 5 permits citizens to appeal to some ideas of the good as part of their arguments in public reason.

moral comprehensive doctrines which are part of political liberalism ought to be reasonable in two senses.[31] He also uses the term *reasonable* as a normative feature of a political conception of a person. This element refers to the capacity of the person to enter into and uphold the terms of justice. Lastly, reasonableness is regarded as the correct standard of political justification in public reason. A reasonable justification of state action is a reason generated by an appeal to ideas drawn from common political values and following the norms of public reason. These various references show the prominent role Rawls's construal of reasonable performs in defining what fairness is in political liberalism.

In this section, I examine some theoretical requirements of Rawls's conception of reasonable. They present some challenges for believers. For instance, the notion of the burdens of judgments can prompt a level of scepticism among believers about the tenability of religious reasons as part of public reason. In addition, the role of religious reasons in public reason appears to be too limited. Believers would find it difficult to act in accordance with a principle of justice based on political values alone. Lastly, the veil of ignorance employed in the original position makes the standard of reasonableness too demanding from a believer's standpoint. I shall discuss each requirement in turn.

4.1.1 The burdens of judgment

Rawls draws a dependent relationship between a comprehensive doctrine and the political conception of a person through the concept of reasonable: a reasonable doctrine is a comprehensive doctrine that a reasonable person would affirm (Wenar 1995, p. 36). Part of what this means is that a reasonable comprehensive doctrine recognizes

[31] Reasonable comprehensive doctrines have to recognize (1) the plurality of ethical worldviews as a natural outcome of the burdens of judgment and (2) that they do not propose to co-opt state power in order to impose their own doctrines or political agenda on non-adherents. See, PL II §1.

the normative features of a reasonable person[32] (Wenar 1995, p. 36). Forms of religion and secular ethical worldviews should include an understanding of citizens as reasonable persons in order for them to be affirmed. This entails meeting some conceptual requirements in order to qualify as a citizen in Rawlsian society. One of them is the concept of *the burdens of judgment.*[33] I shall highlight some of the problems it generates for believers.

First, according to the burdens of judgment, reasonable comprehensive doctrines should acknowledge the difficult conditions citizens face in making precise judgments about values and facts salient in cases of justice. Part of this is the vagueness of the concepts a citizen uses and the difficulty of making an overall assessment of an issue of justice. The burdens of judgments imply that she ought

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[32] Rawls specifies five attributes as definitive of a reasonable person. Reasonable persons: 1. (a) possess the two moral powers – the capacities for a sense of justice and for a conception of the good; (b) possess the intellectual powers of judgment, thought, and inference; (c) have a determinate conception of the good interpreted in the light of some comprehensive view; (d) are able to be normal, fully cooperating members of society over a complete life (p. 81, see also pp. 15–35); 2. are ready to propose and willingly abide by principles and standards that are fair terms of cooperation, given assurance that others will likewise do so (pp. 48–54); 3. recognize the burdens of judgment (pp. 54–58); 4. have a reasonable moral psychology (pp. 81–86); and 5. recognize the five essential elements of a conception of objectivity (pp. l10–12), (Wenar quoting Rawls 1995, p. 37).

[33] 'The burdens of judgment are supposed to explain the difficulties of making correct judgments about values and facts, and so to explain disagreement among people conscientiously using their powers of reason and judgment. They are as follows: a) the relevant evidence is conflicting and complex, and therefore hard to evaluate; b) we may disagree about the weight different considerations are to be given; c) our concepts are vague, so we must rely on judgment and interpretation; d) the way each person assesses evidence and weighs values is shaped by her particular life experiences (by her ethnicity, class, place in the division of labour, etc.); e) it is difficult to make an overall assessment of an issue when there are normative considerations of different force on both sides; and f) in any society some selection of values must be made from among all that might be realized,' (Wenar quoting Rawls 1995, pp. 55–57).

to demonstrate this attitude in all questions related to the political domain. The attitude of openness involves making conclusive stances on issues of justice. For example, in the case of the permissibility of abortion, it is unclear whether and when a foetus is considered a person. Similarly, in the case of homosexual unions as an acceptable family configuration, there are conflicting views about what family is and the extent to which they should be recognized in law. Citizens weigh values and assess evidence according to their moral views which others might not find acceptable. If part of being a reasonable person in Rawls's construal includes accepting the notions of the burdens of judgment, then it is unclear whether believers should be confident about the reasons religion provides in justice claims, bracket religious reasons in favour of political ones, or be sceptical of the conclusive stances which some of their religious authorities hold on issues of justice.

Part of what makes justice claims controversial, and sometimes irreconcilable, is the fact that some believers interpret matters of justice largely from their faith doctrines. Major religions have a tradition and system of moral precepts that believers rely on in making a conclusive stance on justice cases like abortion or homosexual marriage. Often religious authorities supply some guidelines for members to help them formulate conclusive stances which align with their faith. For example, the Catholic church provides guidance to its members about the considerations necessary for individual deliberation of different political issues (e.g. abortion, just war, homosexual marriage, etc.) and its stance as religious authority on them.

Believers could accept the reality of deep disagreements in matters of justice and even the fact that some religious doctrines are evolving. They could agree on the limitations of human judgment in the face of addressing some justice claims. However, this does not require them to accept entirely the notion of burdens of judgment. Some of believers view the claims of non-adherent citizens as morally erroneous. They understand that others could exercise improper judgment because of their false beliefs. Some believers see a non-adherent as a person who is tainted by sin and therefore has a limited or obscured understanding

of what is good and true. This affects her judgment about the evidence, values, and assessment of justice claims. In this case, it is not the concept of the burdens of judgment but rather, religion which provides explanatory reasons for the fact of reasonable disagreement. Believers need not adopt the concept of the burdens of judgments in order to be counted as reasonable citizens.

Corollary to this, and as a second point, reasonable disagreement as presented in the burdens of judgment implies that others can reject a conception of justice. In face of this possible rejection, the demands of openness to a believer as a reasonable citizen are largely vague. There are several negative implications of this. Believers would either (1) suspend judgment on the question about the correctness of their conception of justice, (2) acknowledge that they are mistaken, (3) exhibit lower confidence on their own conception as being correct (Wall 2014, p. 420), or worse, (4) endorse other conceptions and abandon the fundamental aspects of their faith and their attitude to it (Wenar 1995, p. 45). In these instances, believers should resolve conflicts between their doctrines and conceptions of justice. This is a complex issue because finding the most reasonable conception of justice may not necessarily cohere with some religions. For instance, major religions have a unified and coherent view about human life based on a rich tradition of doctrine.[34] From this, they formulate responses to the questions left open by the burdens of judgment. Although believers can be open to other views, they are limited partly by the reasons supplied by their faith and the rational process involved in it (e.g. consultation with religious authorities, reference to scriptures, mechanism of discussion and dialogue of political issues) whenever they balance values and in developing their definitive positions in interpreting the principles of justice salient in particular claims.

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[34] For example, the Catholic church released the document *Gaudium et Spes* which discusses the relationship of the Catholic church and the world. Part of it explains its position in matters of justice through the premises of its faith and tradition and expressed in a language which both a Christian and a non-adherent can understand.

Third, Rawls argues that the concept of the burdens of judgment is a normative feature from which the fact of reasonable pluralism is affirmed (PL §II, 2). In other words, the notion of the burdens of judgment is necessary to justify his presentation of pluralism as a permanent feature in society (Wenar 1995, p. 46). *Contra* Rawls, I agree with Wenar that different comprehensive doctrines present their own narratives of pluralism. For example, some Kantians see pluralism as a result of the free exercise of human reason. The Catholic faith interprets pluralism as part of the struggle in correcting human error as an effect of sin (Wenar 1995, p. 46). Despite the different narratives of pluralism, having conclusive reasons on issues of justice which are partly grounded on faith does not mean that believers are not amenable to change their views or that they have the inability to move the discussion forward. For instance, in the case of the permissibility of homosexual marriages, some Catholics support the idea of civil unions as form of legal protection for same-sex couples in cases of property and fair access to some public services.[35] The conclusiveness of religious reasons could be interpreted as believers making a clear position on an issue of justice. This stance is still subject to changes given their participation in public reason. What is most important for believers is for them to have access to religion in offering well-defined but flexible arguments in public reason.

I agree with Wenar's assertion that Rawls's conception of burdens of judgment is unnecessary. This is largely due to the fact that (1) citizens would likely end up endorsing principles of justice based on the explanations from their own reasonable comprehensive doctrines,

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[35] For instance, in a BBC article, Pope Francis has said that he thinks same-sex couples should be allowed to have *civil unions*. He said: 'Homosexual people have a right to be in a family…They are children of God and have a right to a family. Nobody should be thrown out or made miserable over it. What we have to create is a civil union law. That way they are legally covered.' He added that he 'stood up for that', apparently referring to his time as Archbishop of Buenos Aires when, although opposing same-sex marriages in law, he supported some legal protections for same-sex couples. Cf. https://www.bbc.co.uk/news/world-europe-54627625

and (2) the main purposes of burdens of judgment are already achieved by the two basic features of a reasonable person[36] (Wenar 1995, p. 42). The adoption of less substantive criteria of reasonableness might help address this issue.

4.1.2 The limited role of reasonable comprehensive doctrines

Rawls suggests that reasonable citizens should also accept political constructivism as providing the correct account of objectivity as applied to the political domain (PL, pp. 110–15). This means that a believer ought to endorse in her political thought the conceptions of person and society as outcomes of practical reason, accept the original position, and view the principles of justice as specifying an appropriate set and objective order of reasons (Wenar 1995, p. 54). This is partly how Rawls secures the compatibility of comprehensive doctrines and his political conception of justice: each comprehensive doctrine supports the elements of political liberalism arising from a constructivist framework and accepts it as its own political module (Wenar 1995, p. 53).

The compatibility between religion and justice through a political constructivist approach involves some contentious issues. For instance, Rawls intends his political conception to be an overriding normative force because it generates reasons that would apply to *all* citizens regardless of their comprehensive doctrines (Wenar 1995, p. 54). This implies that the believer should privilege the reasons generated from political liberalism as the main motivation for adhering to her obligations to the terms of justice rather than the moral precepts of her religion. This is not a serious problem when there are fewer disagreements. Citizens could appeal to many sets of reasons to justify their acting in accordance with the principles of justice. However, the fact of reasonable pluralism admits a wider range of disagreements even among reasonable persons. For Rawls,

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[36] These two features are (1) capacity to form, revise, and pursue a conception of the good and (2) capacity to uphold and enter into terms of justice. A reasonable person sees others as free and equal citizens (Wenar 1995, p. 37).

the deciding reasons citizens should adopt to settle matters of justice are those that are predicated entirely on political values. However, political values such as liberty and equality are contested. In other words, there are different (and sometimes, opposing) conceptions of liberty and equality depending on one's moral or ethical worldview and the circumstances of justice. Plant explains that comprehensive doctrines may share concepts, for example human dignity or equality, but harbour different conceptions of them and thus, an agreement over 'thin' concepts (e.g. equality, dignity, etc.) is insufficient to avoid the disagreement over 'thick versions' of a particular concept, given the wide variance among comprehensive doctrines (Plant 2013, p. 18). This challenges the tenability of Rawls's claim of the role of political constructivism in providing the correct account of moral-political objectivity.

A political liberal could argue that the account of objectivity does not supplant nor does it cast doubt on the truth of moral doctrines. Its main practical purpose is for citizens to be assured that the deciding reasons in justice claims are generated in the conditions of fairness. In addition, an independent account of objectivity makes Rawls's overlapping consensus stable and endure over time (Wenar 1995, p. 55). Quong suggests that comprehensive doctrines play a limited but important normative role. He explains that comprehensive doctrines supply the ultimate grounding of some political values (e.g. liberty, equality) and how they cohere with their conceptions of truth[37] (Quong 2010, p. 230). It is inaccurate, according to him, to allege that moral truths do not perform any normative role in political liberalism (Quong 2010, p. 231).

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[37] Quong calls this the *buck-passing* approach. In Quong's view, the task of providing ultimate foundations for the political values like freedom and equality falls on the person's comprehensive doctrines. In this step, political liberalism *passes the buck*, so to speak, to individual citizens and their comprehensive doctrines for the reasons why persons should be reasonable and why persons should hold freedom, equality, and fairness as important values. See Quong 2010, pp. 229–31.

In reply, the insistence on political constructivism as providing the only correct account of objectivity generates some problems for believers. First, the claim is incongruous with Rawls's ideal of public reason. Recall that he amends his rules and norms of public reason by permitting citizens to appeal to their comprehensive doctrines in offering arguments and views of justice. This addresses the demandingness objection which requires that citizens only employ sets of reasons and forms of arguments which are strictly political. However, I agree with Wenar who argues that only reasonable persons who adhere to Kantian constructivism would believe and accept reasons from political constructivism as the real reasons for just action (Wenar 1995, p. 55). In contrast, believers would adopt as real reasons those that arise from their faith, even if these reasons could be viewed independently from their moral sources. Believers would find it very difficult to find congruence with their faith given the insistence of the normative superiority of reasons drawn from political constructivism.

Reasonable comprehensive doctrines, like major religions, offer conflicting understandings of justice. However, some of them actually overlap in a range of principles. For instance, Catholic social teachings on the value of human dignity grounds a set of inalienable rights articulated in reference to its own scriptures. This is also found in some Islamic views of justice. Other ethical conceptions which do not refer to God support the same set of human rights. An advantage of this kind of overlapping consensus, even if some theorists find it too 'thin', is that it assures compatibility with reasonable comprehensive doctrines. It also supports Rawls's claim for a reasonable overlapping consensus on some terms of justice.

Part of the complexity of the issue of coherence between reasonable comprehensive doctrines and terms of justice occurs in the original position. This I discuss in the next section.

4.1.3 Some challenges to the original position

Another important feature of political liberalism is the original position. Rawls employs this device of representation in which parties determine the terms of justice under the *veil of ignorance* (PL I, §4). The

veil of ignorance restricts the range of morally acceptable reasons and arguments which parties can employ in selecting principles of justice (Freeman 2007, p. 143). It implies, according to Freeman, that some information is not morally relevant (e.g. religion, culture, economic class, gender) and they are excluded by the veil of ignorance (Freeman 2007, p. 144). The original position is designed to maintain the conditions of fairness in which parties deliberate the terms of justice.

Another purpose of the original position is to make explicit the reasons and convictions of parties in finding terms of justice. Samuel Freeman explains that the original position help us clarify the principles of justice our moral convictions have already committed us to accept (Freeman 2007, p. 167). Freeman concludes that in the original position, parties understand that the principles of justice are not alien moral obligations; they are already implicit in their reasonable comprehensive doctrines (Freeman 2007, p. 144). For example, the view that persons are free and equal, society understood as fair terms of social cooperation, and reasonableness are assumed to be basic moral principles found in most religions. Lastly, one can regard the original position as a *selection* device for parties to use in making choices from the list of principles and moral conceptions drawn from the tradition of moral and political philosophies (Freeman 2007, p. 146). Despite its advantages, I highlight some conceptual worries for reasonable believers who are parties in the original position.

First, the veil of ignorance has been a source of contention among political liberals. Some theorists argue that the veil of ignorance is unnecessary because parties in the original position are deprived of so much information which is crucial in making a decision whether to accept a principle of justice or reject it. In its defence, Rawls argues that the veil of ignorance only prevents participants from shaping the moral-political view to accord with their own personal attachments and interests (TJ, p. 453). In addition, parties in the original position are supplied with relevant information that enables them to protect their fundamental ends and higher-order interests (TJ, p. 152). For example, they are aware that most of them have a fundamental interest in practising their faith or are committed to moral and ethical

convictions as part of their rational plans of life (Mandle 2014, p. 137). They would choose principles which would protect the liberty of conscience even if that would cost some economic gains (Mandle 2014, p.137). The veil of ignorance only prevents them from knowing which particular faith or moral convictions they would acquire (Mandle 2014, p.137). In the example, what is relevant for choosing the principle is the fundamental interest of liberty of conscience.

Other worries are related to some rules and components of the original position. First, parties in the original position should limit their conduct and form of arguments following the standards of reasonableness. This means that parties in the original position are to believe that the framework of justice they endorse is a political conception following the political constructivist criteria (Scheffler 1994, p. 13). One of the negative implications of this is the exclusion of some reasonable believers from the overlapping consensus. I agree with Scheffler that for some believers, the notion of a political conception is not always straightforward (Scheffler 1994, p. 15). It seems that the strict adherence to the political criteria and norms limits, in a rather artificial way, the parties in the original position to a range of permissible arguments and theories of justice. In Rawls's original position, it is unclear whether citizens can reason and act from within their reasonable comprehensive doctrines.

If participants are to choose principles from moral and ethical traditions in light of good reasons, then this requires them to be open to some non-political reasons as part of the relevant information allowed by the veil of ignorance. For instance, parties to the original position can rely on the richness of religion to supply reasons why liberty of conscience, though important, is not an overriding value in all cases. Or why certain distributive principles would end up compromising the coherence of religious goods. Part of the features of the original position is that parties uncover philosophical assumptions from various conceptions of justice so that they can compare the reasonableness of the different assumptions and arguments (Freeman 2007, p. 145). The dependence on political criteria and norms alone restricts the range of relevant reasons there are in public reason.

Even if these objections can be answered, a major problem is constituted by the exegetical dominance of conceptions of the original position which are strictly neutral. This may not be so much a problem for Rawls, but rather for his reception. For instance, Quong's reading of the original position aims at the parties achieving reasonable agreement. For him, the elements in the original position ensure that citizens should be reasonable following the political constructivist criteria alone. This secures the internal consistency of a framework of justice following political liberalism. However, as I have pointed out, it is not clear why the parties in the original position would be (a) motivated exclusively by political reasons, and (b) how principles of justice cohere with their moral views.

In sum, the normative features of a reasonable person in a Rawlsian society are substantial and comprehensive, even if only applied in the political domain. In particular, the notion of the burdens of judgment, the objectivity of the political constructivist framework, and elements in the original position do not address the problem of congruence which believers face in order to be counted as reasonable citizens. This weakens the plausibility of a reasonable overlapping consensus because Rawls's criteria are too demanding for citizens who rely on an active and stable tradition of doctrine like religion.

4.2 An alternative reading of political liberalism

A successful political conception should generate widespread endorsement from citizens who hold different and sometimes opposing reasonable comprehensive doctrines. This is important because it permits believers to participate in the political sphere and protect them from instances of marginalisation. Although Rawls has the right intentions, I have argued that some of the elements of political liberalism overlook the problem of congruence. In this section, I offer a reading of the elements of political liberalism based on Wenar's suggestions to address the issue. This, I shall argue, leans towards a thin conception of the demands of political liberalism.

I begin with a discussion of less substantive criteria of reasonableness.

4.2.1 A limited conception of reasonable

To improve political liberalism, Wenar prescribes the retention of the two main attributes of a reasonable person and abandonment of the other theoretical requirements (Wenar 1995, p. 61). He suggests a limited conception which is largely based on two normative features of a reasonable person: (1) capacities for conception of the good, and to accept and uphold the terms of justice (reciprocity), and the (2) recognition of other citizens as free and equal persons (Wenar 1995, p. 61). Wenar's minimal conception allows each citizen to recognize the principles of justice and endorse them from her own moral comprehensive doctrine. If adopted, then Wenar's limited conception is a version of political liberalism which offers wider compatibility with religion. There are some advantages to this.

First, the removal of the burdens of judgments permits believers to refer to religion in their participation in public reason. It also admits alternative narratives in explaining the fact of pluralism (e.g. people having false beliefs, people as morally erroneous). This enables citizens to be more transparent about their normative sources and political positions in public reason. It mirrors the reality of public deliberation more successfully than Quong's suggestion where citizens simply bracket together their moral or ethical doctrines and rely purely on political arguments and norms alone. Second, the two normative features can be understood by all. Each citizen sees the other as reasonable in terms of their capacity to enter and uphold the terms of justice, despite the differences in their conceptions of the good. They are to regard each other as equals in terms of (1) having two moral powers, (2) free persons, and (3) fellow members of society. Simple criteria of what is reasonable would generate stronger intuitive

appeal and acceptability to religious citizens.[38] By employing a thin criteria, the state could accommodate a wider range of believers to include those who hold religions that have loose political conceptions or rely heavily on scriptures.

The other feature of a reasonable person which is her capacity to pursue and revise a conception of the good could account for the limitations of human judgment which the burdens of judgment imply. For instance, some believers, in their course of pursuing their conceptions of the good, may not find sufficient reasons to further engage with religion. It is important that their capacity to revise and chart a new way of life is protected. Religious commitments admit changes. Some believers undergo conversion experiences which move them to leave their religion for another, or even become non-believers. The person's basic capacity to revise her conception of the good is part of her general right to self-determination. It also supports the fact of pluralism where citizens in certain occasions move from one reasonable comprehensive doctrine to another. In retaining the two basic features of a reasonable person, believers can accept even quite demanding standards of reasonableness.

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[38] This is different from Christopher Eberle's proposal of *ideal conscientious engagement* (ICE). His theory does not suggest any modification on the requirements of what is reasonable. Instead, Eberle offers religious citizens a process that is compatible with public reason, *strictu sensu*. Part of this is that they would consider various data, evidence, and circumstances, assess them under religious norms, and come to a conclusion about the moral appropriateness of a given principle or law (2002, p. 105). This constitutes part of what he refers to as *high degree of rational justification*. A high degree of rational justification works as an internal constraint for believers, in favouring or withholding of support for a principle or state policy. However, if moral appropriateness is determined exclusively by an individual's religious norms and beliefs, then believers ought to abide by other constraints: to consider others' points of view, to provide explanation of the reasonableness of their religious bias, to commit to general norms of public reason in arguing for principle and laws, and to refrain from supporting any policy, religious or otherwise, that rejects the dignity of her fellow citizens. This deliberative, persuasive, and rational engagement with others is an appropriate manifestation of respect for persons. See Eberle 2002, pp. 105–6.

4.2.2 The role of non-political reasons in public reason

Second, I propose that the rules of public reason be relaxed in ways that would admit appeals to a range of ideas of the good to combine with political values and arguments. This strengthens the overlapping consensus between principles of justice and moral comprehensive doctrines because it recognizes the implications of values and goods to liberties. For example, the ban on the public wearing of a religious dress matters to some believers because such dress forms part of a core social practice in religion. Burdens on religious liberty are difficult to estimate if such practical consideration is not permitted in public reason. John Horton argues that the indeterminacy of rational conditions of public reason should be supplemented with controversial substantive content and shaped by values of a political vision (Horton 2020, p. 25). I partly agree with Horton's claim about the limitations of rational conditions of public reason. However, I endorse a range of ideas of the good which are not necessarily controversial or too substantive that it alienates non-adherent citizens.

As a defence of Rawls's approach, Scanlon explains that citizens can appeal to this range of ideas in ordinary legislation but cannot do so in the constitutional essentials and design of social institutions. However, something important seems to be missing in the division of labour between principles in Scanlon's proposal. The restriction of the application of justice to basic constitutional essentials and basic structure overlooks the fact that the effects of state power run deep, and the exclusive grounding of state policies on political values would be insufficient (Mulhall & Swift 1992, p. 225). Some disagreements about rights involve the ordering of the principles and the balancing of values salient in justice claims. The balancing of values when they conflict in cases of justice (e.g. bodily integrity, religion, and conscience) requires the adjustment of liberties. If religious freedom is part of the scheme of liberties of each citizen, then the state has to refer to religion whenever religious freedom is adjusted as a right. The state, when caught in conflict situations involving rights, unavoidably appeals to ideas of the good for fair resolution. Without attention to

this, some forms of harm to religion (e.g. interference to the collective integrity of the group) can occur through state action.

This also partly explains why religious liberty is distinct. For believers, the freedom to worship does not only protect their capacity to choose and provide them with the necessary scope to exercise it. Religion matters to them more than, for example, the freedom to purchase a dress they like or watch football. Liberals, as Waldron explains, are committed to freedom (Waldron 1989, p. 1103). What most liberal theorists often overlook is the fact that some liberties seem to be more important than others: religious worship seems to matter more than my freedom in driving my car in any direction; the state would be more careful in restricting the former than the latter kind of freedom (Waldron 1989, p. 1103).

In sum, I am arguing that some ideas of the good might combine with political arguments.[39] My proposal aims at providing each citizen with a range of ideas which are reasonable whilst being sensitive to her conception of the good. Reasons arising from religion should perform a normative role in the political domain. *Contra* Quong, they are not inimical to the ideal of public reason. They actually help strengthen public reason because this permits a wider range of views and a higher level of transparency from citizens in public deliberation. Rawls acknowledges that the appeal to moral doctrines in some political

[39] I discuss this in full in Chapter 5.

advocacy is not inappropriate in public reason[40] (Scheffler 1994, p. 16). This makes public reason more inclusive because it recognizes the normative role that reasonable comprehensive doctrines perform alongside political arguments in grounding principles of justice.

4.2.3 A wide understanding of the original position

Rawls enumerates some advantages of accepting a framework of justice as an outcome of a constructivist procedure: (1) it does not exercise judgment on the truth of the principles, (2) it minimizes political fragmentation because the principles are accepted only as reasonable and not based on moral truth, and (3) it can appeal to many citizens and increase the likelihood of an overlapping consensus (Scheffler 1994, p. 19). However, his defence implies that citizens should accept the standards of reasonableness as the more appropriate basis for public justification than moral truths (Scheffler 1994, p. 20). The problem here lies in determining the extent to which religion can supply reasons for citizens which also meet standards of reasonableness. It would be unrealistic if arguments partly framed by religion are excluded in the overlapping consensus. I claim, following Scheffler's arguments, that it is not necessary that citizens should think of the framework of justice as strictly political (Scheffler 1994, p. 19). Parties in the original position should consider reasons from different moral traditions aside from the political reasons alone. This

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[40] 'Rawls himself considers the examples of the abolitionists and of Martin Luther King, Jr., and in the face of these examples he modifies his principle to allow that citizens may in certain circumstances appeal to their comprehensive doctrines if this is necessary to strengthen the ideal of public reason itself. But there are many other examples that could be cited in addition to the two that Rawls mentions: such as the religiously inspired opposition of Quakers and others to the war in Vietnam; the religiously motivated opposition of many people to capital punishment; the central role traditionally played by black churches in the political life of the African-American community; the opposition by certain religious denominations to US policies in Central America during the 1980s and the associated movement to provide sanctuary in churches for Central American refugees; and the religiously based advocacy of policies to eliminate homelessness and poverty' (Scheffler 1994, pp.16–17).

would enable parties to choose a political conception which can be compatible with reasonable comprehensive doctrines.

By compatibility, I refer to the capacity of religion to ground a set of principles of justice from its normative sources. This assures congruence between comprehensive doctrines and the political conception. One of the aims of the original position is to make explicit what is implicit in public-political culture. Part of this procedure is exploring why those moral principles are suitable for citizens to accept as terms of justice. For example, the principle of giving each person access to an equal scheme of liberties acquires stronger intuitive appeal if its explanation is supplemented by religious reasons. In my suggestion, citizens can hold terms of justice as reasonable and acceptable because they are partly grounded on religion.

My reading of the original position also helps to define a position from which the state can maintain, to a large extent, impartiality among citizens. Part of Rawls's aim through the original position is to ensure that no one is given the chance to exploit others to gain an advantage (Scheffler 2007, p. 157). Parties in the original position should not be distracted by information that would lead them to bargain. If everyone is on an equal footing, then citizens can focus on finding appropriate principles. However, citizens should also have recourse to reasons that would help them ground those principles in reasonable comprehensive doctrines which they would end up having.

In sum, my alternative reading does not ask reasonable believers to reject political liberalism. The critique and concerns raised on some of its important elements align with one of the main aims of political liberalism: to recognize the separateness of persons. Rawls's intention also includes establishing a society in which each person can reasonably pursue a vision of a good life. What is good for the individual goes beyond her personal goals and benefits. It includes all the aims that an individual has reason to want to promote, like realizing some ideal of life or living up to the demands of her religion (Scanlon 2018, p. 2). Believers share a common enterprise with others in finding principles of justice which would guarantee each person fair access to liberties

and all-purpose means. But, they also want to live in a society that has a broad range of conceptions of a good life which complex terms of justice could support. The main disadvantage of Rawls's political conception, Scheffler asserts, is that the more things people ought to take into account in order to be part of Rawls's consensus, the more it is difficult to actually achieve it (Scheffler 1995, p. 13). My alternative reading addresses this. It also opens the possibility for a minimal conception of the demands of political liberalism.

In the next section, I defend my proposal against some challenges and objections.

4.3 Challenges and objections

A political liberal might find my interpretation of political liberalism unconvincing and problematic. First, she could raise the point that political values are sufficient to accommodate religious claims. Second, she could insist that Rawls's political constructivist criteria allows citizens to exercise moral compartmentalisation where they can distinguish moral reasons which are politically relevant from those that are not. Third, a critic would be concerned about the introduction of ideas other than political ones in the original position. According to Quong's suggestion, the role of comprehensive doctrines should happen at a later stage which, after principles are selected, religion and other comprehensive doctrines provide them ultimate grounding (Quong 2010, p. 186). Ideas of the good are irrelevant in the original position. I respond to each in turn.

4.3.1 The sufficiency of political values

Some political liberals argue that citizens should follow the norms of public reason including the appeal to political values for finding principles of justice. For instance, Quong defends the strict adherence to rules of public reason because disagreements about justice can be fairly regulated by a common framework of rational justification (Quong 2007, p. 338). This is unlike the disagreements of the good that runs all the way down – *foundational* – which cannot be resolved by the same framework of justice (Quong 2007, p. 338).

Two claims are important here: (1) the norms of public reason and political values are sufficient to accommodate religious claims, and (2) the introduction of non-political values would only intensify disagreements in the political domain.

I do not deny the importance of having common rules to help illuminate the possibility of reasonable agreement among participants. My main worry is that the total exclusion of non-political ideas makes public reason too demanding for believers to offer terms of justice which their own comprehensive doctrines can support. The loosening of some norms of public reason does not lead to a wider range of irresolvable disagreements, as Quong fears.

A political liberal who is sceptical of my interpretation would defend the sufficiency of political values for believers to employ in public reason. For example, an MP could argue for the permissibility of wearing the *hijab* through religious liberty. This claim is weighed with other political values like public order salient in a justice claim. A political liberal could also argue for a fair tax system that may involve churches paying a certain levy. She could raise the point of that such a tax system does not aim at singling out religion. It is a fair solution in regulating institutions which acquire and maintain properties, some which are engaged in forms of for-profit business, and others that act as employers. It seems that there is an ample range of reasons for citizens in public reason without them resorting to non-political ones.

I admit that political values provide room for a reasonable believer to advance her claims without recourse to non-political reasons. However, some disputes about rights implicate some ideas of the good and a range of values. They have an impact on the extent to which citizens can engage with goods like religion. For example, the controversies surrounding the ban of the wearing of the *hijab* are more than the issue about the practice of one's religion. In some countries, the permission to wear the *hijab* in public is presented as endangering state neutrality; others claim that it advances instances of wrongful discrimination among women who are forced to wear such religious

dress[41]. As pointed at by Myriam Hunter-Henin, the protection of religious freedom only depends on the extent to which a political value (e.g. liberty of conscience, liberty of association) is worthy of state protection (Hunter-Henin 2020, p. 97). Religious claims are understood within the confines of political values (e.g. liberty, fairness, equality) which are at stake in claims of justice and not because of religion (Hunter-Henin, p. 97). Following her argument, some ideas of the good (e.g. the importance of religious dress) could help parties understand the religious value of wearing the *hijab* in the public, which then helps estimate the burden on religious liberty when it is balanced with interests on public order.

Second, I agree that churches should not be totally exempt from state scrutiny whenever they are engaged in business or when they act as legal employers. Reasonable believers understand that some of their practices and activities ought to meet standards that protect employees from wrongful discrimination for example. I only flag the tendency to treat churches exclusively as institutions similar to non-religious kinds. State regulation affects a church's institutions and activities. It would be helpful if the state could refer to what religion is, when necessary. Having a coherent view of religion permits voices in public reason to

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[41] Kılınc (2020, p. 107) cites the case in France where 'in 2003, Dounia Bouzar and Saïda Kada, two French Muslim women activists, wrote a book titled *L'Une voilée, l'autre pas* (One Veiled, the Other Not) on their views on Muslims' participation in French republican modernity (Bouzar and Kada 2003). Even though they represented two different Muslim perspectives, one wearing a headscarf and the other not, they were united in the idea that most of the Muslim women in France sought to be part of the modern republican public sphere. Kada challenged the view that the wearing of the headscarf symbolizes submission to men; rather, she argued that it symbolizes submission to God and contributes to spirituality. Both authors criticized the patriarchy and argued that there are several ways to counter it; sometimes wearing a headscarf is part of that struggle. At a time when Muslim women were being presented by the media as uniform and submissive, Bouzar and Kada attempted to demonstrate the subjectivity of Muslim women. However, their message fell on deaf ears. The French media kept presenting Muslims as a monolithic category characterized by patriarchy, bigotry, and fundamentalism'.

echo why some state actions and policies may be detrimental to religion as a unified good and not simply reduce it to some of its dimensions.

4.3.2 Moral compartmentalisation

A political liberal might interpret the justification model in political liberalism as an example of moral compartmentalisation. What this means is that in political liberalism, citizens can distinguish their religious beliefs from political reasons as part of being reasonable. For example, Joe Biden, the US president, holds a Catholic belief that life begins at conception whilst recognising that it is morally wrong to coerce non-adherent citizens to accept this view through state policies.[42] For political liberals, what matters most in the political domain is for citizens to limit their arguments within the ambit of political values. The inclusion of non-political moral reasons only muddles the issues of justice. Religious officials have to apply conceptual restraint for the sake of non-adherent citizens with whom they share state power as a corporate body.

This is not an easy task for a believer who is also a state official because it seems that her role requires her to be impartial all the time. As a reaction, one of the cardinals explains that politicians who support measures contrary to church teaching are not only barred from receiving communion but they are also considered *apostates* who

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[42] 'In recent months, the Biden administration has lifted restrictions on federal funding for research involving human foetal tissue, rescinded a Trump policy barring organisations that refer women for abortions from receiving federal grants, and allowed women to remotely obtain a prescription for an abortion pill during the pandemic.' Cf. '"Unique problem": Catholic bishops split over Biden's support for abortion rights', *The Guardian*, 12 June 2021.

warrant excommunication (i.e. being not part of the church).[43] Biden and other politicians are in a bind in trying to hold at the same time their moral convictions and the demands of their roles as impartial state officials.

The proposal of moral compartmentalisation is not as easy as it appears. The problem of coherence between religion and justice in cases like abortion unavoidably involves ideas of the good and reference to values. There is deep tension partly because a believer's reasons for actions are largely circumscribed by her religion. For officials who are also believers, the exercise of state power falls between the demands on one hand of their religion, and on the other hand, the fact that not all citizens share their beliefs.

To address this, Kevin Vallier present an alternative conception of public reason. In his proposal, state action is imposed if each citizen has sufficient intelligible reason to accept it in reference to her value and belief sets (Billingham 2017a, p. 543). In other words, a believer simply needs to offer intelligible reasons, and they need not necessarily be acceptable to others; however, she must also consider that others should have conclusive reasons to endorse a law that she is proposing (Billingham 2017a, p. 544). Vallier's approach aims to protect individual integrity by giving each citizen sufficient reason not to accept a law for which she cannot find conclusive moral grounds. For example, a satanist cannot support a law that permits non-compulsory but government-sanctioned festivals that involve public orgies, blood rituals, and animal sacrifice (Talisse 2012, p. 318). Such a law which allows morally abhorrent practices is not justified

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[43] 'A national online meeting of US bishops will discuss whether the president and other high-profile political figures should be denied the sacraments because of his stance on abortion rights. "How can he say he's a devout Catholic and he's doing these things that are contrary to the church's teaching?" asked Archbishop Joseph Naumann, chair of the US Conference of Catholic Bishops' (USCCB) committee on pro-life activities, last month. Biden's position was a *grave moral evil* which presents a *unique* problem for the church, Naumann said.' Cf. *The Guardian*, 12 June 2021.

under Vallier's condition because non-adherent citizens do not have conclusive reasons to endorse it.

I do not propose to go into details of Vallier's complex conception here.[44] I merely cite his theory as an example of how comprehensive doctrines can play a normative role in public reason. In contrast, my suggestion is for believers to employ some ideas of the good that non-adherents would find sensible.[45] If applied in the case of Biden and church authorities, public reason can include arguments from religion on why the protection of life is an important value and how this ought to balance with the freedom of following one's conscience. It also includes the morality of exercising the power of one's office to coerce others who do not share one's religious beliefs. These are relevant practical considerations which can help challenge the positions of each party.[46] For instance, Judith Thomson proposes a strategy where believers and non-believers can have shared premises about some

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[44] Due to the complexity of the theory and its issue, it is difficult to make a full assessment here. My own conceptions depart in particular from Vallier's account of what counts as a conclusive reason derived from each citizen's value set.

[45] I cite particular examples where religious reasons could support political values through some ideas of the good in Chapter 5.

[46] For some considerations regarding the case of abortion, see footnote 64 of Chapter 5.3.2, p. 126.

aspects of abortion.[47] Citizens could reason from shared premises and this delivers a quite substantial set of pragmatic agreements. An inclusive view of public reason allows a citizen to understand why others hold certain positions in issues of justice, why certain liberties are more valuable to them, what the serious consequences would be of some social policies, and how parties can proceed in addressing issues of justice.

4.3.3 A clarification of the original position

Lastly, a critic might worry about allowing information from moral traditions and different conceptions of the good in the original position. This can result in instances of bargaining because parties argue in accordance to and in preservation of some moral traditions and conceptions of the good. The role of moral traditions should remain in the second stage after the principles of justice have been selected following Quong's suggestion.

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[47] Thomson argues mainly that even if believers and non-believers accept the premise that a foetus is a person, there are limits to the rights of persons. For example, considerations of self-defence are advanced where threats to the mother's life sometimes prevail over the life of the unborn child. In Catholic morality, cases of ectopic pregnancy allow abortion to save the life of the mother. Thomson expands this to include cases of cardiac conditions of pregnant women and instances of rape. While she argues for the permissibility of abortion in some cases, this does not entail that abortion is *always* permissible nor does this mean securing the death of the unborn child (Thomson 1971, pp. 47-66).

Political liberalism does not aim at serving detailed prescriptions of what to do in particular justice claims. However, it does provide guidance for citizens in approaching a particular public policy like the legalisation of abortion. A Catholic and a political liberal would consider that a public policy of permitting abortion involves serious moral implications: 1. a particular belief on the right to life, and 2. the use of state power to impose such belief on non-adherents. Even if there is a level of agreement about the moral status of a foetus as a person (or when it is a person) as Thomson argues, there is still scope for disagreement in employing state power to ban or permit it. Political liberalism does not give ultimate answers to the case but it does provide citizens a way of approaching such justice claims in public policy via a limited but efficacious overlapping consensus. See also footnote 64, p. 126.

In reply, I offer a clarification of the conception of the original position. Part of what this means is to understand the role of the veil of ignorance in a *nuanced* way – a device which eliminates as much arbitrary bias as possible that distracts the parties in finding common ground. This does not entail that only political arguments and values are allowed in the original position. Parties in the original position also have to understand why liberties and all-purpose means are important for some citizens who would end up having religious commitments, for example. A wider conception of original position allows this. It allows parties to refer to religion when necessary. It permits parties to have reasons to accept why principles of justice are morally sound – that is how they can cohere with religion in general.

Moreover, religion is a conception of life in which some citizens find meaning and value. Without sensitivity to its normative features which make it a unified and distinct good, the tendency is for the state to frame religion as a *moderate, inner set of private beliefs* (Hunter-Henin 2019, p. 92). The state has an interest in maintaining proper conditions for its citizens to engage with plural goods in society. It does this without trying to impose a particular conception of the good. In a clarified conception of the original position, parties for example can offer reasons that refer to some features of religion and identify the implications in considering some norms of justice. It also raises an important question on whether and to what extent the state ought to support the possibility of citizens engaging with religious goods.[48] These reasons need not privilege religion over other conceptions of the good.

4.4 Conclusion

The examination of the main elements of political liberalism reveals some important theoretical challenges which should be addressed. Some of these normative features like the burdens of judgments and the privileging of objectivity as supplied by the account of political constructivism might be too demanding on believers in order for

[48] I shall explore this in Part 2 of the thesis, religion and distribution.

them to be recognized as reasonable citizens. Furthermore, it makes the overlapping consensus only reasonable but does not ensure congruence with their comprehensive doctrine. To address this, I have offered interpretations of the elements of political liberalism which allows believers to propose terms of justice from within religion as a reasonable comprehensive doctrine. This includes the employment of less substantive criteria of what is reasonable, following Wenar's suggestions. In addition, I have advanced a wide view of public reason which admits diverse ethical views, and the level of transparency among citizens is higher than a strict neutral interpretation of public reason. I concede that my interpretation might not be the best reading of political liberalism. However, it largely addresses the problem of congruence between moral comprehensive doctrines and principles of justice because reasonable believers are able to rely partly on religion to ground their arguments in public reason.

It is with hope that, with my reading of Rawls, a version of political liberalism emerges as a plausible approach. If the society Rawls aims at is one that advances the good of each citizen, then serious attention should be given to understanding the reasons why religious liberty is distinct and valuable to some citizens. This also helps the state to make a fair assessment on justice claims where religious liberty is involved in particular, and in determining principles of justice which could be a subject of an overlapping consensus in general.

5

RELIGION AND LIBERALISM: TRADITION AND POLITICAL LIBERALISM

Some critics are concerned that in political liberalism, religion plays a very limited normative role in providing believers admissible reasons and arguments in public reason. I have offered clarifications of what political liberalism entails to address this. I shall now examine whether religion can ground political values through a modified account of political liberalism. This will hopefully aid believers in their participation in finding reasonable terms of justice in public reason. It is also a reply to some liberals like Quong who argue against admitting religious reasons and views of justice in public reason. Against Quong, I argue with Waldron that keeping religion away from the realm of the right would not work because believers derive their political stances from their religious commitment (Waldron 2021, p. 93).

In this chapter, I discuss the plausibility of a thin account of political liberalism based on the reading I have proposed and whether it takes full account of reasonable believers. In the first part, I explore MacIntyre's notion of tradition together with Crane's descriptive view of religion in order to understand (1) what a religious standpoint is, (2) its implications in the political domain, and (3) whether it is compatible with a liberal outlook. MacIntyre's notion of tradition helps a liberal understand coherently the normative sources from which a believer draws her views of justice. Crane's descriptive view of religion is an example of a conception which identifies the role of a religious practice in realizing the internal goods of religion and asks whether some religious practices implicate state responsibility.

I shall reply to some challenges related to this part of the enquiry. Second, I shall advance a two-pronged claim which maintains that (a) believers can offer conceptions of justice which are intelligible and might even be acceptable to non-adherent citizens and, (b) religion can adapt to be reasonable. I return to some of Quong's arguments and evaluate his restrictive model. Last, I argue that a thin account of political liberalism which is closely aligned with Rawls's ideal of public reason can accommodate reasonable believers. I shall then sharpen my proposal by addressing some concerns and objections from critics.

5.1 Tradition and public reason

In this section, I shall explicate what it means to argue from a religious standpoint and its implications to public reason. Some of the values (e.g. basic equality, toleration, and liberty) which political liberals desire to protect are supported by major religions. The foundational support is largely achieved by appealing to the normative sources of religion understood as *tradition*. Against this, critics are concerned about instances of *implicit theocracy* and some problems related to keeping the duty of civility. A few would argue that the relevant portion of religious citizens who are committed to political values might only comprise a tiny minority within their religions. I shall address these worries. I conclude with a discussion of some of the elements in Crane's descriptive view of religion. This is part of my defence of the plausibility of appealing to ideas of the good in combination with political values as permissible arguments in public reason.

I begin with a discussion of MacIntyre's notion of tradition and how it frames a believer's point of view.

5.1.1 What is tradition?

A way for citizens to understand religion as a complex good is through the concept of tradition. First, tradition has a variety of interconnected content. Beliefs, doctrines, values, and practices are part of a normative network from which a person draws particular meaning. Tradition also functions as a normative resource. It is a

source of reasons for action of believers. Each tradition, according to MacIntyre, has its own theories of justice, practical rationalities, and evaluative practices (MacIntyre 2001, p. 391). It is largely based on the content of tradition according to which a believer would evaluate her efforts in living a good life and her relation to others (Mulhall & Swift 1992, p. 90). In other words, tradition helps the believer conform her ways and views of the world towards a *religious ideal*. But what is a religious ideal? Crane offers a simple explanation: 'to live life according to God's will or in accord with the prescriptions of the laws that embody these divine wills' (Crane 2017, p. 38). This largely makes a religious standpoint distinctive because it offers a particular comprehensive view of human life according to God or the divine.

Second, the content of tradition includes social practices and norms which help a believer realize religion and enjoy its goods. A significant implication of this is the normative importance of the social dimension of religious practice. Crane argues that belonging to a religion is like 'inheriting things when growing up in a family: how to eat together, how to behave with guests and strangers, how to talk to your elders' (Crane 2017, p. 97). There are two important insights in his analogy. First, religious practices through repeated and collective performances are means for believers to connect with the divine. For example, believers gather for common worship at a specific location on a regular day and time where they perform prayer according to roles and historical custom. Through this social dimension, believers are connected to one another as a practising faith community. Common worship is performed by believers in spite of the degrees of member sincerity or individual conceptions of the value of the said religious practice. Similar to growing up in a family, children become accustomed to a certain way of living and looking at life. A corollary, and as second point, is that religious practices bind a believer to a community through repetition – doing it socially with other people (Crane 2017, p. 88). This makes religious practices a different category from the network of beliefs and moral code of religion. Religious practices are sustained and organised performances of rituals, whether individual or collective, which shape a believer's personal identity and her connection to a faith community. Much

like growing up in a family, the practices and way of doing things that children learn from parents shape the way they see themselves and how different they are from other families. These activities are not merely believed or taught as a code. They are performed habitually, following norms which are rooted in shared history.

Third, tradition implicates *internal* goods. MacIntyre defines internal goods as goods particular to a practice (MacIntyre1981, 2007, p. 188). For example, the coaching, training, and norms of chess-playing are only understood and appreciated by one who is engaged in chess-playing. Those who do not play chess would have a vague notion of what an excellent chess player is and the relevance of an investment in such a sport. They may judge an excellent chess player by appealing to another set of criteria – popularity, earnings, or rankings – but these are what MacIntyre refers to as *external* goods (MacIntyre 1981, 2007, p. 188). Similarly, a believer enjoys goods peculiar to religion. This includes a deep connection with the sacred, shared worldview about ultimate ends, substantive connection to a faith community, and a meaningful life grounded on a religious ideal. If the state aims at recognising what is due to believers, the idea of internal goods can help the state determine whether the claims related to religion are reasonable. For instance, a policy that bans the wearing the *hijab* not only restrains the exercise of an individual's choice in terms of what to wear in public. It also prohibits her from realizing the internal goods of religion through that practice. This internal good can come in forms of connecting with the sacred, the formation of her identity as a devout believer, or her relationship with the Muslim community. The notion of internal goods provides a believer with a kind of reason that explains the value and meaning of a religious practice which a non-adherent can understand. For instance, ignorance of the internal goods of religion can endanger the distinct character of religious practice as opposed to chess practice or architectural practice. Through the notion of internal goods, the state could identify some essential goods of religion which, when sacrificed, constitute serious burden on religious freedom. The notion of internal goods is a relevant practical consideration in examining the effects of

some social policies, without the state becoming objectionably partial to believers.

Last, part of what makes tradition active and evolving is the fact that it is passed on and received by communities. These communities are situated in various human societies. They are not immune to the circumstances of justice in their own times. Reasons for the actions of believers are generated in part by the manner in which the community interprets and, consequently, lives out religion in the present times. As an implication, some practices do not endure, and some beliefs and doctrines take on new interpretations. This flux in tradition is responsive to reasons, contrary to an oft repeated view that religion is irrational. For major religions, their members and religious authorities go through a rational process of discerning beliefs and practices which are in tension with external ideas or challenged by present circumstances (McCrudden 2018, p. 157). For example, the development of doctrine in Catholicism about religious liberty[49] includes a conception of liberty which non-adherents can understand and might accept. Reasons are generated from how the community interprets its way of life and how it is applied in moral and political life. It enables believers to be open to changes and revisions.

Some interpretations of religious doctrine and beliefs are outcomes of the interaction of believers with non-adherent citizens. Rawls affirms the capacity of religion to evolve in acknowledging and, sometimes, providing moral grounds in support of political values. He asserts that reasonable comprehensive doctrines have an active and stable tradition (PL §2). The 'active' aspect of tradition refers partly on how believers make sense of others' critiques of religious conceptions of liberty and equality which could expand its interpretation of its own moral code and scriptural references.

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[49] *The Declaration on Religious Liberty* affirmed religious liberty as grounded on human dignity and principle of toleration in *Dignitatis Humanae* (1967). See: https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vatii_decl_19651207_dignitatis-humanae_en.html

In sum, MacIntyre's notion of tradition clarifies what arguing from a religious standpoint entails. First, the content of tradition contains a system of beliefs, moral codes, various practices, and social norms. They form part of the normative sources from which believers draw reasons for action in moral and political life. Second, the concept of tradition implicates the internal goods of religion. Believers enjoy a set of internal goods through religious practices. Religious practices bind believers as a community and make manifest the social dimension of religion. Third, the community of a believer normatively interprets how their tradition is adapted to suit particular times. A religious standpoint could be open to changes and revisions.

However, a critic could raise several problems regarding the employment of the notion of tradition.

5.1.2 Implicit theocracy and problems related to the duties of civility

An understanding of religion as an active tradition and an evolving normative source partly grounds the claim that religion can provide foundational support to political values. For example, Locke's defence of toleration as a liberal principle partly draws from religious references.[50] Likewise, the Catholic church's defence of liberty of conscience and religious toleration are expressed in reasons drawn

[50] 'The perfect example of that Prince of Peace, who sent out His soldiers to the subduing of nations, and gathering them into His Church, not armed with the sword, or other instruments of force, but prepared with the Gospel of peace and with the exemplary holiness of their conversation …The Toleration of those that differ from others in Matters of Religion is so agreeable to the Gospel of Jesus Christ … that it seems monstrous for Men to be so blind, as not to perceive the Necessity and Advantage of it in so clear a Light …' Cf. Locke, *A Letter Concerning Toleration*, p. 16, 25.

from its rich tradition.[51] Waldron cites the *Evangelicals and Human Rights Declaration* which is replete with scriptural references and religious imagery as a case of believers who rely on the resources of religion in condemning the state's employment of torture as an affront to human life[52] (Waldron 2012, p. 845). In these examples, religious conceptions of toleration, liberty of conscience, and human torture are concerned with the protection of individual life and liberty. Religious views of justice ground a set of political values and principles without being anti-liberal or anti-secular. Religious arguments are not inimical to political values.

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[51] 'This Vatican Council declares that the human person has a right to religious freedom. This freedom means that all men are to be immune from coercion … in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly …. The council further declares that the right to religious freedom has its foundation in the very dignity of the human person as this dignity is known through the revealed word of God and by reason itself. … It is in accordance with their dignity as persons—that is, beings endowed with reason and free will and therefore privileged to bear personal responsibility—that all men should be at once impelled by nature and also bound by a moral obligation to seek the truth, especially religious truth. … [M]en cannot discharge these obligations in a manner in keeping with their own nature unless they enjoy immunity from external coercion as well as psychological freedom.' Cf. Pope Paul VI, *Dignitatis Humanae: on the Right of the Person and of Communities to Social and Civil Freedom in Matters Religious*, 7 December, 1965, §2.

[52] 'The sanctity of human life, a moral status irrevocably bestowed by the Creator upon each person and confirmed in the costly atoning sacrifice of Christ on the Cross, is desecrated each day in many ways around the globe. Because we are Christians who are commanded by our Lord Jesus Christ to love God with all of our being and to love our neighbours as ourselves, this mistreatment of human persons comes before us as a source of sorrow and a call to action. All humans who are mistreated or tormented are ... by Jesus' definition, our neighbours .... [In them and through them we encounter God himself.]' Cf. *Evangelicals for Human Rights, An Evangelical Declaration against Torture: Protecting Human Rights in an Age of Terror* (Mar. 2007), reprinted in Gushee, *The Future of Faith in American Politics: The Public Witness of the Evangelical Centre* 253–70 (2008).

Some critics might still be suspicious of religious reasons. For instance, Crane's descriptive view of religion contains normative features of religion which some liberals might worry about. For Crane, religion is (1) a systematic and (2) practical attempt by human beings (3) to find meaning in the world and their place in it in terms of their (4) relationship to the transcendent (Crane 2017, p. 6). The believers' relationship to the transcendent makes religion distinct from other traditions. For some liberals, this feature of religion is often a cause of conflicts among citizens because it implies dividing the world into believers and non-believers, the sacred and the profane, religious and secular. Such a division makes religious reasons objectionably partial in grounding terms of justice.[53]

Critics could mention implicit theocracy and problems in maintaining the duty of civility as cases against employing religious reasons as admissible in public reason. Waldron explains that for some, religious arguments cannot be understood apart from the logic of religious authority and this implies, implicitly, a preparedness of imposing to some degree one's doctrine on others (Waldron 2012, p. 849). Consider the statements *we are commanded by our Lord Jesus Christ*, *bound by moral obligation to seek religious truth*, or *obey the moral demands of our faith in accordance with the Scriptures* as examples of faith premises which underpin the advocacy of some religious citizens for a change of laws or particular state policies (Waldron 2012, p. 849). In addition, one might insist that it is inappropriate for believers to rely on faith premises in grounding political arguments, because most non-adherent citizens would not find them sensible. Rawls explains that the ideal of citizenship imposes a duty which

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[53] Paul Gifford calls attention to the case of Evangelical revival (a Christian denomination) in the US and how it has evolved into a political concern. It has cultivated a political reach based on its fundamentalist doctrine in particular the mobilisation of its popular televangelists. Gifford notes that this movement created and popularised a notion of 'religious right' which is invoked in contentious legal issues such as abortion or same-sex unions. He argues that a substantive view of religion would help address whether we are dealing with something religious or political (Gifford 2020, p. 72).

includes the ability to explain to one another how the principles and policies they advocate are supported by the political values of public reason (Rawls 1999, p. 217). A political liberal like Quong interprets this as relying on political values and arguments alone. Non-political reasons like religious commitment should be kept outside the realm of public reason because of their sectarian character.

But a different take on Rawls is that, for him, the demands of justification of principles of justice need not be limited to forms of political reasoning and arguments alone. By justifiable, a Rawlsian means that the reason is *intelligible* – it can be understood by those who are not engaged with a particular tradition. For example, non-religious citizens have a basic concept of the goodness of allowing a person to follow her own conscience, the badness of torture as a case of mistreatment and affront to human lives, and the dangerous implications of employing state power to coerce others to follow a certain belief. These ideas are intelligible. They can form part of arguments in public reason which highlight important practical considerations in justice claims.[54]

Furthermore, religious arguments need not be purchased wholesale by non-adherent citizens. There are parts in a religious argument which support political values. For example, the public wearing of religious

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[54] My conception of *intelligibility* aligns with Laborde's category of accessible reasons. A reason is *accessible* if 'it can be understood and assessed, but need not be endorsed according to common standards' (Laborde 2017, p. 120). For Laborde, 'accessibility articulates what citizens need to share, in particular societies, in order for public deliberation to be possible at all, while remaining indeterminate about the substantive content and outcome of public reasoning' (2017, p. 121). I endorse a simple account of public justification similar to Laborde's and which is line with Rawls's wide view of public reason. My account is different from others like Quong and Estlund whose theories prescribe substantive forms and norms of political justification which limit the kind of content and aim at some determined outcome (e.g. reasonable agreement) in public reason. In their models, believers are asked to abandon religious reasons. They should rely on secular equivalents in order to be counted as reasonable or full participants in public reason.

dresses as part of religious liberty can be grounded by a combination of religious (e.g. religious norm, religious value) and non-sectarian reasons (e.g. personal identity, internal goods). By combining political and non-political reasons, believers can express their views in public reason and engage with non-adherent citizens. It also exposes them to a level of transparency where others can scrutinize their views. In this way, public deliberation can stimulate changes in religion. Waldron similarly argues that church people should not refrain from drawing on their values in public justification so long as there is, on their part, the willingness to give due recognition of other citizens' moral and ethical worldviews in public life (Waldron 2012, p. 849).

In addition, one could follow Waldron in distinguishing the two kinds of authority involved in the charge of implicit theocracy: *theoretical* and *practical* authority. The grounding of arguments based on faith involves theoretical authority. This is the authority of the church as an expert in interpreting religious truths and from it, drawing moral and ethical responses to issues of justice. Waldron shows that the use of scriptures and religious imagery of the evangelicals are instances of theoretical expertise and that they do not impose any duty on others (Waldron 2012, p. 852). This is not uncommon because experts on law and ethics offer normative interpretations over practical matters as ready advice and they do not necessarily replace state authority (Waldron 2012, p. 852). Similarly, religious authorities are experts who guide their believers in making sense of justice claims from their worldview. This does not in and by itself entail imposing their sets of beliefs and doctrines on others through state action (which is under the domain of practical authority). For non-adherent citizens, they can consider religious reasons as part of useful information in understanding why religious citizens take a particular stance on a

political issue and why some disagreements involving liberties are more important to them than others.[55]

To address the worry of violations of duties of civility, citizens could focus on ideas which are intelligible and indicate which of them can help the debate move forward. These ideas guide citizens in finding common ground in public deliberation. In the case of torture, religiously inspired arguments call attention to the wrongness of torture, a concept which non-adherent citizens find intelligible and can embrace. Another example is liberty of conscience. Religious arguments ground the goodness and the importance of preserving liberty of conscience on the dignity of human beings as the *image of God*. This highlights the importance and in some cases, the priority of liberty of conscience in contested justice claims. Although some non-adherent citizens could challenge the religious notion of human beings as images of God, they understand and can share the idea that the liberty of conscience protects a fundamental aspect of human dignity. This partly explains Waldron's claim that religious propositions sustain liberal principles *qua* foundational and not *qua* religious (Waldron 2021, p. 102). In other words, religions have conceptions of political values such as toleration, freedom, and equality which overlap with

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[55] For example, Martin Luther King invokes religious imagery in his fight for anti-racism and social equality for African Americans: '"I still have a dream," his voice rose, "that one day all of God's children will have food and clothing and material well-being for their bodies, culture and education for their minds, and freedom for their spirits." His dream was shaped by multiracialism and a commitment to class equality as strong as his antiracism' (Jackson 2007, p. 246).

Another example is the Quakers and their conscientious objection to war that led to the pacifism movement: 'Pacifism in Britain could be traced back in an unbroken line to the proclamation by the Quakers of their peace testimony in 1661; and pacifism grew out of the rational Christianity and political radicalism that became significant influences in the late eighteenth century … British Protestantism, as shaped in particular by the dissenting denominations and summed up neatly in the phrase "nonconformist conscience", has combined harmoniously with secular reformism to produce a moralistic but moderate progressivism not found in Roman Catholic, Lutheran, or Calvinist countries' (Ceadel 1999, pp. 135, 145).

non-adherent citizens through ideas of the good. In the case of liberty of conscience, it is the goodness of preserving the conditions of fairness which enables people to follow their own paths to the truth and form meaningful convictions. There are, therefore, a range of ideas of the good that provide common ground for citizens, believers and non-believers alike.

Moreover, an interpretation of the duty of civility highlights its close link with the political conception of a person as free and equal. In other words, when citizens keep to their duty of civility, they treat others with equal regard and consideration for their liberties. Part of this is expressed in norms and forms of arguments in public reason. It is also a moral norm found in most religions. Take for example, Catholic social teaching. Its principles of justice are framed by a religious ideal which includes all citizens. Citizens are viewed as free and equal – in human dignity and possession of inalienable rights – regardless of their religious affiliation. Whenever reasonable believers refer to religion to ground in part their arguments in finding reasonable terms of justice, they do not necessarily violate the duty of civility. What is important is that they display an attitude and message which indicate to others that they are willing to work out reasonable agreements on issues of justice. As seen in the cases of civil rights movements in the US (e.g. Martin Luther King, Jr.), by expressing their arguments in combination with religious reasons, believers could show how their religious views affirm political values (Nussbaum 2011a, p. 14). This aligns with Cheshire Calhoun's conception of the duty of civility. Her conception includes 'giving concrete signals to others that we are willing to be co-participants in political dialogues' (Calhoun 2000, p. 266), and in doing so 'the discussion of controversial subjects among those who disagree will continue, instead of break down' (Calhoun 2000, p. 269).

Some may be unconvinced by this conception of the duty of civility. A critic might offer a stronger version of the problem of religion with the duty of civility. She would cite cases in which within a religion there are some uncompromising interpretations which are incompatible with political values. For example, there are conservative

Catholics who are inclined to support only rigid conceptions of freedom of conscience or equality. Within Islam, there are religious authorities who favour some interpretations of doctrines and practices which reject liberal views of individual freedom and equality. There are also Zionists who advocate for a creation of a 'Jewish State' to the detriment of non-Jewish citizens. Arguments from a religious standpoint do not guarantee a strong wave of support for and a robust grounding of political values and even liberal principles. This is largely due to the wide variance of interpretations and epistemological conflicts within religion. Those believers who meet the standards of reasonableness might turn out to be a very small crowd.

I acknowledge that there are different levels and kinds of interpretations of religious doctrine. Within religions, there is a wide variety of groups whose interpretation of doctrine and beliefs compete with each other and they give shape to some conflicting conceptions of freedom and equality. A few of them take intransigent positions. However, this does not discount the capacity of religion to evolve and change. It could adapt to be reasonable so long as religion is part of public reason and that believers treat non-adherent citizens as persons who are free and equal, for example. In addition, reasonable believers could show a willingness to cooperate with others despite disagreements and conflicting conceptions of the good. This attitude of civility following Calhoun's arguments helps believers to be open in finding common ground with others.

To illustrate, Shafinah Begum Abdul Rahim surveys several distributive justice models grounded on *zakat*, an ethical principle which is part of Islam's five pillars of faith (Rahim 2015, p. 25). She

argues that behind the several models of distribution[56] is a strong Islamic tenet to provide for the least advantaged in society, part of which implicates state responsibility (Rahim 2015, p. 25). This overlaps with the second principle in Rawls's theory of justice.[57] Rahim's examination of Islamic distributive justice models shows that the principle to attend to the interests of the least advantaged is widely shared by reasonable citizens. In a similar vein, Fiamma Nirenstein explains that part of Jewish spiritual worldview is *tikkun olam*—working for 'the improvement and mending of the world' (2020, p. 267). This includes, Nirenstein argues, for Jews to stand with the poor, homeless, oppressed which may include their 'enemies' like Palestinians (2020, p. 268). Some implications of this, Nirenstein claims, involve criticising Netanyahu's policies which marginalise Muslims, homosexuals, and other ethnic identities (2020, p. 269).

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[56] For example: 'Zubair Hassan (1988) stands firm on the idea that distributive justice from an Islamic perspective is a matter of integrated implementation of the interrelated mechanisms available in the system. He claims that one of the reason for the world to be torn between different economic systems is because of the problem of having to decide whether economic freedom or distributional equity should be given the highest priority in the social schemes of things … From an economic stance, it refers to the "appropriate" dispense of productive resources such as opportunities (entry and other technical support) based on the needs of the recipient. In contrast, the *Islamic Distributive Justice: A Concise Statement* by Islahi (1992) was an attempt to provide a comprehensive list of provisions in regard to institutional arrangement of Islam for distributive justice. Lastly, Heidari (2007) summarizes the main schemes of distributive justice in Islam to include an institutional approach, multiplicity and decentralized structure of redistributive measures, and hierarchy to lend flexibility to the system. Given the divine nature of the framework, the task of Islamic scholars and scientists is to discover the pure rules of justice from Quran and Sunnah and to adjust them to the prevailing circumstances of the modern era.' See Rahim 2015, p. 25.

[57] The second principle states that 'social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage and (b) attached to positions and offices open to all.' Rawls qualifies that 'while distribution of income and wealth need not be equal, it must be to everyone's advantage.' Cf. TJ §11.

However, I admit that some believers can be inflexible and uncompromising of their positions on liberty and equality in some cases of justice. For example, Khaled Abou El Fadl cites a Saudi *fatwa* which states that any Muslim who 'demonstrate against the holders of power or who join any purported revolution' are 'buying a permanent place in hellfire.'[58] Moreover, some interpretations take time to evolve and change to accommodate political values in ways that many non-adherents could accept. For instance, Nirenstein argues that many Jews have not considered interpretations of *tikkun olam* which challenge them to reject right-wing views and take the 'ideological leap' to stand with the oppressed Palestinians (2020, p. 268). Such a segment of believers has to cope with stronger tensions with those of a liberal outlook.

In sum, arguing from a religious standpoint does not necessarily mean the believer's incapacity to engage with non-adherent citizens' reasons. Religious arguments are not entirely unintelligible. They call attention to the moral character of liberal values like toleration, liberty of conscience, and religious freedom even if non-adherent citizens do not accept the premises of faith. Permissible arguments in public reason should not be limited to those that are grounded exclusively on political reasons and framed by political norms.

In the next section, I shall argue that an appeal to ideas of the good allows believers to draw from the normative sources of religion to ground arguments in public reason.

5.1.3 Ideas of the good

An appeal to a range of ideas of the good helps the state to accommodate believers' claims without resorting to controversial metaphysical doctrines. These are non-political ideas which citizens can employ in their justification and deliberation of the principles of

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[58] *Fatwa* is a moral prescription issued by a religious authority. Khaled El Fadl argues that some religious authorities who want to promote Islam as a civil religion use *fatwas* to suppress freedom of expression and political demonstrations against some acts of the state (El Fadl 2023, p. 617).

justice. I have cited as examples the badness of torture, the goodness of following one's conscience, and the wrongness of using state apparatus to coerce people to accept a certain doctrine. A set of ideas of the good can combine with political arguments. An upshot of this is that it offers a wider space for religion to play a normative role in public reason. In the version of political liberalism I suggest, an appeal to a range of ideas of the good permits citizens to rely partly on their religion to supply permissible arguments in public reason.

Some of the presuppositions about religious reasons are that they are entirely otherworldly, totally framed by Bible passages or unchanging doctrines, too self-referential that they only purport to advance religious conversion, or even anti-secular. For instance, Crane identifies new atheists as part of those who relegate religious beliefs either as archaic cosmology, a collection of moral precepts, or a combination of both (Crane 2017, p. 3). I agree with Crane and consider that this would constitute a problematically narrow reading of religious reasons. Along the same lines, Rosa Antognazza explains that part of what makes religious beliefs credible is the fact that they can be communicated to others through sets of reasons (2013, p. 722). Even if some of these reasons do not meet the standards of strict formal arguments, they help make religion non-arbitrary and public—which means faith could be examined by people in some form (Antognazza 2013, p. 722). If applied in the political domain, there are concepts and ideas in religion that appeal to non-adherent citizens because these ideas support a set of political values. Take for example, the Catholic understanding of the principle of common good. Part of its conception teaches that God is the ultimate end of humankind. The Catholic church also recognizes that in political life people have different and, sometimes, conflicting views about ultimate ends. Hence, part of its understanding of the principle of the common good refers to 'the set of means and conditions that enable persons and communities to achieve their ultimate fulfilment or good'.[59]

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[59] See *Gaudium et Spes* (1965) and Catholic Social Teaching (www.vatican.va).

The Catholic understanding of the principle of the common good is both religious and reasonable. It is religious because it posits God or the divine as the ideal of what is best for human life. It also employs Catholic doctrine and scriptures as part of its premises. Despite the particularity of the view, it meets standards of reasonableness because part of its argument advances the position that conditions of justice must be established and maintained by political authorities in order for citizens to pursue the good whatever that turns out to be. This involves liberties and equal access to goods. Such a view can be accepted by non-adherent citizens. This form of argument is a combination of reasons from religion and ideas of the good.

In sum, believers can argue partly from religion in support of terms of justice and political values. Arguing from a religious standpoint is reasonable so long as its beliefs and doctrines are not imposed on others and that they are open to critique in public reason. Religious authority need not replace the state's practical authority over matters of justice. However, it is important that religion plays its normative role in supplying reasons for believers in constructing political arguments and views of justice. Lastly, political liberals need not fear the permissibility of religious viewpoints in public reason because the state's exercise of practical authority is grounded on a range of ideas which non-adherents could understand and might even accept.

5.2 Religion and justice

In this section, I advance the claim that reasonable conceptions of justice can be partly grounded on reasons drawn from the normative sources of religion. This is not a straightforward case. Some religions have different notions of justice and ranking of values and liberties. Others do not have a complete conception of justice following political liberalism. It might be useful at this point to return to Quong's own view of the demands of political liberalism. He is sceptical regarding the possibility of relaxing some of the requirements of political liberalism. I shall propose a different and thinner account of political liberalism as an alternative approach. This alternative account is a

result of my reading of political liberalism which I have discussed in the last chapter.

5.2.1 Reasonable conceptions of justice

In a political conception of justice, social institutions are organised to guarantee a set of liberties and fair access to all-purpose means (e.g. liberties and goods) for all citizens. This is consistent with one of the core tenets of political liberalism: the recognition of the separateness of persons. For Rawls, an acceptable view of justice should (1) ensure that each citizen has access to a set of basic rights, (2) place priority on those rights, and (3) propose a fair scheme of the distribution of goods (Quong 2012, p. 177). Call this the *basic requirement model* (hereafter, BRM).

Some theorists assert that a conception of justice that meets the BRM alone is insufficient to be part of political liberalism. For instance, Quong agrees that there can be an overlapping consensus on the basic set of liberal principles (Quong 2012, p. 178). He disagrees, however, with the sufficiency of the BRM to secure the conditions of overlapping consensus. He insists that in order to qualify as part of a family of reasonable conceptions of justice, the political conception (1) must also be applicable to institutional arrangements, (2) can be presented independently of comprehensive doctrines, and (3) can be worked out from ideas drawn from public-political culture (Billingham 2017b, p. 405). The second requirement is key. For example, if Catholic citizens offer a principle of the common good as part of the terms of justice, then it should be free-standing and applicable to the political domain. It ought to contain political values which are distinct from non-political ones. In addition, it should meet the standards set by public reason. To put it briefly, the concern is that these other normative features make it unclear whether believers can ever meet the standards of reasonableness in political liberalism. Call this the *demandingness objection to the requirements of completeness*.

What would be some areas of concern? First, most religions have their own ranking of values based on their system of beliefs and practices. Rawls is aware of this as part of his construal of a

comprehensive doctrine.[60] This is part of the reason why he offers a political conception which is limited in scope so that comprehensive doctrines can adopt it as their political module. He hopes that his proposal will result in fewer conflicts between terms of justice and religion. However, and as I have pointed out in the previous chapter, a closer inspection of political liberalism shows that its requirements are substantive. Part of these includes an adherence to a particular ordering and priority of principles. For instance, there might be an overlapping consensus on the equal liberty principle, but disagreement on the ranking and priority of some liberties. For example, some Catholics support views of justice that protect the liberty of conscience, but they are unsure about its ranking and priority. Certain justice claims like abortion rights might be seen as challenging the ranking and priority of principles. Or some Evangelicals support a political conception of justice that condemns human torture, but their moral prescriptions do not support the right of homosexuals to civil union. Within religion, there are religious authorities and sects who advocate conservative positions in interpreting individual rights involved in justice claims.

Second, Quong insists that reasonable comprehensive doctrines should ground a conception of justice that could provide enough details and reasonable answers to most of our political problems (Quong 2012, p. 173). He suggests a restrictive model in which citizens only consider reasons arising from a set of criteria and values that are entirely political (Billingham 2017b, p. 407). In this approach, a citizen is prohibited from appealing to her religion in deciding which political conception would be most reasonable. Part of Quong's worries is that citizens would not come into a likely agreement because of the inclusion of too many conceptions of justice, some of

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[60] Religions could fall under what Rawls calls comprehensive or partial doctrine. Comprehensive doctrines have a coherent view of what is best for human life and are applicable to all forms of human conduct. In addition, they have their own sets of values, methods of ranking those values and which of them gains priority based on their normative system of beliefs. Partial doctrines are limited in scope and have a loose conception of life but they can evolve into comprehensive doctrines. Cf. PL II, §3.

which are not political enough or do not provide satisfactory answers to political questions. For example, the BRM admits conceptions of justice which lack answers to the questions about which liberties are relevant, how much priority and weight should be accorded to them, and what principle (e.g. sufficientarian, prioritarian, or Rawlsian) should govern the distribution of resources (Quong 2012, p. 178).

In addition, recall that Quong offers a surprising understanding of the overlapping consensus. For him, the overlapping consensus is achieved when citizens agree on a set of political values aside from the rules and norms of public reason which would evaluate different conceptions of justice (Quong 2012, p. 184). This secures the likelihood of reasonable agreement because partly, it rules out any appeal to ideas of the good which is a source of foundational disagreements among reasonable comprehensive doctrines. It is a conception of the overlapping consensus which offers an ideal of reasonableness.

As can be seen from this brief summary, Quong's view can be too demanding for reasonable believers. Some religions can support a principle of just distribution in which each citizen has access to all-purpose means but they could disagree about the particular distributive approach. Other religions do not have enough experts to guide believers in their discernment of the compatibility of a distributive principle with their religion. Religious authorities could supply believers with reasons to support a political conception that, for example, does not neglect the least advantaged (e.g. the Catholic's preferential option for the poor, Islam's *zakat*) without offering a detailed distributive view in all points identical to that of Rawlsians. Most religions can provide foundational support for some political values and distributive principles but not to the level of detail that Quong demands. Quong's strict requirements limit the kind of believers who can contribute to public reason and public deliberation: only those who can be political liberals are allowed. Surely liberals (political or otherwise) can participate in public reason and public deliberation without a conversion to political liberalism's tenets.

I propose a modified account of political liberalism as an alternative approach which I discuss in the next section.

5.2.2 A thin account of political liberalism

I offer a version of political liberalism which subscribes to minimal requirements. Call this the *thin* account. In this version, conceptions of justice partly framed by religious reasons should align with some of the basic elements of political liberalism: (1) no co-opting of state power to further a religious agenda, (2) fair distribution of goods and access to liberties, and (3) a conception of a citizen as a person who (a) pursues a conception of the good and (b) is free and equal. The Catholic conception of the common good, the Islamic distributive justice models, the Jewish principle of *tikkun olam*, and the Evangelical declarations are some examples I have cited which align with these elements. These religious views of justice are addressed to all peoples. They recognize others as human beings who should have access to liberties and basic social resources.

As views of justice, they implicate state responsibility and evaluation of social institutions. Consider again the Catholic conception of the common good and the Evangelical declaration against human torture. In the Catholic principle of the common good, the state is strongly encouraged to maintain conditions which enable its citizens to pursue the good. The evangelical declaration calls attention to the wrongness of exercising state power in forms of human torture. Although the grounding of the arguments includes faith premises, their main concern is to correct conditions which have perpetuated unfair and inhumane social policies.

My proposal aligns with the main elements of Rawls's conception of public reason. In this model, citizens could appeal to their reasonable doctrines in public reason. I have taken this view to mean that there is no artificial line which divides political and non-political reasons, so long as the views of justice and the arguments of reasonable believers are those which non-adherent citizens could understand and might support. In a thin account, citizens could form common ground for finding principles of justice and enjoy a wider space for relevant

practical considerations in a justice claim. This largely responds to the question of living well together despite citizens' varying reasonable comprehensive doctrines.

To address the demandingness objection, I suggest two conceptions of completeness: *internal* and *political* completeness. Internal completeness refers to the coherence of a religious worldview as applied in public reason. In other words, it is the consistency in which the religious ideal is expressed through a conception of justice, rights, and fair distribution of goods. On the other hand, political completeness implies that citizens meet an ideal of reasonableness following the requirements of political liberalism. Given these two conceptions of completeness, there is tension between them. For example, some religious experts are only concerned about maintaining internal coherence. They interpret their moral code and beliefs in such a way that it is indifferent or sometimes opposed to the requirements of being reasonable. Fundamentalist interpretations of Islam and Catholicism are some examples of this. On the other hand, there are political liberals like Quong who propose strict requirements of political completeness without considering the implications to the coherence of a believer's worldview. This restricts the possible views of justice, rights, and distribution that can be admitted in public reason.

The requirements of reasonableness are less substantive in my account than what Quong suggests. They are limited to the elements I have mentioned. A critic might consider this too 'thin' an alignment and therefore insufficient to hold the compatibility between religion and reasonableness following political liberalism. In reply, my suggestion remains sufficient so long as believers can communicate their views of justice intelligibly to non-adherent citizens and that they are willing to cooperate with those who hold opposing views. This allows for wider religious views of justice in public reason. For example, a Catholic or a Jew could support a prioritarian view of distribution in which the interests of the least advantaged are given more weight. Or a Muslim can offer different economic approaches grounded on *zakat* following Rahim's distributive models. There are some religious views like the Catholic conception of common good

which is internally and politically complete. However, there are views of justice like the Islamic distributive justice theories that are internally complete but insufficient in terms of political completeness judging from Quong's requirements.

Moreover, in a thin account of political liberalism, believers could offer terms of justice using a combination of religious reasons and political arguments. Believers can draw out conceptions of justice from religion and highlight a set of reasons which are useful in establishing common ground with non-adherent citizens. Reasonable believers could also employ the requirements of BRM to evaluate their own conceptions of justice and identify those that are compatible with political liberalism. These views of justice can be endorsed with reference to religious scriptures or faith premises in combination with political values (e.g. tolerance, liberty, equality). What my proposal excludes are religions that do not meet the BRM and those who resort to co-opting state power in an authoritarian and intolerant manner to further their agenda.

Quong might be worried that my recommendation admits conceptions of justice that import perfectionist ideas. This would be inconsistent with political liberalism. For him, some BRMs fail to be reasonable because they are grounded on sectarian beliefs and values (Quong 2012, p. 175). For example, religious courts can be allowed to operate if my account of political liberalism is accepted. Take the case of the *Shari'a* courts which implement a Muslim code of conduct that have legal implications for non-Muslims. Its conception of marriage is largely shaped by its moral precepts. Quong could argue that state recognition of the legitimacy of *Shari'a* courts violates the demands of reasonableness even if it is only applied to Muslims. There

is warranted fear that vulnerable groups (e.g. women, children, and people who are gender-diverse) would be denied their rights-claims.[61]

In my approach, citizens can appeal to a wide range of reasons in discussing the permissibility of a religious court. Relevant practical considerations include references to the nature and scope of the powers of a religious court and its implications for a person's liberty and fair access to goods. Non-adherent citizens could understand the need for a religious court to resolve marriage cases because these are performed under religious rituals (a Catholic annulment court is a paradigmatic case of this). In this case, the permissibility of *Shari'a* courts could be grounded on reasons which support state scrutiny to ensure fair division of property and the protection of women. These are among the practical considerations which citizens can consider in justifying the permissibility of religious courts. As an example, Faisal Kutty cites Tariq Ramadan's model where the permissibility of *Shari'a* courts includes a collaboration between Islamic legal scholars, Canadian legal scholars, and other experts to develop a Canadian Islamic jurisprudence which would review decisions made in cases of faith-based arbitration (2012, p. 137). This proposed collaboration, Kutty notes, has gained the support of the Islamic Councils of Imams Canada (2012, p. 137). In Quong's restrictive regime, *Shari'a* courts are already excluded.

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[61] Jocelyne Cesari explains that in most contemporary Muslim states, the *Shari'a* law is not codified but rather a body of positive law which is a result of 'a process involving knowledge, judgment, techniques of interpretation, and the study of legal doctrines and principles' that depend in part on Islamic scholars and controlled by *imams* (religious authority). The main content of *Shari'a* law is family laws (e.g. marriage, inheritance, child custody, etc.). Cesari argues that the expansion of *Shari'a* to constitutional and criminal law is a recent development and when discussed alongside human rights, most scholars assert that *Shari'a* and human rights are deemed incompatible. For instance, there are moral prescriptions on the amount of time that should elapse before one is allowed to remarry and inheritance laws which require that 'for every part given to a daughter, two parts must be given to a son'. In other words, the taking into account of Islam family laws in civil law means meeting certain requirements of human rights and liberties (Cesari 2012, p. 6, 9).

The main problem with Quong's position is that it limits the range of conceptions of justice available in public reason. This puts reasonable believers in a very difficult position if they wish to support a political conception that does not take them away from religion. In contrast, a thin account of political liberalism admits a wider range of conceptions of justice and ideas of the good when necessary. It provides citizens with common ground in selecting principles of justice and a framework to approach a range of political disagreements (e.g. ranking, priority). If applied in the case of *Shari'a* courts, it is not immediately clear that religious courts are outright incompatible with standards of reasonableness. Some Islamic views of justice include a principle of equal access to liberties. Part of this permits state scrutiny of *Shari'a* courts which ensures that a person is not placed in a disadvantageous position in her claim of resources following a divorce case. In other words, a conception of *Shari'a* courts with limited state scrutiny meets the requirements of reasonableness. It protects a citizen's access to a set of rights and grants the state some role in adjudicating cases of redress and appeals.

In Rawls's view of public reason, particularly in its revised form, religious views are included as part of public deliberation.[62] The main advantage of Rawls's revised view of public reason is that it offers ample room for practical considerations, some of which involve religion and its goods. An implication of this is that the state can have good reasons to protect, for example, goods related to religion for the sake of its citizens who are engaged with it as part of their options for a meaningful life. This opens the possibility for religion to be accommodated as a unified good.

In sum, I have argued that citizens can offer religious conceptions of justice following the requirements of a simple account of political liberalism. This includes views of justice which meet the BRM. In the

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[62] Rawls permits the use of religious reasons in public deliberation as long as and in due course, state action would be justified by reasons arising from political values. See Rawls 1997, pp. 765–807.

next section, I shall explain why a unified view of religion is important for determining reasonable conceptions of justice.

5.2.3 A coherent view of religion

Quong is hardly the only available interpretation of political liberalism. As an alternative to Quong's approach, Billingham proposes a permissive model. In his theory, citizens are to draw from their comprehensive doctrines a set of reasons to evaluate the competing interpretations of principles of justice including their priority and ranking (Billingham 2017b, p. 407). If principles from a citizen's religion (R_1) are incompatible with a conception of justice (C_1), then she can reject it in favour of C_2 or a conception of justice that best matches her comprehensive doctrine (Billingham 2017b, p. 407). For example, if C_2 ranks freedom of association higher and this would support laws to permit male-only priesthoods, then Betty, a Catholic, who believes in male-only priesthoods, would endorse C_2 (Billingham 2017b, p. 409). She could combine religious reasons with those related to freedom of association as part of her argument for choosing C_2. C_2 is a complete political conception. This means that it is free-standing, it endorses a set of rights with certain priority and ordering, it can be applied to institutions, and it only considers reasons arising from a set of political values. In Billingham's model, believers should first work out a complete political conception using both political and non-political reasons (Billingham 2017b, p. 413).

I share Billingham's aim of providing a normative role for religion to play in deliberating terms of justice. In his model, citizens could draw reasons from religion in arguing for the priority or ranking of some liberties for example (Billingham 2017b, p. 407). An upshot of this is that conceptions of justice (C_1, C_2, C_3) are also evaluated based on their compatibility with religion. Thus, the most reasonable conception of justice is also one which does not depart far from a person's comprehensive doctrine. Another theoretical advantage of Billingham's permissive model is that it admits a wider range of conceptions of justice to be considered than Quong's restrictive model.

However, in Billingham's model, non-political reasons play a limited normative role in deciding which political conception to choose (Billingham 2017b, p. 413). It is unclear whether he endorses Quong's requirement that a framework of justice should provide sufficient answers to most political questions. One also needs to clarify what Billingham's suggestion of working out a political conception using both political and non-political reasons entails. It might be the case that the menu of conceptions of justice has already been worked out, independent of religion. He gives this impression when he states that citizens should not move directly from their comprehensive doctrines to apply them in particular laws and policies and the arrangement of social institutions (Billingham 2017b, p. 413).

Billingham's model also lacks reference to a unified view of religion. Religion determines significantly the degree of reasonableness of a believer citizen. By contrast, Crane's notion of a religious ideal helps us understand what this partly means. The religious ideal expresses a normative order which tells us how things ought to be in relation to the transcendent or God's will (Crane 2017, p. 35). This normative order includes an ideal of a political society. This perspective has several implications.

First, religious views of justice are an application of the religious ideal to the political domain – they express how things ought to be in a just society from a believer's point of view. Thus, *contra* Billingham, Betty does not need to disaggregate principles from her religion and match them with a candidate's conception of justice. In other words, Betty does not simply match R_1 to C_1 or R_1 to a set of political conceptions $\{C_1, C_2, C_3\}$, because R_1 is not a loose collection of unrelated principles. It is a conception of justice framed by a religious ideal. As an alternative, Betty can offer her religious view of justice. She can highlight political values which non-adherent citizens could understand and might accept.

Second, I have suggested less substantive requirements of what is reasonable to help reasonable believers in examining their own views of justice. For example, some evangelicals have to rely on scriptural

references to express their view of justice. This reliance on scriptures which is combined with political values generates conceptions of justice that meet the BRM. Moreover, the ranking and weight of liberties and the variety of distribution schemes may be too complex for some religious authorities to examine, in order to guide their believers. In addition, some religions do not have enough conceptual resources for believers to work out a complete political conception following Rawls's requirements. Against Billingham's strategy, my approach acknowledges the political incompleteness of the views of justice of some religions.

Third, Rawls believes that religion can adapt to be reasonable. He explains that major religions have an active and stable tradition. *Active* partially refers to the capacity of religion to evolve and in doing so, support political values through its engagement in public reason. This should not be construed as the capacity to *liberalise* because that is an instance of imposing liberal interpretations on religious views. What is important is for believers to offer arguments partly based on religion in public reason and that they are willing to cooperate with non-adherent citizens to live well together. Some Catholics can be political liberals, some are. Others have a Marxist view of distributive justice. The plurality of views of justice in public reason should not be limited to and in favour of the liberal tradition. The norms and rules of Rawls's public reason are procedurally 'neutral' in order to allow as many reasonable conceptions of justice as there are. Only then would citizens see the flexibility of religion to adapt and include in its worldview other distributive principles and political values which could be acceptable to many reasonable citizens. Believers need not disaggregate their moral code and system of beliefs in order to offer permissible arguments in public reason.

In sum, a unified view of religion need not be threatening to non-adherent citizens. It is important that believers offer terms of justice which are partly framed by religious reasons in order for the religious ideal to be expressed and scrutinised in public reason. Furthermore, the requirements of what is reasonable should not privilege narrowly secular liberal interpretations. Religious views of justice could align

with elements of political liberalism. In a thin account of political liberalism, believers can offer intelligible and reasonable views of justice.

5.3 Why a thin account of political liberalism

In this section, I sharpen my proposal by responding to some challenges and objections. First, my proposed strategy employs a type of public justification which avoids drawing an artificial line between political and non-political reasons. Nor does it limit citizens to appeal exclusively to neutral reasons. This aligns with a view of public reason that is found in political liberalism. Second, some religious advocates might be suspicious about the employment of ideas of the good. They could argue that ideas of the good can be a pretext for supporting models of justification that require believers to find secular equivalents for their arguments in public reason. I shall argue that this is not the case in my approach. Third, my account aligns with a wide interpretation of the original position. In my framework of public justification, parties in the original position focus on the relevant pragmatic considerations and they can negotiate what is reasonable and unreasonable in justice claims. This includes reference to religion when necessary. I shall discuss each in turn.

5.3.1 A view of public reason

A successful overlapping consensus on a reasonable conception of justice requires that (1) its standards are reasonably accepted by citizens to evaluate the arrangement of social institutions, and (2) permissible arguments are those that conform to the requirements of public justification (Weithman 2016 p. 54–55). Billingham calls this the *reasonable acceptability principle* (hereafter, RAP) (Billingham 2020, p.1). There are different theories of public reason depending on the specificity of RAP requirements (ibid.). My proposal involves minimal RAP requirements. It suggests a theory of public reason which is more inclusive of religious views of justice. Against this, a critic would be uncomfortable about the use of the ideas of the good because the overriding reasons are not entirely political reasons but a combination of political reasons and ideas of the good. This

compromises the internal consistency of a political conception of justice.

In the approach I endorse, believers should offer concepts and ideas which non-adherent citizens can understand and might accept in grounding their justice claim. Some ideas of the good (e.g. practices, internal goods) help religious citizens express the implications of state policies or distributive approaches in their practice of religion. In the case of the public ban on the wearing of the *hijab*, Islam experts can provide input about the meaning and value of religious dress which differentiates it from non-religious head dress. This is important because the public wearing of religious dress is not simply a matter of individual choice. Nor is it exclusively determined by contribution to personal well-being or identity. The wearing of religious dress binds the individual believer to her community. It also possesses a status (i.e. it belongs to sacred things) which determines the way it should be treated. For example, some forms of religious dress are worn for sacred worship and could not be treated like fashion dresses.

In a thin account of political liberalism, citizens begin by discussing relevant pragmatic concerns. In the case of the public ban of wearing the *hijab*, considerations include the implications of such a policy to the need of Muslim women. The need for wearing religious dress publicly is not limited to the values of personal choice, individual integrity, or women's equality. It also includes reference to the meaning and value of this practice to the Muslim community. This helps determine the substantial burden on religious freedom which the state needs to balance with other interests like the non-discrimination of women. Social policies are then justified by a range of reasons including religious ones so long as they are intelligible. In the case of a state policy of the prohibition of wearing religious dress in public, believers can negotiate what is reasonable and unreasonable.

Unlike Quong's model, my proposal does not intend to argue entirely against perfectionism. Reasonable disagreements are the results of accepting Rawls's idea of reasonable pluralism. The reliance on ideas of the good is a strategy which might help those who rely heavily on

religious reasons to propose norms following RAP requirements. To accomplish this, I only recommend a less substantive RAP. My theory of public reason still retains reasonableness as the correct standard following Rawls's wide view of public reason. An upshot of my proposal is that it provides a clear answer to the rationale question of RAP from the viewpoint of a believer.[63] My RAP requirements permit reasonable believers to make explicit the set of political values and practical considerations salient in a justice claim as shown in the case of the wearing of the *hijab*. It could also achieve reasonable overlapping consensus on some principles. Take the position of Khaled Abou El Fadl who argues that some principles like people having inalienable rights, the right to elect and hold government accountable, and the role of the state to represent people's will could be supported by Islam (2023, p. 626). These principles are not exclusively Western or liberal. They can be a focus of an overlapping consensus without asking believers to leave religious reasons aside. In addition, I have identified and explained how the Catholic conception of common good, the evangelicals' declaration against torture, and Islamic distributive justice models are some of the paradigmatic cases.

5.3.2 Not a secular model of public justification

Some may worry that the employment of general ideas of the good seems to fall under the strategy of using secular analogues to accommodate religious reasons. The main weakness of this strategy from the point of view of some defenders of religion is that religious reasons could be substituted with secular equivalents. In other words, believers are better advised to employ secular equivalents in order

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[63] Billingham and Taylor explain that part of the problem most political liberals make in the debates about public reason views is the insufficient attention they give to the rationale question of public reason. The rationale question enquires '*Why should reasonable citizens endorse this version of the RAP?* Billingham and Taylor maintain that political liberals like Quong either avoid or provide question-begging answers to the rationale question because this would require them to appeal to disputed philosophical theories to ground their own RAP requirements and in relation, their public reason theories (Billingham and Taylor 2020, p. 6).

for their political arguments to be more intelligible and acceptable to non-adherent citizens. Religion is interpreted derivatively through the elements of secular concepts. Thus, believers could dispense with a religious standpoint. They could rely on secular justifications entirely in public reason.

As a reply, the ideas of the good (e.g. badness of torture, goodness of liberty of conscience and its limitation, and badness of using state power to coerce) help religious citizens to be reasonable without departing far from the normative sources of religion. Some ideas of the good do not work exclusively as 'secular' analogues. They are complementary reasons in understanding contested values in justice claims. For example, Islamic experts could dispense advice about the value of *Shari'a* courts and their exclusive application to their faith community by appeal to internal goods of religion. They can supplement that by appealing to some elements of freedom of association that preserve the associative integrity of their faith community. Here, the concept of tradition helps make transparent in public reason the internal goods of religion and why they are important. Those who object to the legitimacy of *Shari'a* courts can offer counter-arguments by grounding a conception of equality on the badness of wrongful discrimination. Thus, the employment of some ideas of the good goes beyond finding a secular translation or analogue. The ideas of the good complement political reasons to show why some religious practices are important and what reasonable approaches are available in case these practices are subjected to limitations by other rights-claims.

Second, the ideas of the good are conceptual means by which a religious standpoint can be made intelligible to non-adherent citizens. For example, the case of abortion involves various pragmatic considerations. It admits a diversity of reasons other than the mere contrast between moral arguments of pro-life and pro-choice. Through ideas of the good, religious citizens can express their views about abortion and its practical considerations without being inflexible, too

dogmatic, or uncivil to those who hold opposing views.[64] Instead of asking believers to adopt a secular version of their arguments which some liberal theorists prefer, a range of ideas of the good can be a plausible alternative in helping create common ground. Citizens can draw reasons from religion to substantiate their political positions and even offer views of justice in public reason.

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[64] Consider Gina Schouten's interpretation of the ethics and politics of abortion. If citizens grant that foetuses have moral status, then part of the fair arrangement of social institutions and state policies should include foetal care for unwanted foetuses. Schouten grounds this claim on an expansive notion of shared obligation which results from individual moral failing (2017, p. 645). Broadly, she argues that if unwanted foetuses have moral status, then the state has an obligation to provide care for them much like it does for orphans or elderly people who were abandoned (2017, p. 645). However, Schouten explains, this has serious complications because in cases of abortion, the responsibility of caring for the foetus falls upon the woman who is unwillingly pregnant and does not choose to avail herself of foetal care (2017, p. 646). This implicates competing moral and political interests those of the unwanted foetuses against unwillingly pregnant women (2017, p. 657).

Reasonable believers can offer reasons framed in part by their faith in responding to this issue. For instance, a Catholic could interpret the principle of common good to supply the moral and political grounds for what Schouten argues as shared obligations involved in abortion cases. Recall that part of the aim of the principle of common good is for the state to maintain the conditions in society to enable citizens to pursue the good whatever it turns out to be. If applied in the case of abortion, some of these conditions implicate state responsibility 'to ensure that care is provided to dependents who have no loved ones intrinsically motivated to provide for it' (e.g. unwanted foetuses) (Schouten 2017, p. 657). This can include but is not limited to determining the conditions of child support, citizenship, and other benefits which a full human being enjoys. The state has to consider the cost to social welfare when it decides to recognize the benefits and rights of unwanted foetuses. The same principle of common good could also ground the interests of unwillingly pregnant women, especially those victims of rape, sexual assault, or sex trade. Here, the problem of abortion is understood in a wider context as part of an ongoing dialogue of public health and social injustice and the roles the state might play in addressing them. Believers could end up having divergent views of justice despite sharing the same moral principle of common good or referring to the same Scriptures.

5.3.3 Compatibility with the original position

Lastly, my framework might be construed by political liberals as incompatible with the original position. For example, ideas of the good are irrelevant information for the parties in the original position to consider in their deliberation of the principles of justice.

I maintain that the employment of ideas of the good does not permit irrelevant information which distracts the parties in the original position. One of the features in the original position is that the parties agree to principles which they believe are best for those they represent (PL VII §4). This feature allows a broad range of rational interests and general features of the conception of the good despite the limited information sanctioned by the veil of ignorance (PL VII §4). Rawls recognizes that the veil of ignorance makes it difficult for the parties to ascertain the person's good (PL VII §4). Take the case of religious goods.[65] To resolve this, Rawls proposes the idea of primary goods which are goods necessary for realizing moral powers (reasonable and rational) and they are all-purpose means that sustain a sufficiently wide range of final ends (PL VII §4). Rawls acknowledges that parties in the original position need to have a rough sketch of rational plans of life and why they have a certain structure and depend upon a set of primary goods for their execution, formation, and possible revision (PL VII §4). MacIntyre's notion of internal goods, for example, is permissible in the original position because it helps parties in the original position to have a rough sketch of conception of the goods like religion. This is part of the relevant information allowed by the veil of ignorance.

A believer might be concerned about the limited information permitted in the original position. The veil of ignorance subtracts a range of information which might be essential for the parties in the original position to know. This includes prudential reasons related to religion and its component goods (e.g. religious practices, access to some resources, etc.). To allay this worry, a party in the original

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[65] I will discuss this in detail in Part 2 of the thesis.

position could employ some ideas of the good to articulate her rational interests. Rational interests or prudential reasons are admitted as part of the considerations in determining the range of opportunities that ought to be available to all citizens in a fair arrangement of social institutions, because they do not know whether they would end up having a religious commitment or not.

My proposal of employing a range of ideas of the good strengthens, in part, the intuitive appeal of a thin account of political liberalism. It is not incompatible with the reasoning of parties behind the veil of ignorance in the original position. It opens up a wide range of reasons and views of justice which could be admissible in public reason.

5.4 Conclusion

I have proposed a thin account of political liberalism as an alternative strategy to what I consider a problematic, emphatically anti-perfectionist, conception of political liberalism. Part of this strategy consists in employing a range of ideas of the good in order to accommodate reasons from a reasonable religious standpoint. As believers, some citizens subscribe to norms and standards of evaluation which are not exclusively defined by the effects on personal well-being or individual choice. Although believers have a level of individual freedom in their practice and there is variety in terms of the degree of their belief, their religious commitment binds them to a particular tradition. Following MacIntyre's conception, tradition is composed of internal goods, social norms, and standards of excellence. It is a normative source of reasons which believers employ in explaining their views of justice. The adoption of tradition as a way to coherently view religion is not a straightforward case of implicit theocracy or a violation of the duty of civility. As long as the religious ideal is expressed in ways that are intelligible, even through a combination of political and religious reasons, believers could offer conceptions of justice which non-adherent citizens could comprehend and might even accept.

Rawls's revised ideal of public reason admits a wider range of reasons than some political liberals acknowledge. Following

my recommendations, citizens should consider relevant practical considerations in a justice claim, and this requires reference to religion when necessary. My suggestions do not entail that believers get to advance their interests to the detriment of non-adherent citizens. Reasonable believers can work with others to find common ground in deliberating agreeable terms of justice. I hope that I have shown that religion could be reasonable and that believers could offer conceptions of justice partly framed by religion which are admissible in a thin account of political liberalism.

PART II:
RELIGION AND DISTRIBUTION

6

RELIGIOUS GOODS AND NEEDS

Laborde suggests that one of the greatest puzzles of contemporary liberal political theory is how to treat religious and non-religious goods equally (Laborde 2018, p.103). Consider the following political issues: *Should the state subsidize religious groups providing social services such as health care on the same basis as non-religious groups? Should it fund faith schools as well as secular schools?* (Laborde 2018, p. 103). Whenever a liberal state interprets individual rights and organizes the distribution of temporal goods, this at its core shapes our interpersonal relations as free and equal citizens. It involves finding fair schemes of allocating goods and, in some cases, the prioritization of claims. Part of the complex problem Laborde has raised is a question about whether religious goods are viewed coherently and as a result, religious citizens are treated fairly. For example, in egalitarian frameworks and neutral approaches, religious goods are understood as a function of individual choice or even an adaptive preference. But this perspective on religious goods is overly narrow and does not allow a full understanding of the role religious goods play for those who are engage with them.

In this chapter, I shall examine an important question which involves the construal of religious goods and its distributive implications. I advance the claim that religious goods are part of the category of needs. James Griffin offers a twofold conception of needs: *basic* and *instrumental* needs. He assigns religious goods to instrumental needs which do not carry moral weight. I challenge part of his interpretation and show why religious goods can be

considered as part of a person's need for a substantive conception of life. In the second part, I shall argue against the preference satisfaction proponents who consign religious goods within the range of individual preferences. They claim that religious goods are special interests which a person can easily revise or forego. In the last section, I shall discuss key distributive implications of a needs conception of religious goods. I shall also address challenges and objections to my proposal.

6.1 Why needs?

T.M. Scanlon famously presents a case comparing the relative strengths of the claims of a person foregoing a decent meal to build a church and that of a person who is in need of a decent meal (Scanlon 2003b, p. 74). I tease out several arguments which support the plausibility of understanding religious goods as part of the category of needs. Against this, James Griffin explains that religious goods belong to a range of instrumental needs which do not acquire significant moral weight (Griffin 2003, p. 42). Griffin's narrow understanding of needs and his concern about some problems of indeterminacy form part of his rejection of a needs-based account as a plausible basis for a fair scheme of the distribution of goods. I shall address Griffin's objections. In contrast, I recommend a wide interpretation of needs which includes religious goods.

I begin with a discussion of needs as a plausible concept.

6.1.1 A case of needs

According to Scanlon, a fair distributive account should be sensitive enough to a wide variation of individual preferences. However, it should rule out cases in which preferences of no great relevance or those that are simply acquired in *happenstance* are compensated for by the state (Scanlon 2003b, p. 74). He points to the fact that citizens with a *special interest* or an *unusually refined taste* would not be satisfied without incurring high expenditure (Scanlon 2003b, p. 74). Scanlon gives a case in which the claim from a citizen who sacrifices a decent meal for the sake of building a church would acquire the same level of strength against a claim for aiding a citizen

who is desperate for a decent meal, assuming that the level of burdens required of others to meet such claims are the same (Scanlon 2003b, p. 74). Although Scanlon recognizes the importance of the church to the person, he argues that in cases of urgency, such an interest could not trump the other's claim for a decent meal (2003b, p. 74). There are several important claims in Scanlon's case which require close examination.

First, it is plausible to understand the claims involved in Scanlon's pairwise comparison as belonging to two kinds of needs. The first category of needs which grounds a person's claim for a decent meal refers to a set of *vital* needs which must be attended with urgency. It is very difficult to deny the fact that those who are deprived of basic provisions in order to survive (e.g. food, water, shelter) have a claim on us. We could agree with Scanlon that claims related to vital needs have a higher level of strength, or at least of urgency, compared to other interests. In situations of extreme scarcity, the claims of citizens for vital needs (e.g. decent meal) often override other claims, including that of the building a church. In addition, a set of vital needs has a universal property: these are needs that all citizens would have (e.g. food, water, shelter) regardless of the life plans they pursue. A normative implication of this is that a distributive principle which ensures such vital needs of each citizen are met appears reasonably justified.

However, there is also a kind of need represented by a citizen who sacrifices part of these very vital needs for the sake of building a church. A believer's sacrifice of a decent meal expresses a level of strength of a claim for resources to fulfill an interest (e.g. building of the temple) which is not exclusively defined by the degree of importance that a person attaches to it. I agree with Scanlon that there is a difference between needs (including urgent needs) and preferences which do not belong to the same normative category, and may not ground claims from others on us. However, his example seems to exclude the building of the church from the category of needs and to place it in the category of preferences. This is problematic partly because the building of a church may appear less urgent than a meal, but it

is a need no less than food - this is exactly why the believers sacrifice a decent meal to build it. *Contra* Scanlon, there are sets of special interests which a person does not acquire by pure chance. A citizen can be worse off because of the lack of consideration for this other category of needs which arise from pursuing a meaningful life.

We can agree with Scanlon on two counts: (1) a category of needs includes special interests that enable citizens to pursue substantive conceptions of life, and (2) claims arising from this category have essential importance which does not amount to, nor is exclusively determined by, individual preferences. If applied in the case of religion, the view is that the church is necessary for some believers to perform common worship. Common worship is a core element of religion, regardless of the degree of importance a believer attaches to it. The elements of agreements with Scanlon lead to defining a set of interests which generate reasonable claims to goods. Although different from the urgency of vital needs, these special interests strongly invite state attention. A normative implication of this is that a distributive principle which gave the category of needs a central place would not be unreasonable particularly in the case of moderate scarcity.

Griffin presents a challenge to the view I just sketched. He proposes an interesting distinction in the kinds of needs we have and their corresponding moral weights. For Griffin, there are (1) *basic* needs, which are restricted to those we all share as human beings, and (2) *instrumental* needs which we happen to have because of our chosen ends (Griffin 2003, p. 41). If applied in Scanlon's case, a person's claim for a decent meal is part of a person's set of basic needs. For Griffin, a set of basic needs includes those that 'we need to survive, to be healthy, to avoid harm, or to function properly' as human beings (Griffin 2003, p. 42). The claims based on survival, proper functioning, the avoidance of harm, or the protection of health do not depend on people's choices, whims, or preferences, but on human nature (Griffin 2003, p. 42). According to Griffin, this is the main reason why basic needs have a strong moral weight and pose a reasonable limit on others who might have a claim on us. In contrast, the person's claim for building a temple does not qualify as

part of basic needs. It falls under instrumental needs, a category which does not have a fundamental moral weight.

Let us look further at Griffin's conception of needs. First, Griffin is correct to point out the difference between types of needs. Wiggins explains along the same lines that basic needs are categorical compared to other types of needs because the purposes of basic needs are fixed (Wiggins 1998, p. 35). The fixed purposes echo the same conditions that Griffin mentions: (1) survival, (2) avoidance of harm, and (3) proper functioning. But Griffin adds that claims based on what he calls instrumental needs have lesser moral force because these needs are not necessary for survival. What this means is that giving up part of our instrumental needs does not drastically affect our level of well-being, compared to sacrificing our basic needs. For example, believers can still go on living without having a sacred building. They could still pray together in somebody's house or they can do it individually. This is unlike having restricted or no access to potable water which would severely harm a person's health. Wiggins cites the case of a person who is need of £200 to buy a suit (Wiggins 1998, p. 34). He argues that for such claim to have a strong force, the person has to show that he cannot go on with life without that particular suit (Wiggins 1998, p. 34).

Although I agree with Griffin regarding categories of needs and their corresponding moral force, I claim that the range of needs is wider than Griffin thinks. First, when he includes the *avoidance of harm* and *proper function* as part of the conditions of fundamental needs, this should not be interpreted as restricted to the things we need to survive like shelter, water, or in Scanlon's case, a decent meal. A person sacrificing her share of a decent meal in order to build a church for her god is motivated by her fundamental needs. Wiggins introduces an important distinction in thinking about vital needs and other needs (e.g. believers' need for a church). He argues that there is a 'purely instrumental' sense of need which corresponds to Griffin's idea of instrumental needs (Wiggins 2005, p. 29). But there is also a 'quasi-categorical' sense of needs which roughly points to Anscombe's idea of flourishing (Wiggins 2005, p. 29). It is categorical like vital

needs, following Anscombe's argument, because it is impossible for the person to flourish without those goods (Wiggins 2005, p. 29). If applied to religion, without a church, it would be very difficult for believers to gather and function as a faith community. A church is not simply a means to fulfil an instrumental need such as individual prayer or personal religious obligation. Although they are part of the reasons believers offer in articulating their need, the gathering as church at a specific time and place and following a ritual actualizes religion concrete as a good. Even if they can pray individually, without the permissibility of building a church, believers suffer greater harm, individually and as community, because they cannot perform common worship. Compared to the person forgoing a £200 suit, a claim for assistance to build a church carries moral weight because it is an essential good for believers to realize religion as a substantive conception of life. In other words, believers sacrifice something urgent and basic such as a decent meal in order to preserve something which is no less necessary. This shows the difficulty of weighing the exact force of competing needs and ranking them.

Second, if my proposed expansion of the category of needs to include churches is adopted, then Griffin's worry about the narrowness of a needs-based account for interpersonal comparison is partially addressed. The range of needs can include those that arise from some ends we happen to have because those ends give shape to our human existence. Against this, Griffin might be concerned about the objectivity of a needs account. He makes it clear that basic needs are those that all human beings share. He is worried that the inclusion of needs based on a person's conception of the good endangers the objectivity of a needs account. In reply, I argue with Wiggins that the relativeness of a needs-based account is not a serious obstacle to its objectivity. For instance, the *avoidance of harm* as a necessary condition of need is not limited to a broad conception of what we all share. Consider the case where some people who are trapped in war and they are desperate for a meal yet are also committed to religious dietary laws. If the meal being served has ingredients contrary to religious beliefs, then those who are believers are in danger of compromising their religious identity. In this case, one cannot simply reason to a believer that her

meal requirements according to religious laws are solely instrumental needs which can be easily sacrificed. Here, we have a complex picture of needs. In the war meal case, we have to attend to people's need for a meal but this should not confine us to giving all of them the same meal. In situations of absolute scarcity, this might be the only option. But if there are enough resources to go around, it is also a reasonable requirement to serve meals which also attend to the religious beliefs of some people. Thus, a needs framework retains an objective standpoint because it addresses harm, and it does so by being sensitive to the kinds of harm arising from a person's conception of the good. In other words, the objectivity of needs does not entail uniformity; and this is what is in the war meal case. We should, that is, avoid talking of 'instrumental needs' and keep the essential distinction between preferences and needs.

Third, a needs-based account can serve as a plausible basis to partly evaluate the arrangement of social institutions and state policies in the distribution of goods. In a situation where there are enough goods to go around, it is reasonable for the state to ensure the availability of goods which citizens consider necessary in order to live according to their conception of a good life. In other words, we can agree with Scanlon that (a) there are things which are obviously necessary for all, and (b) there are goods which we need in order to live in accordance with our conception of a good life. Both of them pose reasonable limits on claims that others might have on us. A breach in those limits would require others to make unreasonable sacrifices. Consider that in society X, all citizens do not go hungry but are nevertheless left without goods for them to pursue substantive conceptions of a good life. It seems that most of us would feel deprived and find it impossible to flourish in society X. Scanlon asserts similarly that social institutions could be criticized for making available only an unduly limited set of goods which limit the range of lives accessible to its citizens (Scanlon 2003b, p.76). Of course, one could hold reasonably that there is something objectionable in society Y in which resources fund exorbitant artistic or religious projects at the expense of citizens' urgent needs. The problem of distribution of goods involves balancing claims grounded on urgent needs against other needs to allow citizens

to engage in the pursuit of a meaningful life. But the point is that both categories constitute *needs* and that their balancing should not systematically lean towards prioritizing urgent needs.

Griffin might remain unconvinced by a needs-based account despite the amendment I have suggested. He argues that in general, a needs-based account has to contend with serious problems related to indeterminacy that 'loosens the link between need and obligation' (Griffin 2003, p. 45). I shall address these concerns in the next section.

6.1.2 Some problems related to indeterminacy

Much of Griffin's scepticism of a needs-based account arises from problems related to indeterminacy. First, it is very difficult to include and exclude things based on needs from an objective standpoint. Griffin uses an example of scholars who make the sacrifice to go without exercise equipment for the sake of extending their library (Griffin 2003, p. 45). If we employ only a set of basic needs for interpersonal comparison, then we are left, according to Griffin, with a thin notion of well-being (ibid.). This will exclude the scholars' claim from the scope of needs. If we opt for an expansive account, then we are held captive by an onerous variety of needs which arise from particular ends. Second, Griffin doubts that the concept of needs performs most of the normative work. For him, it is the notions of *harm*, *survival*, or *proper function* which stipulate the conditions of state compensation (Griffin 2003, p. 42). These notions, which vary in each society, propose different standards of a minimum decent life. Last, Griffin believes that an expansive needs-based approach I have suggested would likely end up as a version of a prudential value account in its attempt to draw the line between what is necessary and what can be consigned to mere desires (Griffin 2003, p. 52). This weakens the intuitive appeal of a needs-based account. I respond to each objection in turn.

First, the problem of drawing the line in identifying needs which can reasonably ground claims for goods has been addressed by the distinction we made earlier. The conceptual refinement includes vital needs and the needs related to meaningful pursuits. It helps us

avoid the dilemma that Griffin poses. In a category of needs which is composed of vital needs and those related to meaningful pursuits, we can admit the scholars' claim for a library because it is essential in their practice of learning. However, this does not entail that the scholar's claim would trump a person's claim for a decent meal in all cases. Nor does it obligate the state to provide an extravagant library or fill it with expensive books to suit the scholars' tastes. The state could consider the claim and determine the extent to which it can assist the scholars in building their library. In the case of moderate scarcity where there are enough resource to go around, it is not objectionably partial for the state if it decides to subsidise part of the scholars' library.

Second, Griffin is concerned that needs are not the concept that does the normative work in stipulating the conditions of the distribution of goods. His doubts are based on the fact that needs in general are contingent on social conditions. In other words, what is *harmful*, *properly functioning*, or *basic* for an acceptable life is defined by the conventions in society (Griffin 2003, p. 44). These conventions are subject to changes. For example, an acceptable minimum level of literacy in society X is different from that in society Y. This means that a needs-based account is not actually objective because it is defined by the different levels of particular needs in societies. In reply, although it is true empirically that the standards of harm, proper functioning, or decent life vary in each society, it does not render the needs-based account totally irrelevant. Wiggins argues that the relativeness property enables a needs conception to be more sensitive to the kinds and levels of harm, what constitutes proper functioning, or the standards for a minimum decent life in each society. Wiggins admits that these terms are contestable but that they are not obscure (Wiggins 1998, p. 37). In a needs conception, each citizen is recognized as having a variety of needs. It can be the case that citizens in society A set the standards of needs differently from society B because they have, for example, a more complex set of religious needs compared to society B where citizens consider arts as part of their needs. One could still maintain the objectivity of needs account because they stipulate necessary conditions – harm, proper functioning, vital – and they only vary in degrees and content. Although some of the things related to harm and

proper functioning will overlap, they still determine concretely what a person cannot go without. This aligns with the idea of separateness of persons because each person would have different needs partly defined by her substantive conception of life, and there are needs which she shares with others universally. For example, a pianist can be said to need a piano even if this is not a general need.

Third, Griffin argues that the inclusion of needs arising from particular ends weakens its theoretical appeal because the state ought to refer to particular values or conceptions of the good to determine the kind of resources each substantive conception of life requires (Griffin 2003, p. 50). He explains that a government cannot avoid making judgments about the value of libraries when weighed against claims for improving road safety or the purchase of exercise equipment to promote health (Griffin 2003, p. 50). For Griffin, it would be very difficult to determine the point at which the demands of health, for instance, are not particularly affected and that they matter less compared to the scholars' claim for extra books (Griffin 2003, p. 52). It is unlikely that the needs-based approach would be independent from a range of prudential values (Griffin 2003, p. 52). In response, I agree partly with Griffin that in my interpretation of needs, the state may refer to some particularities given the kind of goods involved which conceptions of the good demand. When a believer asserts that her needs are not met, part of this involves an understanding of religion and its component goods. However, the reliance on a descriptive view of religion does not entail that a needs conception ends up as a prudential value account. By focusing on the essential component goods of religion, for example, a needs-based account retains part of its objectivity because these goods are necessary for a believer whether she actually prefers them or not. For instance, common worship is an essential good for some religions, whether or not their members actually perform their duty. In Griffin's example, a library is a basic good which enables scholars to exist as practitioners of learning, whether some of them desire a big or a small library with a given number of books.

Wiggins offers a useful guide to mitigate the level of indeterminacy of needs and to identify those which counts as needs. He stipulates that the state could look into the (1) badness or gravity of needs (how much harm is involved in the claim?), (2) urgency (how soon should this be addressed?), and (3) substitutability (is there a sufficient alternative or less harmful substitute?) (Wiggins 1998, p. 38).[66] Wiggins's stipulations do not give clear answers to all cases, but they aid the state in balancing claims based on different kinds of needs (e.g. vital, needs for flourishing).[67]

In sum, a wide interpretation of needs can address problems of indeterminacy which Griffin posits. An expansive notion of needs is comprised of vital needs and needs related to meaningful pursuits. It helps us avoid a conception of distributive justice focused exclusively on needs for survival. Second, the empirical indeterminateness of a needs-based account is not a serious concern because it mainly addresses harms. Its relativity allows citizens to set different thresholds and arrange social institutions consensually as they see fit, based on the variety of needs in their society. Last, a needs-based approach does not necessarily end up as a prudential value account because it is limited to the component goods which form part of the necessary conditions of the conceptions of a good life.

In the next section, I shall argue that religious goods can be considered as needs.

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[66] I shall discuss Wiggins's proposal in detail in Chapter 8 which deals with primary goods and social policies based on a needs conception.

[67] Wiggins mentions that some of these stipulations overlap: 'A need for x can be not very bad but basic, for instance; or bad and also urgent yet substitutable with respect to x; or bad in the extreme and highly entrenched insofar as it is urgent but, insofar as it is not urgent, relatively superficially entrenched in the mid-term and not entrenched at all in the long term. It should be equally obvious how important it is to be clear whether the need we are talking about stems from a judgment about a particular human being, or about all human beings in specified kinds of circumstances, or (making the truth-condition most exigent of all) all human beings under all actual variations of circumstance' (Wiggins 1998, pp. 38–40).

6.1.3 Religious goods as part of needs

Many would find it odd to consider religious goods as part of needs. For example, some religious practices like the wearing of religious dress, obedience to dietary laws, or devotional prayer are activities which are under the domain of individual choice and responsibility. This means that religious practices largely depend on how the believer considers those activities as essential to her practice of religion. In addition, religious goods are not universal; only some citizens are engaged with religion as part of a conception of a good life. Griffin maintains what he calls 'instrumental needs' like religion do not carry moral weight (Griffin 2003, p. 42). It seems that religious goods are commonly considered part of the category of *what I want* instead of *what I need*. Finally religion is sometimes contrasted, as we saw, with urgent, vital needs.

However the inclusion of religious goods as part of a person's needs is highly plausible. First, it is reasonable to identify essential component goods of religion which makes it possible to exist as an actual good in order for people to engage with it. Religion is not simply a construct filled with beliefs, doctrines, and moral code. Part of what makes religion concrete, as Crane argues, is the range of religious practices. A religious believer, *per* Crane, ought to perform some activities, once or repeatedly, which are fundamental to what her religion is (Crane 2017, p. 87). For example, part of becoming a true Muslim involves the *hajj* – a pilgrimage to Mecca – and the observance of Ramadan. Religious practices are essential components of religion which enable believers to enjoy its goods and realize religion as a real and distinct good.

Second, a needs conception is appropriate to accommodate religious goods. Like the scholars' claim for a library, believers have an array of needs which must be met and which cannot be simply sacrificed like individual preferences. This is largely for the reason that their needs have arisen out of their belonging to and practice of religion. Most people who are brought up in or acquire a religion endorse it as part of their conception of a good life. Because of their response to this calling to faith and practising it, they acquire

certain needs which are independent from, and cannot be revised by, individual choice alone. For example, Jehovah's Witnesses claim for alternative blood treatments are based on religious beliefs which cannot simply be abandoned, changed, or adapted. Their practice and beliefs are part of a complex network of social norms and moral code which makes their practice of religion possible.

Third, in an expansive account of needs, religion does not acquire special treatment nor is it outrightly favoured. Its claims would still be weighed and balanced with other claims based on needs. As I have explained when examining Scanlon's example and Griffin's library case, there will be instances where vital needs (e.g. decent meal, critical health operations) would win over claims of believers for aid in building a church. However, a believer's claim cannot be dismissed for the reason that it is part of mere desires or optional goods. It carries serious weight because it is a kind of need arising from a necessary condition for religion to exist as a concrete unified good. Here, the distinction can be made between needs and mere preferences where essential goods of religion could fall under needs. And, in turn, this may call for state assistance in pursuing them.

In sum, a closer inspection of Scanlon's case provides an interpretation of the problem of distribution as a complex picture of human needs. On the one hand, it corresponds to some of our intuitions that resources are distributed and basic social institutions are arranged in such a way that they attend to the needs which are vital for human survival. On the other hand, there are other needs which merit serious attention, following Wiggins's suggestion. These include goods which enable citizens to form, revise, or pursue substantive conceptions of the good life. The claim for mutual aid for the building of a temple in Scanlon's case has a level of strength which others cannot ignore in the way they would unreasonable preferences.

Some liberal theorists remain unconvinced. Although they recognize a range of necessary goods each citizen should have, they argue that this does not include those that arise from particular

conceptions of life (e.g. religious or cultural goods). Instead, they offer the notion of preferences as a neutral category to accommodate them.

6.2 Why not preferences?

A liberal could argue that religious goods fall under the category of individual preferences. She would point out that in Scanlon's case, the person who foregoes a decent meal for the sake of building a church has the liberty to choose otherwise. Compared to claims of hunger or a life-threatening illness in which a person's survival is at stake, the sacrifice of a special interest does not severely diminish a person's well-being. In the case of religion, the maintenance of a cathedral or a funding of a pilgrimage demands special provisions that only a few enjoy. The liberal critic of a view based on needs would argue that such practices, important though they are, can be sacrificed without incurring a greater cost to believers, because these are preferences which they can adapt, change, or even abandon. In this section, I shall argue against the employment of individual preferences as (a) the concept to understand religious goods, and (b) the basis of interpersonal comparison and distributive approaches.

I begin with a discussion of the conceptual advantages of individual preferences as a basis for interpersonal comparison.

6.2.1 Individual preferences

What would be some of the advantages in employing the category of preferences to range over goods which are contingent to a person's life plan? First, the category gives maximum recognition to individual sovereignty (Scanlon 2003b, p. 72). The person's preferences define the level of her actual well-being and this is a reasonable basis for the evaluation of social institutions and state policies (Scanlon 2003b, p. 72). In other words, the category of individual preferences takes the idea of the separateness of persons seriously because a person's well-being is defined relative to what she considers important to her. Second, the category is not contentious because it neither discriminates nor favours any preference over another: it is neutral. It is the fact of the person's preference that does the normative work and

not how valuable the object of the preference is. As an implication, the state does not need to determine whether football or opera are valuable goods *per se*. It only needs to measure the strength of each person's preference relative to the benefits of those goods to her well-being. Third, in terms of the distribution of benefits and burdens, preferences are special interests that are largely within the domain of individual responsibility, whether they have arisen in happenstance or out of discerned choice. A normative implication of this is that citizens who have preferences which demand high expenditure could be persuaded to adapt or forego them. They could choose alternative pursuits which demand relatively low expense.

Although preference is an attractive concept to ground the distribution of goods, I agree with Scanlon that an exclusive reliance on it is ultimately misguided. In a preference-satisfaction model, one gives premium to what a person wants. There is risk, for example, in compensating people who have desires which are of minor concern over those with great relevance. Scanlon uses the principle of equal satisfaction as an example. In this principle, operating on the basis of preferences, the state is obliged to allocate special assistance to a person who suffers from physical disability in order for her to enjoy a normal life and also to a person who with special interests or expensive preferences could not be satisfied without incurring high costs (Scanlon 2003b, p. 74). Scanlon points out that the reliance on preferences does not distinguish between those that are minor or mere desires from those that of great relevance (Scanlon 2003b, p. 74). In brief, I follow Scanlon in opting for an objective theory which is largely independent of a person's tastes and preferences.

Moreover, distinguishing mere desires from those with great relevance appears harder in a preference framework. Griffin admits that one of major weaknesses of a preference satisfaction account is its *over-extension*, because not all of them make claims on others (Griffin 2003, p. 55). Scanlon is right to point out that it would be unreasonable to allow a person's preference to justify raising what is an objectively minor concern to the level of urgent concerns of others,

even if such person places high importance on such minor concern (Scanlon 2003b, p. 80).

Some theorists (e.g. G.A. Cohen) recommend a choice conception to address the problems of indeterminacy that plague a preference-satisfaction conception. One of the fundamental assumptions of Cohen's proposal is that preferences have a strong voluntariness property which is closely similar to individual choices (Scanlon 2003b, p. 78). This is supported by the fact that a person can develop, change, or manufacture preferences over time and due to chance encounters (Scanlon 2003b, p. 79). It assumes that the range of preferences is entirely under the control of the person; it is a subset of individual choice. In Cohen's suggestion, preferences are viewed as outcomes of a person's choice: she identifies with an object and accords it a level of importance to her well-being. As an implication, the state would only compensate citizens for welfare deficits due to factors outside the scope of individual choice (e.g. luck, disadvantage). A citizen has to take responsibility for the preferences she develops or acquires. For example, a *hajj* pilgrimage, a mandatory religious practice for Muslims, would be considered an object of personal choice in Cohen's account. It does not qualify for state assistance. The religious group should be entirely responsible for the funding, security, and any form of assistance (e.g. visa processing, material requirements) of its pilgrims.

However, as Scanlon argues, the dominant assumption that we are in full control of our wants and desires; that we can revise them as we please is faulty (Scanlon 2003b, p. 78). Scanlon points out that those preferences which are commonly thought of as under our control are *peripheral* or minor (Scanlon 2003b, p. 79). In addition, there are some interests that could not have arisen or to which the person would not have assigned the importance she does presently (Scanlon 2003b, p. 79). What this partly means is that the malleability of preferences is not entirely in the power of the person. For example, when a person converts to a religion, part of her commitment is significantly determined by her spiritual encounters. In other words, one does not simply choose religion like a passing hobby or a book on

a shelf. Most religious members testify to being *called* into religion. And it happens often through the social dimension of religion: rituals, common worship, shared devotion, or celebration with communities. The social norms of religion are beyond the power of a believer to revise or adapt. Take again the case of the *hajj* pilgrimage. Its norms, goods, and rituals are outside the responsibility of the believer alone. As pilgrims, they participate by following a tradition of norms in order to engage with the religious goods properly.

From the foregoing, an account of preferences, although initially attractive, encounters difficulties in overcoming problems of indeterminacy. Some of these problems are generated by the wide scope of preferences which includes desires, expensive but trivial concerns, and other factors that are beyond a person's control. The restriction of preferences to a choice conception fails to assist because preferences are not entirely subject to our will, as Scanlon argues (Scanlon 2003b, p. 78). If applied to religious goods, the concept of preferences limits the understanding of religion to the detriment of believers.

6.2.2 Religious goods are not mere preferences

An advocate of preference-satisfaction would favour an individualistic conception of religion. She would cite Rawls's argument which states that as citizens, we should take responsibility for our tastes and preferences whether or not they have arisen from our actual choices (PL V, §3). Certain religious practices like the wearing of religious dress, obedience to dietary laws (e.g. Islamic halal, ritual animal slaughter), or engaging in religious festivals are individual practices of religion. Granted that some believers belong to a faith community, it is acceptable and often conceived that religion is a personal commitment. Part of this highlights the fact that members have the capacity to choose religion and the way they see it fit in their own conception of a good life. For example, there are traditional practices in Irish Catholicism, which are not compulsory based on general church teaching, but which adherents take to be obligatory for them (e.g. pilgrimages to Lough Derg, Croach Patrick). It would be very difficult for the state to support religious activities because of

(1) the wide variety of core and non-mandatory religious practices, and (2) the multiple iterations of individual practice of religion.

In reply, a proponent of a needs conception would stress that religious goods are different from preferences because some of them are beyond the scope of individual choice. For example, the ban on wearing the *hijab* prevents a Muslim from fulfilling her religious duty. A non-adherent citizen cannot simply persuade her to adapt by wearing different headgear, or convince her that the sacrifice of this individual practice is not a high price to pay in exchange for a higher level of security. Another case is the pilgrimage to holy sites. It is a central practice for Muslims to perform, at least once in their lifetime, the worship in Mecca. Even if the person has the liberty to give up this duty because of cost or other reasons, such a religious practice is defined by the wider faith community to which she belongs.

Religious duties, as Scanlon points out, are not equivalents of an acquired interest or a passing hobby. Some contemporary liberal theorists agree with this. For example, Jocelyn Maclure classifies religious activities as part of a class of *meaning-giving convictions* which belongs to a different category of values and which are not on a par with preferences and tastes (Maclure 2018, p. 11). He explains that meaning-giving beliefs that normatively shape an agent's conception of self-respect form part of the core of her moral identity (Maclure 2018, p. 11–12). Laborde agrees with Maclure's view. Laborde asserts that religious practices are examples of moral practices and behaviours grounded on personal integrity which generate deep guilt, shame, or remorse if sacrificed or significantly burdened (Laborde 2017, p. 204). As an implication, even if religious practices fall under individual responsibility, their demands are not comparable to those arising from preferences. To ask religious citizens to sacrifice them like individual preferences constitutes a substantial burden on their part.

If we now shift to the perspective of a choice conception, certain complexities of religious commitments are overlooked. For example, the guilt and suffering of a religious believer would qualify as a case for compensation due to bad luck in a choice conception. This

means that the state is liable to assist religious citizens because of the suffering and guilt connected to maintaining their commitments (e.g. fasting or monastic living). This would strike many as odd. Cohen acknowledges this when Scanlon points out that some costs of unchosen commitments like religion are not instances of bad luck (Cohen 1989, p. 937). It would be strange to compensate a monk's sacrifice of some goods due to the demands of his religion. If so, then the monk is treated similarly to a person with a disability because of the welfare deficit arising from his commitment. Believers do not want to be treated as people with a disability which requires compensation.

Moreover, in a category of preferences, a conception of a good life is understood narrowly as a combination of a person's sophisticated and mere preferences without reference to goods. In a preference-satisfaction principle, religion is viewed as entirely under the control of the subject. This is not completely mistaken because the believer plays an important role in actualising religion as part of her conception of the good life. She is the one who prays, participates in religious festivals, and embodies the values and moral teachings of her religion. However, religion is not simply determined by the preferences of its practitioners. Recall MacIntyre's concept of tradition. Religion, viewed through the lens of tradition, is composed of norms and practices which believers follow in spite of their temperament, degree of desire, or even level of understanding. The practice of religion is not simply an aggregation of the preferences of believers. For example, the sacrament of baptism involves norms, goods, and way of proceeding which have been passed on, codified, and performed by competent religious authorities. Although there is room for modification, social norms and rituals do not change based on the believer's temperament. A believer cannot simply revise the sacrament to suit her preferences. Thus, a fair interpersonal comparison also demands sensitivity to the kinds of life and goods available in society. In the case of religion, the state has to refer to it as a good outside the category of individual preferences.

In sum, the category of individual preferences, although sensitive to the person's interests and effects to her well-being, is insufficient

to capture goods which are essential to religion. A believer does not only acquire a special interest which she can easily revise. Nor is religion simply a person's preference that she happens to have. If some of the core elements of religion are sacrificed, then believers suffer a burden which cannot be addressed exclusively through a simple revision of preference or even to make the choice of foregoing that special interest. A needs-based account is more appropriate in accommodating religious goods. And this, in turn, has distributive implications.

6.2.3 Some distributive implications

The identified needs of a believer citizen generate some key distributive implications. First, the state cannot rely on distributive approaches grounded entirely on individual preferences. One of the often-suggested ways for the state to distribute goods is to adopt average utility as a standard – an interpersonal computation of benefits and burdens that maximises a weighted sum of utility of individuals (TJ §27). The baseline of interpersonal comparison of this approach is not sensitive to the kind of life the individual pursues. Its main concern is to achieve the expected average utility. The main disadvantage in this strategy is that some preferences, needs, or goods should be sacrificed by each individual as part of the demand of achieving overall average utility.

If applied to religion, there are religious practices that require a form of sacrifice, like fasting, fixed monetary donation, or separation from the world (monastic living). To put them in calculative terms based on general utility would not work because these sacrifices are not considered welfare deficits.

As an alternative, we can ground interpersonal comparison of claims on the basis of needs. In this case, we look into the opportunities, means, and related goods that are necessary for individuals to lead a flourishing life (Munoz-Dardé 2013, p. 230). Munoz-Dardé explains that with this type of baseline we are more sensitive to the set of needs which enable us live a good life and to not consider our conceptions as formal notions filled with individual preferences (2013, p. 230).

Joseph Raz gives an example of the concert pianist who would lose the life she has if her fingers are broken (1988, p. 153). These needs are not entirely personal based on the choice or preference of the individual. According to Raz, the range of needs includes those that enable us to have such a life (e.g. concert pianist) or the possibility to even engage with such goods, independent of our choices (1988, p. 153). This directs us towards considering distributive approaches which attend to a complex range of needs. If applied in the case of religion, one could identify the component goods of religion and examine their roles in making religion possible as a distinct good. This does not entail that state support ensures that believers meet all their religious obligations successfully. The claims of expensive religious duties (e.g. building magnificent cathedrals, pilgrimages) on resources would be subject to the limits imposed by others whose demands fall under vital needs (e.g. basic food, health, or security) or needs from meaningful pursuits (e.g. arts, sports, music).

In this context, the concept of needs helps religious citizens to avoid grounding their claims entirely on intrinsic values. A life of a monk might be valuable for a segment of citizens. However, it would be difficult to accept that the state should subsidise monks because their way of life is valuable in itself or more valuable than others. In comparing the lives of a pushpin player and a poet, Scanlon insists that what matters is not the importance or value that each person attaches to her pursuit but that the other's share of scarce social goods should not be unreasonably sacrificed, leaving her unable to pursue her own conception of life (Scanlon 2003b, p. 81). In other words, for Scanlon, (1) a person who pursues a life of a pushpin player has 'the same moral claim not to be interfered with' as the poet's, and (2) they have the same claim to share in social resources after the most urgent interests (e.g. vital needs) have been addressed (Scanlon 2003b, p. 81).

A sceptic might worry about an obligation imposed on the state to cater to a wide range of various needs of citizens and to ensure that no one is deprived of pursuing a substantive conception of the good. She is concerned that the state has to identify different kinds of needs

to pursue a conception of a good life. This can be too demanding. For instance, the state is liable to rely on perfectionist ideas of the good whenever it deals with complex goods like religion, culture, arts, or music. In addition, some religions demand more obligations from their members compared to others. A critic would offer an alternative in which the state would distribute to each citizen a universal basket of basic goods. Or the state could determine a minimum level of social resources which would enable citizens to pursue some substantive ways of life. Citizens could have an equal share of resources and they would enjoy equal access to a level of opportunities. Here, the state is not enmeshed with the wide-ranging conceptions of the good that its citizens pursue. It could be indifferent to conceptions of a good life so long as it maintains a social minimum of liberties and goods.

In reply, without sensitivity to the needs arising from meaningful ends that people pursue, we might end up with a society which only sustains a limited range of conceptions of the good. Or, due to the lack of attention to what religious goods are, some goods in the common basket might turn out to be irrelevant to a believer. It is important that a liberal takes into account what the good is; it should not be limited to the goals of society or the best way to achieve them (Cohen 2011, p. 207). For instance, ritual animal slaughter in Judaism and Islam involves core elements of communal prayer, shared practice, and social norms. Religious meat is a necessary element in the way believers relate to the divine. This is not a simple case of preference in which the state can ask believers to change following ethical standards of animal slaughter. It has to be sensitive to the kinds of goods at stake when balanced with other justice claims. In the case of religious meat, it has to refer to religion in order to determine the substantial burden to religious freedom of a policy that promotes ethical animal slaughter. This is very important in attending to what some of its citizens need and in avoiding instances where essential religious goods are unduly compromised.

From the foregoing, it is reasonable that the state should take account of the needs of a citizen who has faith and belongs to a faith community. Doing so would protect a citizen from being

deprived of a share of resources which are related to her realisation of religion. This alternative concept is not concerned with maximizing a particular state of affairs. It eschews the reliance on preferences as the basis for distributive approaches. It also avoids some perils related to the concept of value. Lastly, in a needs-based approach, a believer can ground her claim without demanding that the state ensures the success of her practice of religion or worse, treat her as a person with a disability.

6.3 Challenges and objections

In this section, I shall discuss several challenges and objections. First, a sceptic of a needs-based approach might worry about maintaining the impartiality of state action. For a critic, it is harder for a needs-based account to distinguish mere desires from needs. Second, an opponent might still favour a prudential value account which is composed of basic needs and mere desires because of its flexibility and sensitivity to individual notions of well-being (Griffin 2003, p. 56). Last, Cohen argues that the genesis of a person's preference is important in determining fair distribution of goods. *Contra* Scanlon, an interest which could not have otherwise arisen and which a person develops before it became expensive for unforeseeable reasons is eligible for compensation (Cohen 1989, p. 940). A needs-based approach cannot account for this welfare deficit. I discuss each objection in turn.

6.3.1 Needs and desires

A critic might be concerned about the susceptibility of a needs-based account to objectionable partiality in its attempt to include various ends as part of the range of needs. If applied to religion, one could mention the case of a new religious practice from a minor religion, say Jedism. She would ask, at what point do religious practices qualify as needs instead of mere desires which fall under individual responsibility? It seems that the dividing line between needs and preferences is not obviously clear in a needs-based approach.

In reply, I agree that some religious practices that we find unfamiliar or offensive, or those we deem expensive challenge the

plausibility of a needs-based framework in determining what can be included and excluded in its scope. To address this, one can rely, as I have mentioned, on a descriptive view of religion in order to identity its essential elements. This helps us examine some distributive implications of policies on the needs of believers. For example, several pilgrimages might require some state assistance especially if it is part of the core element like the *hajj*. Or believers' access to *halal* (i.e. religious slaughter) meat is an important practical consideration when drafting policies that set health standards and protect animal welfare. If applied to a practicing Jedi, one could examine his claim for wearing a Jedi robe in the office based on needs and then balance it with concerns about security and uniform policy. Like Wiggins's example of the expensive suit, the practicing Jedi should argue that he could not go on without wearing such robe in his employment. A reliance on a descriptive view of religion does not entail that their claims would be favoured. A descriptive view of religion is very helpful to determine the range of essential goods of believers and whether they are being unfairly sacrificed in a justice claim.

6.3.2 Against a prudential values account

A proponent of a preference theory might advance a modified prudential value account, composed of basic needs and informed desires, as a plausible alternative. Griffin favours this account because it is more sensitive to the fundamental elements of a person's well-being. In other words, the strength of a subjective account is in its ability to provide a view of deliberating values and how they fit in particular lives according to the individual (Griffin 2007, p. 54). If applied to religion, it is its individual aspect which is most important because believers have different ways of realizing how religion fits in their conceptions of a good life.

In reply, Griffin's account combines needs and mere desires, which makes it difficult to track which does the normative work. In his approach, mere desires include those that are related to meaningful pursuits. In such a wide category, Griffin does not prescribe how the state can differentiate needs from mere desires. It appears that it is up

to the individual citizen to determine the importance and the value of goods in her spectrum of desires and needs. Griffin's account suffers problems of insufficiency because the object of the preference does not play any normative role in determining the strength of the claim. In contrast, a needs-based account includes reference to the kind of goods there are. This forms part of the necessary condition for some conceptions of the good to be real options for its citizens to pursue. In the case of religion, the state could identify its essential component goods. This helps the state avoid cases where a person who assigns an unusually high value to a trivial concern or those in which an agent assigns an inordinately high value to her interest which would likely reduce or take away other's share of scarce resources (Griffin 2003, p. 80). For example, there are religious practices which are left to individual discretion (e.g. praying rosary, going to some pilgrimage places). I would suggest that the state could refer to the social dimension of these religious practices as part of the practical considerations when balancing individual believer claims which may take away other's share of resources unreasonably.

6.3.3 Idiosyncrasies and religion

Cohen challenges part of Scanlon's critique of preferences and choices. Cohen argues that the genesis of preferences is important in determining whether the set of special interests which a person acquires or develops before they became expensive for unforeseeable reasons merit compensation from the state (Cohen 1989, p. 940). For Cohen, certain interests could not have arisen and therefore, they are of minor importance even if the person attaches great worth to them (Cohen 1989, p. 940). One example he thought of is religion. *Contra* Cohen, Scanlon qualifies religious preferences as falling under central interests (Scanlon 2003, p. 80). In other words, for Scanlon, religious commitments are not equivalent to mere idiosyncrasies which do not invite state attention. Cohen contests this because religion is central only to some people, and it is not implausible to consider it as an idiosyncrasy based on a genesis of preferences argument (Cohen 1989, p. 941).

In reply to Cohen, a serious problem of a preference satisfaction model is its exclusive focus on the subject – her choice, desire formation, and the importance she attaches to her commitments. In such an approach, it does not refer to what the object is. This is important because idiosyncrasy as defined by Cohen is subject-dependent. For example, wearing the *hijab* can be understood narrowly as an idiosyncrasy based on a subjectivist perspective. What this view rules out is the normative role and meaning of *hijab* in Islam, regardless of a person developing such preference. A needs-based account performs better because it views religious practices in relation to the faith community and not only because the person chose it, developed it, or happened to acquire it. If the state relies on needs as an alternative concept, then it can identify the essential elements of religion and its component goods. This forms part of the state's evaluation of distributive claims.

Contra Cohen, the genesis of preferences is irrelevant in measuring the strength of the person's claim. This helps the state avoid the obligation of satisfying all the idiosyncrasies there are. The state could also avoid judging whether these idiosyncrasies are valuable or trivial. What is most important in a needs-based approach is the identification of essential component goods of religion which are part of the basis of distributing goods fairly in situations of moderate scarcity. This can be accomplished by using the norms of religion or relying on religious expert advice in determining whether an emergent religious practice is indeed part of a set of needs and the extent to which it implicates state responsibility, if any. The state should be careful not to treat religious citizens as if they are people who have expensive idiosyncrasies.

6.4 Conclusion

Part of the problem of distribution involves the treatment of religious and non-religious goods. In addressing this, it is an important step to think about the ways in which theorists regard religious goods. Scanlon presents a controversial case which compares claims of special interests and vital needs. I have argued that some special interests like religious goods can be plausibly understood as part of the category

of needs. This seems to be a strong claim because religious goods are only important for citizens who are engaged with them. Furthermore, the wide variety of individual practice of religion supports the idea that religious practices are actually individual preferences, or that they are only outcomes of a person's choice. In addition, some religious claims demand a large share of resources (e.g. building of a temple, pilgrimage) which many find unusual and unfair if they are included as part of state responsibility.

In reply, I have sharpened the concept of needs. Its range includes vital needs and those that enable citizens to pursue substantive conceptions of life. Vital needs includes those that we require, following Griffin's definitions, to function properly, survive, or avoid harm as human beings. In contrast, other needs refer to the essential components of conceptions of a good life (e.g. religion) that make it possible for them to be real options for people to pursue. In a needs conception, some claims by believers could pose reasonable limits on others because the sacrifice of essential goods of religion would endanger it as a unified and distinct good.

Some theorists suggest preferences as the appropriate concept to ground distributive claims. Preferences are understood entirely from a subjectivist perspective and under a person's overall control. Despite some of its strengths, the adoption of preferences as the normative concept to determine religious goods results in an individualistic notion of religion. This is not totally misleading because some religious practices like the wearing of religious dress or symbol, pilgrimages, and devotions are not widely shared among believers. In a preference conception, the value and meaning of the component goods of religion are largely defined by a person's level of desire, degree of sincerity, or intensity of temperament. Without reference to religion, religious practices are treated like any other preferences which do not have moral weight.

As an alternative, I have offered needs as a concept to accommodate religious goods in a coherent and unified way. The state could rely on a descriptive view of religion in order to identify the needs of believers

which could help in the adjudication of justice claims on goods. In some situations, claims based on vital needs would win over those grounded on other needs. But in a society where there are enough goods to go around, a fair distributive framework should be sensitive to a variety of goods which makes it possible for citizens to pursue meaningful lives. For believers, it is important that the needs arising from religion are taken into full account.

7

RELIGION AS A COLLECTIVE GOOD

I shall explore another aspect of the topic of religious goods and the problem of distribution. Most liberal theorists treat religion in its individual dimension, as either a variant of ethical independence (Dworkin), a function of individual choice (Cohen), a set of personal convictions (Taylor and Maclure), or an integrity-protecting commitment (Laborde). They are not entirely wrong in advancing this position because the individual dimension of religion aligns with a liberal's treatment of citizens as free and equal persons. However, there are aspects of religion that, strictly speaking, do not fall under individual choice. Some critics point to the social dimension of religion: rituals, festivals, common worship, and pilgrimages which bring individual members together as a faith community. For them, part of state responsibility includes serious attention to the social dimension of religion. A difficult challenge in accepting the critics' position is finding a distribution framework where a citizen's claim for resources is not unduly sacrificed when balanced with the demands of believers as a faith community.

In this chapter, I discuss the problem of distribution in relation to the accommodation of the social dimension of religion. First, I shall highlight the limitations of understanding and treating religious goods exclusively as individual goods. Second, I will evaluate the conceptual strategy of Laborde. She appeals to the notion of associational goods to accommodate the social dimension of religion. Although Laborde's proposal has theoretical advantages, her strategy tends to reduce religion to a social club. I shall explain why this perspective is

problematic. Third, I will point out some implications in adopting the notion of collective good in grounding distributive approaches. By appealing to the notion of collective good, the state could identify goods necessary for believers in engaging with religion, the extent to which state responsibility is implicated, and whether a non-adherent citizen's fair access to goods is compromised. This is part of my recommendation for a multifaceted conception of needs for the state to employ in accommodating religious goods.

7.1 Religion and individual goods

Most liberal theorists understand and treat religious goods as individual goods. There are advantages to this approach. To begin with, the adoption of an individualistic perspective closely aligns with the idea of the separateness of persons. By ensuring the separateness of persons, a liberal offers a framework in which social institutions are arranged in ways that protect each citizen's access to liberties and resources. Another conceptual benefit is that different individualistic concepts applied to religious goods help the state to remain within the limits of its competencies. Although I see these advantages, they do not take fully into account the social dimension of religion. Laborde suggests that we understand and treat some religious goods as part of associational goods as a way to accommodate the social dimension of religion. I shall examine her proposal to conclude this section.

7.1.1 Religious goods as personal goods

It is not entirely misleading to conceive religious goods as part of individual goods. For most liberal theorists, the claims of citizens are best assessed in an individual perspective. This conception closely aligns with the idea of the separateness of persons. From this perspective, the state ensures that the claim of each citizen is given equal weight in interpersonal comparison of benefits and burdens. Here, religious goods are conceived as part of a range of goods which are entirely under the individual agent's choice and hence, responsibility. This provides the state with a reasonable basis to exclude some private and personal goods from social policies. For instance, not all citizens include skiing among their hobbies or sports. Conceived as a personal

interest, the state could exclude skiing as part of social welfare and let market forces decide on the value of goods related to skiing. In this way, the state is not partial to any personal goods. It also allows its citizens take responsibility for personal goods as part of their pursuits of what they think constitutes a good life.

The freedom to choose is an important element in realizing religion. Individual assent requires that a believer is not forced or manipulated into having a religious commitment. Although there are instances in which some members might be under a heavy influence or illusion, individual consent is an important indicator of a person who seriously engages with religion as a good. Moreover, a believer enjoys a level of freedom in her exercise of some religious practices and the appropriation of beliefs in her life. Forms of religion, as Laborde argues, take different combinations: 'practices may or may not be communal, no assumption that beliefs somehow precede and supervene on practices, and rituals often give shape to, and embody, the religious life itself (e.g. the bodily discipline of Jewish or Muslim praying rituals)' (Laborde 2017, p. 205). The individual dimension of religion plays a central normative role in determining which goods and practices are important for the believer in living out her faith. Personal devotions like praying the rosary, the wearing of religious symbols, and embarking on some pilgrimages are common examples of individual practices of religion. It is not implausible to ground the claims of a religious citizen on either the concept of preferences or choice. As I have explained in the previous chapter, claims for resources based on religion as individual choice do not acquire special treatment. From an individualistic perspective, a believer's distributive claim has the same moral weight as that of a musician or sportsperson.

In offering a distributive framework that treats religious and non-religious goods equally, it is no surprise that most liberal theorists privilege the subjectivist aspect of religion as the normative dimension to ground justice claims. For example, Maclure offers the category of *meaning-giving beliefs* as the normative concept that interprets religious and non-religious goods. This category applies to a wide range of religious and non-religious beliefs, convictions, and

worldviews that form part of an agent's moral identity (Maclure 2018, p. 11). In Maclure's view, the state has interest in protecting some religious goods because they are part of protecting the capacity of each citizen to shape her own identity. Claims for religious and non-religious goods are treated equally because it is personal identity that performs the normative work.

This aids the state to avoid what Brian Leiter counts as egregious violations of religious accommodation – exemptions which impose unfair costs to public welfare (Leiter 2013, p. 2). Part of the problem, according to Leiter, is the insistence of many proponents of religious liberty on the normative relevance of the uniqueness of religion and ergo, its special treatment. He asserts that a Sikh boy carrying a *kirpan* is no different from another boy whose community rituals include the passing of a dagger or knife, and yet the latter case appears to have no chance of getting an exemption (Leiter 2013, p. 3). By appealing to Maclure's view, the Sikh boy does not need to refer to the religious meaning of a *kirpan* because he can ground his claim of carrying it on the importance of it to his personal identity. A non-religious person who has special interest in daggers could employ the same justification.

In slightly different manner, Laborde argues that some religions are more practice-oriented – they are focussed on communal life and in displaying their virtues (Laborde 2017, p. 15). Social practices like the wearing of religious dress or the public practice of devotion are strictly speaking not duties of conscience but they are nevertheless valuable because, through them, religion is manifested and the believer's personal integrity is sustained. Laborde offers the idea of integrity-protecting commitment (hereon, IPC). Laborde defines an IPC as 'a commitment, manifested in a practice, ritual, or action (or refusal to act), that allows an individual to live in accordance with how she thinks she ought to live' (Laborde 2017, p. 203–4). The notion of integrity provides the coherence between the aspects of one's self and one's ethical actions (Laborde 2017, p. 203). Laborde explains that the notion of individual integrity demands that persons act out of their particular and identity-forming commitments (Laborde 2017,

p. 204). In a similar mode to Maclure's proposal, the main advantage of adopting Laborde's IPC is that it treats religious and non-religious commitments equally. It preserves the conditions of fairness because the concept of personal integrity is content-neutral. In other words, it does not favour any conception of the good because it is the agent that determines the importance of her claim to her personal integrity. In this way, the state can apply equal treatment of religious and non-religious citizens based on IPC.

Another conceptual advantage of Maclure's and Laborde's proposals is the respect of the limits of state competencies. In adopting their approaches, the state does not need to refer to religion in its assessment of distributive claims. It could appeal to some elements and conditions of personal integrity to ground social policies. One of the often-employed approaches in law to accomplish this is through the concept of *individual sincerity*. Here, the claimant is asked to demonstrate why such practice or good is important in her life and whether there are plausible substitutes available for such practice or good. In this way, a distributive approach is sensitive to the importance of a good or religious practice to individual welfare. The state remains indifferent to the intrinsic value of these goods. It could avoid entanglements with religion because it is the citizen (via identity coherence or personal convictions) that determines the strength and moral weight of her distributive claim. In this way, the state can do without any reference to the kind and value of religion as a good.

In sum, from an individualistic perspective, it is the agent who determines the importance of religious goods in accordance to how she wants to live her faith. As an implication, religious goods are no different from other goods from the point of view of the state. It is the importance to the individual agent (e.g. sincerity, convictions, or integrity) which grounds normatively her justice claims. The main advantages of this are (1) it respects the separateness of persons, and (2) the limits of state competencies are not breached. Religious goods are not singled out for special treatment. They are protected just like any other good.

However, as I shall argue, a highly individualistic approach limits the understanding of religious goods and, as an outcome, religious citizens are treated unfairly. To this I turn in the next section.

7.1.2 Not only an individual good

Maclure's and Laborde's suggestions are plausible approaches for the state to accommodate religious goods. However, there are several concerns which are worth highlighting. First, in their proposals, it is the individual agent alone who provides the content and determines the strength of her claim. I mentioned some of the common approaches adopted to assess this: (1) the degree of the person's sincerity in meeting a religious obligation, and (2) the agent determining the value and meaning of a religious practice to her overall welfare. Religious and non-religious goods are understood solely from an individualistic conception (e.g. personal identity, individual convictions, IPC). Whilst this is important, it does not take into account the other dimensions of religion that are also salient in justice claims. Some claims involve other aspects of religion. Maclure concedes that even if the individual dimension of religion is essential in determining the sincerity of the believer and her understanding of the value of her belief or practice to her welfare, this approach is ill-equipped to deal with cases that implicate the institutional aspect of religion (Maclure 2018, p. 19). Maclure calls our attention to the dimensions of religion which are excluded in an individualistic conception of religion. For example, in major religions like Catholicism, Judaism, and Islam, the social dimension is a strong and necessary element. This dimension includes social norms, a set of religious experts, and shared rituals and standards of excellence. These are essential elements which go beyond a member's observance or personal interpretation. In addition, the moral precepts of religion are not only expressed individual lives. Some of these moral principles (e.g. concern for the poor, religious education of the young, propagation of faith) are realized through the running of institutions like adoption agencies, schools, hospitals, and other services. Maclure considers these cases as part of the social dimension of religion.

Second, if confined within the limits of individual choice, then believers are prone to the challenge of choosing otherwise. In other words, since religion is subsumed under individual responsibility, then believers can be persuaded to adapt, abandon, or revise some of their practices as part of the sacrifice they can reasonably make. For example, worship and devotional prayers can be performed in different individual forms. Or that the wearing of the *hijab* is considered to have the same moral significance as a baseball cap because it is personal integrity and not religion which grounds its meaning. In a comparative weighing of claims, the meaning and value of such goods to an agent's personal identity largely defines religion and its component goods. This makes religious goods, as I have argued in the previous chapter, part of a range of mere preferences.

Take the case of individual sincerity. Its main weakness as a concept to ground distribution frameworks is that it conflates religion with religious temperament.[68] Crane points out that there are some individuals who have the urgency to search for the ultimate meaning of life but are not religious believers (Crane 2017, p. 51). They display the same degree of fervour and sincerity of believers; however, they have not embraced or understood religion in a complex way. Crane identifies them as potential believers. Similarly, there are believers who lack the temperament or the proper religious disposition: people who go through the motions of the rituals and practices, those who do not display a strong sincere attitude to religious beliefs, and members who have some doubts about some of the beliefs they are expected to hold (Crane 2017, p. 52). If the state relies exclusively on individual sincerity as the measure of the strength of the person's claim for goods, then the state is liable to misidentify the value of religious practices and rituals. This occurs because it is the disposition of the person that determines the strength of the claim. In such an approach, a claim from a citizen who has a religious inclination to football is no different

[68] Crane explains that Nagel uses *temperament* to refer to the person's disposition of character which is greater than having a belief. It involves the complexity of individual psychologies that point to a sense of hope or aspiration (Crane 2017, pp. 50–51).

from that of a poor believer who desires to go on a pilgrimage to fulfil her religious obligation.

Although Laborde has correct intuitions in arguing that some religious practices are not strictly speaking duties of conscience, her view of the other dimensions of religion still falls within an individualistic conception. Her IPC proposal together with Maclure's approach suffers from insufficiencies because religion is understood and treated entirely from an individual standpoint. To address this, Laborde suggests employing associational goods as an alternative strategy. To this I turn in the next section.

7.1.3 Why not associational goods?

A proponent of an individualistic conception of goods would suggest that some religious goods be included in the range of associational goods. In this strategy, religion shares the same normative features as a club or association. This covers the institutional and social dimensions of religion by counting religious groups as agents who have legitimate claims. For example, some religious churches run adoption agencies, or bookshops. They even act as corporate agents who own properties like buildings, land, or schools. These activities are no different from those performed by social clubs or like-minded associations. In order to treat religious and non-religious goods equally, Laborde proposes that the state rely on the main elements of the freedom of association (Laborde 2017, p. 171). In doing so, the state can determine in a fair manner when and whether religious groups should be exempted from general laws of equality and non-discrimination (Laborde 2017, p. 171). For Laborde, *group* is a loose term she applies to communities or corporations depending on their purpose (Laborde 2017, p. 173). In Laborde's approach, the main elements of the freedom of association (e.g. collective integrity) do not discriminate against any group. In other words, religious groups do not acquire special treatment because they are treated like any other group or club.

There are advantages in adopting Laborde's recommendation. Cases abound in which faith communities act as employers in operating

hospitals, adoption agencies, and schools. From the perspective of the state, they provide socially valued services to citizens and they are no different from non-religious groups offering the same services. Furthermore, at the level of law, churches merit the same treatment as non-religious corporations because they are registered as legal entities. However, the critical worry about Laborde's strategy is its exclusive reliance on the view of religious citizens as groups or associations which could be treated exclusively using the elements of freedom of association. Some individual claims of religion could conflict with group claims. For example, a female member's claim for access to priesthood on the grounds of non-discrimination would endanger the integrity of Catholicism as a religion because the doctrine of male-only priesthood is an essential belief. By treating the Catholic church as a group, its beliefs, practices, and norms which are suspected to violate conditions of equality and non-discrimination are subject to state scrutiny. Without any reference to religion, Laborde's approach presents a disaggregated picture of religion in which the institutional dimension conflicts with individual claims based on equality and non-discrimination.

In addition, Laborde needs to contend with problems related to positing groups as additional entities other than individuals. To think of Muslims, Jews, or Catholics as groups other than their individual members would require distinguishing their corporate identity from personal identity. In other words, one counts a *group* as an agent which is different from the individual member who forms part of it. This affects the adjudication of the claims of an individual member from those of her group. In complicated cases, the state has to rely on a conception of group identity. Here, the agents of the state have no other possibility but to exceed the limits of its competencies.

Furthermore, if the state treats religious goods as part of associational goods alone, then it can end up asking believers to make certain sacrifices that they might not be able to do. This is partly because a social club or association rely more closely on the category of preferences which are then more open to trade-offs. From this perspective, believers are seen as associating with each other for

a special interest or passing hobby. However, the membership to a religion goes beyond that of a social club. Crane explains that the belongingness to a religious faith is an essential element of one's identity which is, as he explains quoting Roger Scruton, a 'network of relations that are neither contractual nor negotiated' (Crane 2017, p. 94). For instance, the practices, shared beliefs, and rituals of believers form a tradition of social norms and ways of living that have deep historical roots. The social dimension of religion contains social norms and reasons of action that connect each believer in a unified pursuit of religion. Although there is a level of freedom for individual practice and different levels of sincerity, believers generally are not free to depart from what their religious authority or tradition tells them to do.

Some might argue that associations or clubs have shared social norms which make them similar to religious groups. Religious groups only vary in content; but nonetheless, they share general normative features of clubs or associations. In reply, I partly agree that a religion shares some features with associations and clubs. However, its core content – the believers' relationship with the transcendent – makes it distinct from others. This core element is the foundation of rituals and practices which form the community and in which believers are integrated into a particular way of life. This distinctive feature, as Crane points, out makes religion closer to growing up in a family or belonging to a tribe, than joining a club or association. It is a way of life rather than a shared hobby or group interest. Rawls thinks along similar lines when he differentiates a community from an association. He explains that a community is 'a special kind of association, one united by a comprehensive doctrine', whereas members of an association, 'although often have shared ends, do not make up a comprehensive doctrine and may even be purely instrumental' (PL I, §7). He cites the church as an example of a community rather than an association.

In sum, the employment of the concept of associational goods as a strategy to accommodate religious goods has serious theoretical weaknesses. Although it complements the individualistic conception

of goods, believers are treated like members of social clubs. This overlooks the normative relevance of the distinctiveness of religion as a good. Furthermore, the state is entangled with the problem of counting faith communities as groups which are separate entities from individual agents. I argue that the social dimension of religion has not invited serious theoretical exploration. To this I turn in the next section.

7.2 Some religious goods as collective goods

I offer the idea of collective good to accommodate the social dimension of religion. Some theorists disagree with this bold claim because the wide variety of individual practice of religion shows that religion is hardly a collective good. Second, I suggest that some collective goods could merit state assistance. My defence of this proposal includes a response to the demandingness objection. This objection states that claims based on collective goods are incompatible with the principle of equal share of resources. In addition, there are joint enterprises (e.g. mafia, drug cartel, cults) of citizens which do not merit state assistance. One would argue that sustaining a religious joint enterprise is not only objectionably partial but it also misunderstands the demands of religious commitment. I shall address these concerns.

I begin with a discussion of the notion of collective goods.

7.2.1 What are collective goods?

A plausible way to understand religion and its social dimension is through the idea of a collective good. On a minimal view, collective good refers to individuals who realize *jointly* a conception of the good. In other words, individuals with like-minded interests cooperate in realizing a conception of the good. Conceptions of the good are not limited to individualistic pursuits. Some conceptions exist as goods only through joint pursuits of individuals. For instance, part of what enables a life of a pianist to be a real option for citizens is due, in large part, to the social norms, tradition of excellence, and shared resources in piano playing as a good. Within it, there are several groups (e.g. those who like Bach, Beethoven, etc.). Piano groups are only one

element in the social dimension of piano playing. They share with other individual pianists, for example, history, norms, and tradition; and with others who, although focused on a particular type of music, regard piano playing as part of their conception of the good. Similarly, practitioners of the same profession form a community to help them become the best practitioners in their field. This type of joint enterprise is not exclusively understood in terms of an aggregation of individuals or the positing of a new entity like groups. Its complexity lies in the combination of an existing referent good (e.g. culture, religion, arts, music) and agents cooperating with one another in a unified engagement with such a good (e.g. piano players, religious believers, painters).

In a similar vein, within the Catholic religion, there are conservative groups, liberal socialists, and Marxist groups. In Islam, there are Muslim women who fight for equality. There are also Imams and Muslims who are liberals. Taken collectively, they are Catholics or Muslims. There is no separate existing Catholic group or Islam group. As practitioners of religion, they share elements in Crane's view of religion.[69] For example, Catholics subscribe to a set of doctrines and beliefs, perform religious practices, and enjoy internal goods. They share a need for a church. They avail themselves of the same set of sacraments. They perform the same rituals based on a system of beliefs, history of doctrine, and moral code. There is no separate Catholic group. Rather, they are taken collectively as Catholics. This is helpful for the state to determine the implications of its policies and actions without the need of counting separate existent groups.

A critic might be concerned that positing a community as an entity which is entitled to a share of goods is problematic in that it posits

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[69] Recall in Crane's description of religion, there are four elements: (1) systematic, which pertains to the coherent network of ideas and practices, (2) practical, which involves activities and performances both collective and individual, (3) a comprehensive meaning of life that is an attempt to provide the meaning of human life, and (4) appeals to the transcendent or sacred. His descriptive view of religion has normative implications in determining what belongs to the needs of religious citizens (Crane 2017, pp. 6–9).

this entity over and above individual citizens. For example, Christian communities, Islamic faith communities, or indigenous peoples could be counted as entities other than the individual agent. This adds to the complication of thinking about religious goods as composed of individual and collective goods and further, the allocation of resources that might favour a particular group.

To avoid positing a group over and above individuals one might adopt Munoz-Dardé's strategy of contrasting what one does as an individual and what one does *jointly* – that is with others (Munoz-Dardé 2013, p. 238). What we do jointly need not posit a different entity other than the individuals involved (Munoz-Dardé 2013, p. 238). To return to our question, spiritual goods are realized in common worship where individual members, following shared norms and ritual prayer, are gathered collectively. Whenever believers gather to worship, they act as *one church* which is impossible to disaggregate individually. By acting in concert through rituals and norms, the gathered members express their belonging to a church. Other religious practices like the sacraments of baptism, marriage, and funerals are performed following social norms in a public gathering at a place of worship (e.g. church, mosque). These are occasions in which believers act as one church. Here, religion is realized as a concrete good through its social dimension.

This then implicates goods. For example, the sacrament of marriage in Catholic religion should be performed in a sacred building. Or the observance of religious dietary laws requires the availability of certain animals and the manner they are slaughtered should follow certain moral prescriptions. My idea of collective good aligns partly with Seumas Miller's conception. For Miller, collective goods have three main elements: (1) 'they are produced, maintained, or renewed by means of the joint activity of members of organizations (e.g. schools, hospitals, welfare organizations, agribusinesses, electricity providers, police services – that is, by institutional role occupants); (2) they are available to the whole community, for example, clean drinking water, clean environment, basic foodstuffs, electricity, banking services, education, health, safety, and security; and (3) they

ought to be produced (or maintained or renewed) and made available to the whole community because they are desirable (as opposed to merely desired) and such that the members of the community have an (institutional) joint moral right to them' (Miller 2009, p. 4). If applied to religion, believers enjoy the internal goods of religion (e.g. community, relationship with transcendent) and they are made available to non-adherent citizens. Terms of justice affect the way social institutions produce and make available some collective goods. For instance, a policy which restricts access to buildings for the purpose of common worship prevents believers from gathering as a church. The ban of wearing religious dress in public affects an entire community of practitioners and not only individual members who chose to wear it. This policy tells citizens that they could only display their Muslim identity in a restricted and private manner. Without these goods, believers cannot realize religion in a coherent way.

A proponent of Laborde's approach might still argue for the sufficiency of the concept of associational goods over collective goods. She would raise the point that associational goods range over joint enterprises whether religious or non-religious. In addition, different collective goods can be accommodated through the freedom of association. In reply, I partly agree that the elements of freedom of association can accommodate a diversity of collective goods. However, in Laborde's approach, it is the concept of collective integrity that normatively interprets what religious goods are. As another content-neutral concept, collective integrity is thought to apply to religious and non-religious goods. It does away with any reference to religion and why these collective goods are important to believers in general. The normative implications of the distinctiveness of religious goods are overlooked; as such, the needs of believers would be understood and treated the same as those of nonreligious associations or clubs.

Consider the case of Kenora College, a learning institution dedicated exclusively to undergraduate education (Cohen 2011, p. 205). Some young professors argue for the introduction of PhD programmes because (1) this would enable Kenora to cater to a wider range of students, (2) the presence of PhD students would help

improve the learning environment, and (3) the tutorial service to undergraduates would be preserved (Cohen 2011, p. 205). Although the senior professors acknowledge the plausibility of the arguments from their junior colleagues, they assert that Kenora's pledge to serve only undergraduates is part of its *distinct character* and the main reason why the learning institution exists in the first place (Cohen 2011, p. 206). Cohen emphasizes that the distinct character of Kenora is a relevant practical consideration in determining its future. The nature of its collective goods includes this distinct element. For Cohen, something is seriously amiss when the future of Kenora is merely understood in the production of good results or the benefits that can be maximised (Cohen 2011, p. 207). In other words, the question of what the institution is is as important and perhaps more necessary than what its goals are and how best to achieve them. In a similar vein, Jan Feldman presents a case where in Israel, there is a rising number of Haredi (ultra-orthodox Jewish community) living below poverty line. Addressing this economic concern involves a reference to Haredi's way of life as a practical consideration in deliberating economic and educational policies and approaches (2021, p. 30). The Haredi community is at an economic disadvantage because of its exclusive religious education (i.e. men study the Torah full-time, they maintain strict gender separation in public spaces) that deprives them of the basic STEM skills and level of English proficiency required for employment (Feldman 2021, p. 32-33). The concept of collective goods which I suggest permits the state to refer to religion and the kind of collective needs believers have which their communities aim to serve. This is important, for instance, in determining the effects of

policies on the Haredi community as it is balanced with the concerns of poverty and employment of citizens.[70]

Lastly, there are two additional concerns which need addressing about the idea of collective goods. The first one is related to perfectionism. Rawls and other liberals warn that perfectionist values should not be the reasons which ground public funding of universities, museums, arts, sciences (JF IV §46). Even if they are considered valuable in themselves and that some citizens may benefit from them, the arrangement of social institutions should settle matters of fundamental justice first before allocating funds to pursue arts and sciences (ibid.). If applied to religion, a liberal could not accept the proposal of distributing resources in such a way as to fund magnificent cathedrals and pilgrimages because these religious goods are only valuable to a certain segment of its citizens. Second, Rawls and other liberals argue that it is not part of state responsibility to sustain particular ways of life or conceptions of the good (PL V §6). In the case of religion, the state is not unfair if, through its policies, some forms of religion lose adherents over time or are incompatible

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[70] The case of Haredi community involves different political issues which are beyond the limits of this chapter. To cite a few based on Feldman's research: 1. the demands of Haredi men for gender segregated classrooms and male professors are opposed by some who worry about the perpetuation of wrongful discrimination to women, 2. the Israel government subsidizes Haredi schools on the basis of multi-culturalism and the Haredi rabbis have managed to acquire an exemption from state scrutiny of public funds. This alarms some groups because the Haredi community benefits from those funds without proper accountability, 3. This generates a strong suspicion that the growing demands of Haredi rabbis for exemptions from social and educational policies are the main causes of Haredi poverty.

There have been some promising interventions. Feldman mentions the strategy of Ben Gurion University which provides counselling, scholarships, and tutoring to Bedouin women (Bedouins are similar to Haredi in terms of demanding gender segregation) to acquire skills necessary for employment. This strategy was applied by the Technion to Haredi students and some of them accepted it. See Feldman 2021, pp. 49-50.

with political liberalism. It is not part of state duty to preserve religious forms of life.

In reply, there are collective goods which are necessary for some citizens to realize substantive conceptions of the good. This aligns with one of the key aims of liberalism, namely to advance each person's good (Scanlon 2018, p. 6). I agree with Rawls that the state should refrain from distributing resources on the grounds that it should sustain a particular religion. In this case, it should not be a particular conception of the good which motivates the distributive principles but rather, its citizens. And there are citizens who pursue jointly conceptions of the good, some of which are communal in nature like religion. The state should pay attention to the needs arising from what its citizens pursue jointly. These needs are partly expressed in their shared social norms, standards of excellence, and tradition which makes it possible for religion to exist as a real good and meaningful way of life.

In sum, the idea of collective goods aligns with the liberal's concern for the needs of individual citizens. It is not incompatible with the idea of the separateness of persons. Social institutions should pay attention to those things that arise from our cooperative or joint endeavours (Munoz-Dardé 2013, p. 239). Society incurs greater harm to its citizens, some of whom practise religion, when collective goods are totally excluded from state responsibility.

7.2.2 The social dimension of religion

Let me now offer some arguments for understanding the social dimension of religion as a collective good. First, a closer inspection of what a religious practice is shows that it is not solely an individual affair. MacIntyre offers a conception of practice which highlights its social dimension. He argues that participation in practice demands that the person submits to the standards, authority, and paradigms peculiar to the practice (Mulhall & Swift 1992, p. 83). Part of what this means is that the proper execution and meaning of practice is not exclusively determined by personal benefits or effects to individual identity. For example, the novice in chess grows to become a grandmaster by meeting the standards of chess excellence, her internalization of the

rules and games, and the development of the skills and imagination relevant to chess-playing (MacIntyre 1981, 2007, p. 188). If applied to religion, communal religious practices like worship and pilgrimages to holy sites are performed, determined, and defined according to social norms and standards of excellence based on faith. The aim is to engage with religion in a coherent, collective, and sustained manner. Even individual activities like the wearing of religious garb, the adherence to dietary laws, and personal prayers are not independent from the social norms and shared tradition of believers. They guide believers into the proper practice of religion.

Second, the religious view of life is expressed concretely in a coherent system of beliefs, code, social norms, practices, and rituals. A believer is initiated, instructed, and formed together with other believers through shared goods. This social dimension of religion makes it distinct. Crane points out that the distinctiveness of religion lies in the believers' relationship with the transcendent (Crane 2017, p. 105). Part of entering into this relationship with the transcendent is the division of the world between sacred and profane things. For a believer, sacred things are not to be treated the same as ordinary things. The prescriptions in treating sacred things protect the believers' relationship with the transcendent. Religious norms, practices, and rituals guide believers into (a) the proper way (i.e. the sacred manner) of doing things in order (b) to express their relationship with the transcendent correctly, concretely, and in communion with other believers.

Take for example, sacred sites like the *Kaaba* in Mecca (Crane 2017, p. 108 ff). It is a sacred place for Muslims all over the world, the orientation which they should take whenever they pray, and a required pilgrimage (*hajj*) for each Muslim. To a non-believer, it may be a mysterious ordinary box or a superstitious object having magical powers. However, for Muslims, its role in their relationship with the transcendent is central and unique. The role of the *Kaaba* in Islam cannot be exhausted by an individualistic conception of religious practice. Muslims might have different views and degrees of sincerity in their worship of *Kaaba*. However, as a faith community, the *Kaaba* is an essential good which defines what it means to be Muslim collectively.

Recall MacIntyre's conception of internal goods. A citizen who is engaged in religious practice enjoys goods peculiar to religion which she shares with fellow believers. This includes a deep connection with the sacred, a shared coherent and complex worldview, and a robust community life. Part of the set of internal goods is the collective spiritual experience of the sacred and the strengthening of the identification of all believers as Muslims in general. Although the person still has to make a choice whether to follow the precepts surrounding the *Kaaba*, she is still bound by the social norms and the value of the *Kaaba* in Islam. A state policy that does not pay any attention to the religious significance of the *Kaaba* does not only restrain the exercise of individual choice as regards to public worship. It also prohibits a faith community from benefitting from the internal goods of religion which are made available through religious practices.

From this, we can derive an understanding of religion as belonging to a different category of conceptions of the good. Religion unites believers in a way that goes beyond a mere association. Crane explains that social practices strengthen the identification of a believer to her community to which she shares the same pattern of life (Crane 2017, p. 89–90). Being part of a faith community provides the context in which a believer practises religion in a unified and socially embedded way. Social practices like the wearing of religious garb, dietary laws, or marriage rituals frame a person's moral worldview and how she relates with others. Even in religions that do not have a strong social dimension (e.g. Protestant versions, spiritualism), their members are still bound by a tradition of shared norms, beliefs, and practices.

Furthermore, I have mentioned that membership to a religion is partly determined by a *calling*. Not all individuals for example are called to be Catholics, monks, or Muslims even if these are options that a person can choose. In addition, even if each individual member testifies to being called personally to the faith, she still has to meet the community and join them in their collective practice of religion. In fact, her membership of a religion is sealed by a ritual that binds her

to the community in a deep and permanent way.[71] In a general survey of major religions around the world, we see many individuals living as Catholics, Muslims, or Orthodox Jews yet they are part of a faith community through rituals that confirm their individual calling to the faith and the performance of shared practices. As believers belonging to a community, they share a common pursuit of realizing religion through festivals, sacraments, pilgrimages, worship, and moral code.

Moreover, citizens who are engaged with religion suffer a loss of a particular life they have even if it might be possible for them to opt for and be successful in other conceptions that do not include religion.[72] This loss is assumed as part of a collective cost – several or more individuals who are jointly pursuing a conception of the good are left without means, opportunities, and goods. To ask believers to choose otherwise seems to demand an even greater sacrifice if they are taken collectively. The state is invited to consider some of its policies which might endanger the availability of some goods which are essential to the practice of believers as a faith community.

Last, one can hold the claim that religion is a collective good even if not all are engaged with it and enjoy its benefits.[73] For example, a

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[71] Pink highlights the fact that 'the baptized, are obligated by their baptism to fidelity. This obligation can be coercively enforced by temporal as well as spiritual punishments, through penalties for heresy and apostasy'. This shows how the religious bind is more lasting and deep compared to associations or social clubs and even if individual members leave and choose other religions, they are still subject to some form of penalty (Pink 2013, p. 26).

[72] Munoz-Dardé employs Raz's case of a pianist who had broken fingers to illustrate a point. Imagine a pianist who, because of permanent broken fingers, opted out and became a successful business accountant. Despite his success in a new life, he still lost a life he had as a pianist (Munoz-Dardé 2013, p. 238).

[73] Munoz-Dardé uses a further contrast between *what is good for us* versus *what is necessary for us*. What is good for us, from an agent perspective, is true only iff it is read distributively – that is it is good for each individual. On the other hand, *this is necessary for us* points to cases in which something that we need as agents collectively without denying that an individual might argue that it is not part of her need (Munoz-Dardé 2013, p. 239).

Catholic might not consider the pilgrimage to Notre Dame as part of her need as a believer. Even the pilgrimage to the Holy Land is not a duty of conscience for every Catholic. However, other believers consider pilgrimage as part of their essential needs. For instance in Islam, each member is exhorted to make the pilgrimage to Mecca at least once in her life, and it is considered as part of the five pillars of Islam. Though not all citizens would benefit from it, without the possibility of a pilgrimage to Mecca, it is near impossible for citizens who are practicing Muslims to become true Muslims. In addition, Islam as a religion loses part of its distinctiveness and coherence as a good.

Consider the case of Jehovah's Witnesses' claim for alternative blood treatments.[74] This is admitted as part of public health services only if such blood treatments pass a public benefit test. In a public benefit test,

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[74] Rossana Trivino investigates a landmark case that involves a reimbursement claim for private medical treatment from a Jehovah's Witness which the Court refused to grant on the grounds that as a general rule, reimbursements are not permitted because of universal and non-discriminatory public health coverage (Trivino 2013, p. 280). Private medical treatment must be supported by compelling reasons as a preventive measure against onerous medical treatments that are otherwise provided for by public health care (ibid.). It also implies that even if patients have the right to choose, it does not necessarily entail that they would be reimbursed for the costs of their private treatment (ibid.). In other words, patients ought to fund private medical treatments as dictated by their religious beliefs if they so choose (ibid.). Trivino observes a pattern of increasing number of cases that grant reimbursements based on 'unjustified refusal' of the health care provider to offer such treatment (ibid.). Over the years, judges have interpreted the refusal of Jehovah's Witnesses for blood transfusions as not breaching the limitations (e.g. related to public order, protection of public health care, protection of other rights) of freedom to worship (ibid.). In those cases, they have determined that such treatment could have been performed without significant cost whilst respecting the religious beliefs of patients wishing to avoid blood transfusions (ibid.). Trivino evaluates that the *standard public health care* argument has been challenged over the years as a convenient defence of ignorance, fears, and excessive caution on the part of medical practitioners each instance they are tasked to perform treatments that do not involve blood transfusions (Trivino 2013, p. 281).

the blood treatment should be demonstrated to benefit others. Many would find it unacceptable that the state grounds its health care policy solely on protecting religious beliefs because doing so only favours Jehovah's Witnesses viewed as a religious group. As an alternative, one can ground the claim of Jehovah's Witnesses on collective need. Recall that for Rawls, a church is regarded as a community rather than an association. Its members are bound by a comprehensive doctrine. Religion, I have argued, is not solely a comprehensive doctrine. It must not only be understood as a comprehensive doctrine, but also as tradition: as such, religion is comprised of internal goods, norms, and social practices that bind believers into a community. Based on this substantive conception, one can distinguish the collective needs of believers which could merit state assistance.

I do not deny the importance of a public benefit test as part of the strategy to determine whether a hospital treatment should be included in public health. Nor do I claim that a religious group should be treated in a more favourable manner than others. However, Jehovah's Witnesses are citizens who, due to particular beliefs, have needs that the state should give attention to and weigh together with other factors in a justice claim. It would not be unreasonable for the state to at least consider their request for alternative blood treatments as part of public health services. The claim could be partly grounded on the needs of citizens who practise a certain religion even if Catholic, Muslim, or non-adherent taxpayers would not benefit from it. It is a relevant practical consideration aside from the cost of the treatments and other factors. As Rosanna Trivino observes, such treatments can be performed in public hospitals without significant cost, whilst respecting their patients' religion (Trivino 2013, p. 280).

In sum, both MacIntyre and Crane give us to reasons which strongly support a view of religion as a collective good. This again is not to negate the importance of individual choice. Rather, this perspective highlights the normative relevance of the social dimension of religion. Religion brings together individuals who are engaged with it and binds them in a unified pursuit. In this case, we are dealing with two important dimensions of needs – individual and collective. The

challenge then is to accommodate this in a distributive framework which is concerned with protecting each citizen's fair access to goods. To this I turn in the next section.

7.3 Distributive implications of religious goods conceived as collective goods

Part of finding terms of justice is to ensure a distribution of goods for which the state itself is not alone responsible. This includes the set of goods necessary for some citizens who pursue communal conceptions of life. This is a complex problem. First, the state has to employ a set of reasons to distinguish the kind of joint enterprises which might involve state responsibility from those which are best left to social institutions. It would be odd for the state, for example, to consider claims of collective good from a mafia or drug addicts. Second, the treatment of believers taken collectively should not be justified on grounds that religion is better or more valuable than other goods. Third, the state should be careful not to overcompensate citizens' claim for collective goods. Doing so would treat believers as beneficiaries of social welfare.

I suggest that the state employs a two-step approach: (1) to recognize believers as belonging to a community and (2) this belonging requires reference to what religion is in order to identify its essential collective goods. The state could rely on a descriptive view of religion, for example, Crane's description of religion, to identify the necessary collective goods of religion which might require state assistance. One of the conceptual strengths of relying on a descriptive view of religion is that the state can determine the weight of component goods of religion in a given justice claim. I have mentioned common worship, some pilgrimages, and the request for blood treatments as examples of a range of paradigmatic cases.

In reply to the challenge of some joint enterprises which are offensive or eccentric (e.g. mafia or drug cartel lifestyles) the state could appeal to one of Miller's conditions of the collective good. He stipulates that a collective good should be desirable and not merely desired by those who are engaged with it (Miller 2009, p. 4). One could interpret this

together with the harm principle. In other words, the availability of a collective good should not be destructive or detrimental to others and to those who are engaged in it. For example, drug addiction is harmful for those who are engaged in it and in society in general. Religious cults that include infant sacrifice as part of their rituals also count as harmful collective enterprises. Other examples include forms of religion which appeal to violence and which are ready to co-opt state power to further their agenda. Moreover, it is impermissible to violate fundamental liberties and this introduces a further limit on the range of permissible joint enterprises.

As a response to the concerns about perfectionism, the adoption of a descriptive view of religion helps the state avoid the threat of relying on intrinsic values or strong perfectionist ideas. A descriptive view of religion forms part of practical considerations in understanding the needs of believer citizens, some of which are collective. The moral weight of the claim of collective goods is based in part on needs: these goods are necessary for believers to engage with religion as a good. Goods are not distributed based on the reason that religion is more valuable than other goods. Thus, the state can be agnostic about the value of religion and it can avoid a perfectionist understanding of the reasons to distribute religious goods. The state does not aim at satisfying the preferences of each believer. Nor is it an instrument to advance religion. Rather, state policies protect some goods because they address the needs of believers taken collectively.

To take a classical example, namely Rawls: he argues that reasonable conceptions of justice should not aim to promote distinct virtues and values of the liberalisms of autonomy or individuality, or of any other comprehensive doctrine (PL V, §6.3). But this should not be interpreted exclusively as individualistic. Nor is it the case that the state should be indifferent to collective goods. For example, Rawls's distributive principle regulates a list of primary goods which supports a range of reasonable comprehensive doctrines. Rawls explains that the difference principle also maintains the worth or *fair value* of liberties. Fair value of liberties is not exclusively determined in quantifiable terms. Rawls identifies poverty, the lack of material means, and

ignorance as some of the obstacles that affects the worth or value of liberties – that is the usefulness of the liberties to the person (PL VIII, §6). If applied to religion, the unavailability of goods like churches, the ban of wearing religious dress in public, or the desecration of sacred sites are cases which diminish the fair value of religious liberty.

One of the main aims of the distributive principle in political liberalism is to ensure that no religion or comprehensive doctrine can influence and manipulate state powers to promote their own agenda. This does not entail that the state should observed absolute neutrality with respect to religious goods. It can have good reasons to subsidize for example faith schools or alternative blood treatments, because these are goods necessary for citizens who belong to a faith community which cannot be produced or maintained by the efforts and resources of individual members alone.

A critic might advance a nuanced approach about collective goods. She could admit that there is a diversity of collective goods given the various social institutions (e.g. universities, churches, scientists) in a society. She could insist that collective goods are best left to civil institutions. For instance, Miller argues that the sufficiency of a normative distributive account which implicates a system of social institutions depends in large part on the nature of that particular institution (Miller 2009, p. 10). For Miller, prisons have a different purpose and nature compared to universities and they have diverse needs (ibid.). A critic might employ Miller's arguments to support the claim that state responsibility should be limited to universal needs (e.g. food, health) and some public goods. It could exclude collective goods.

I partly agree with Miller that the range of collective goods is defined specifically by the nature or purpose of institutions. I also concur that the state has to face the demandingness objection about the limitation of its competencies in sustaining a variety of collective goods. However, the coercive powers and resources of the state have wide-ranging effects on the kinds of collective goods there are in society and, as a result, the extent of the range of conceptions of the

good that are available for its citizens to reasonably pursue. Universities and churches, for example, cannot sustain their existence totally independent of state power. In certain cases, they need some form of assistance and they are not entirely exempted from state scrutiny. Even if a university declares that its monies and resources are totally private donations, such funds are still subject to the taxation powers of the state. Moreover, as an institution which is part of a wider social network of learning, a university is affected by changes in norms, traditions, and practices. It is also prone to abuses which proper state regulation can address. Thus, the state cannot avoid referring to the kind of collective good and social institution that produces it in a justice claim. It cannot remain neutral because some social policies affect the way particular collective goods are produced by certain institutions.

A very limited notion of state responsibility would leave the availability and production of the goods of arts, culture, sports, or religion to market forces because they are construed as private collective goods. Although this shields the state from exercising ethical judgments, essential collective goods which make religion possible are vulnerable to market valuation and trade-offs. If one accepts my perspective, I propose that the state identifies which collective goods are essential and how best to protect social institutions that make them available.

In sum, collective goods are understood as part of a needs account. My argument for collective goods does not entail that the state should satisfy all of its citizens' joint enterprises, nor does it include all religious goods. It could set the limit by employing a needs conception which determines the extent of state responsibility to religious goods. It is helpful for the state to rely on a descriptive view of religion in order to determine the extent of its responsibility.

7.4 Conclusion

Part of the problem of distribution is to respond to claims which involve the social dimension of religion. This includes a critical examination of the ways in which the state treats some of its citizens,

those who are believers, taken collectively. I have proposed that the state should view some religious goods as essential collective goods. This complements my suggestion in the previous chapter where I have argued for religious goods as part of a person's needs.

Some contemporary liberal theorists (e.g. Laborde, Maclure) agree that religious goods are not merely matters of personal preferences. For them, religious goods comprise part of an agent's moral identity (Maclure) or a fundamental element in shaping one's personal integrity (Laborde). As a response to the problem, they offer individualistic concepts (e.g. meaningful personal convictions, individual integrity, and personal sincerity) to normatively interpret religious goods. The advantage of this, they argue, is that religion is treated equally with other personal projects and non-religious ethical convictions. However, I have resisted part of their claim because religion is not simply a personal good or a function of individual integrity. Although there are individual practices of religion, a closer inspection of major religions highlights the normative importance of its social dimension. To account for this, I have advanced the notion of a collective good. Part of it refers to the needs of believers who engage with religion in a communal way. Some religious practices depend on shared norms, interpretation, standards of excellences for its function and meaning. Believers are not simply members of a social club or an association. They belong to a social institution which produces collective goods that address part of their needs as believers.

Liberals should balance the recognition of these needs with the concern of protecting each person's fair access to liberties and goods. In other words, they have to find a perspective for the state to employ to address in a reasonable manner each person's good, in its individual and collective dimensions.

8

TOWARDS A NEEDS-BASED DISTRIBUTIVE APPROACH

I have argued for a multidimensional conception of needs for the state to adopt in understanding religious goods coherently. This view asserts that there are goods necessary for a citizen who practises religion. It also recognizes the needs of believers as part of a faith community. In trying to meet its citizens' needs, the state is asked to be sensitive to the diversity and complexity of goods in society. In treating religious goods as part of needs, the state accommodates to a wider extent religion as a unified good.

In this chapter, I shall discuss the plausibility of a distributive approach based on my suggested conception of needs. It offers an understanding of the distribution problem which challenges the views of liberal neutralists and political liberals who subscribe exclusively to individualistic concerns in grounding frameworks for fair distribution of goods. It also attends to some concerns of critics who advocate for the distinctiveness of religion as a good.

In the first part, I argue that a distributive approach based on the concept of needs is compatible with Rawls's notion of primary goods. My recommendation departs from some liberal theorists like Will Kymlicka who suggest placing religious goods as a separate item in the index of primary goods. I shall expound some weaknesses in Kymlicka's approach. In the second section, I offer an account based on Wiggins's framework for the notion of needs. I shall apply it to claims involving religious goods. From the perspective of a needs

account, the state can envisage the extent to which it is responsible for religious goods. I recommend that a *responsibility* condition be added to Wiggins's approach to enable the state to draw reasonable limits of its accommodation of religious goods. Since believers are equal participating members of a liberal polity, their needs claims would have to be weighed against that of others. My proposal does not entail that the state has an obligation to treat religion in a special way via social policies. This addresses the fears of some political liberals who might misconstrue my suggestion as privileging religion and therefore, compromising impartiality of state action.

8.1 Primary goods and religion

In what follows, I advance the claim that a distribution approach based on a needs account is not in contradiction with Rawls's idea of primary goods. Primary goods are construed as the set of goods that all citizens need regardless of the conception of a good life they pursue (PL IV, §3). Some political liberals like Quong offer a strict neutral interpretation of primary goods based on Rawls's political conception. Quong's view excludes religious goods from the index of primary goods. I will examine the merits and difficulties of this position. I shall then discuss Kymlicka's proposal of specifying cultural and religious goods as independent categories in the list of primary goods. He argues that part of state responsibility includes paying attention to goods that constitute the social context of individual choice. Although Kymlicka's suggestion is an improvement on a strict neutralist perspective à la Quong, his view that an explicit category of religious goods be added to the list of primary goods runs into serious problems.

I begin with a discussion of the idea of primary goods.

8.1.1 What are primary goods?

Rawls proposes the idea of primary goods as the appropriate basis for interpersonal comparison between citizens with varying conceptions of the good (PL IV, §3). Roughly, primary goods are all-purpose means which each citizen needs regardless of the conception

of the good she pursues (PL IV §3). This set of goods includes liberties and opportunities, positions and powers in office, income and wealth, and goods related to social bases of self-respect, and they are based on a political conception of a person as free and equal (PL IV §3).

There are three key normative features in Rawls's idea of primary goods. First, the set of primary goods is grounded to put it in Rawls's words, on a 'political and not a metaphysical conception of a person' (PL IV §3). The set of primary goods does not have the aim of advancing a particular conception of the good, nor are they defined based on a particular ethical doctrine. Rawls explains that permissible conceptions of the good roughly require the same set of primary goods (PL IV §3). For example, liberties and opportunities, income, and wealth are necessary resources for any free and equal citizen. Even if citizens have conflicting views about a good life, they all need a certain amount of income and wealth and access to a range of basic rights in order to realize their life plans. Second, primary goods are framed by the *publicity* condition – these are goods which are publicly recognized and justified as part of citizens' needs (PL IV §3). To be included in the list of primary goods means that this good can be recognized and accepted as advantageous for all (PL IV §3). In other words, the justification for the distribution of goods should be understood to further the interests of all. Rawls's list of primary goods is not exhaustive but it is flexible enough to address the needs of citizens. Last, primary goods are construed as means to address what each citizen needs in the pursuit of their conception of the good. Part of the basis of primary goods is a combination of an account of a person's moral powers, higher-order interests, basic facts of social life, and conditions of human growth and nurture (PL IV, §3). Rawls considers these elements as objective features of citizens' social circumstances which can serve as 'a practicable and public basis for interpersonal comparison despite reasonable pluralism' (ibid). In other words, primary goods such as income and wealth should be distributed fairly because they are essential for citizens to realize different life plans. Rawls's notion of primary goods does not rule out the proper social and economic conditions which enable believers to realize religion. For example, believers rely on a level of income

and wealth in order to maintain places of worship, produce allowable food and religious dress. These are essential component goods of religion which help believers enjoy the internal goods of religion. In Rawls's notion of primary goods, each citizen, despite the differences in religion and ethical worldviews, should have fair access to a level of income, opportunities, and sets of rights which would enable them to realize their own conception of the good, for example: a religious one.

Some political liberals offer a strict neutral and individualistic interpretation of primary goods. For instance, Quong argues against the employment of perfectionist reasons in grounding citizens' claims to primary goods. He asserts that there is no convincing case for perfectionist policies once every citizen 'has been given a fair share of rights, liberties, opportunities, income and wealth' (Quong 2010, p. 85). Any attempt by liberal perfectionists to justify those policies only results in the state making a negative judgment about its citizens' capacity to advance their own interests which, and thus means that the state becomes paternalistic (Quong 2010, p. 86). For example, art museums, galleries, public parks, and athletic events could not be subsidised based on their intrinsic value, potential value for others, or any account of human flourishing (Quong 2010, p. 86). For Quong, there is no need to appeal to perfectionist reasons so long as citizens have equal access to a set of primary goods. Goods such as art museums, galleries, and public parks should be sustained by policies which require individuals to pay for their maintenance. His position is based on the political conception of the person as free and equal: what is most important is that the state should respect its citizens' ability to freely pursue their own life plans (Quong 2010, p. 103). For Quong, state policies like taxes on alcohol, subsidies for cultural performances, and prohibitions on recreational drug use are blanket policies that apply to everyone and they are, therefore, in violation of persons conceived as free and equal when justified on the basis of their value or by reference to human flourishing (Quong 2010, p. 103). For him, state policies which involve citizens' access to primary goods should be based on a neutral approach in order to protect the right to self-determination.

One of the advantages of adopting Quong's position is that it avoids some perils of perfectionism. Permissible reasons are limited to political values which everyone shares and which do not refer to any particular account of human flourishing. It is consistent with Rawls's demarcation of state responsibility: 'the government can no more act to maximise the fulfilment of citizens' rational preferences, or wants, or to advance human excellence, or the values of perfection, than it can act to advance Catholicism or Protestantism, or any other religion' (PL IV, §3). To do so according to Rawls is to give a sectarian character to the political conception of the arrangement of basic institutions (PL IV, §3). Furthermore, Quong asserts that the set of needs which the state ought to meet is limited by the political conception – those related to a person viewed as free and equal. This is consistent with Rawls's idea of division of responsibility where the other sets of needs should be addressed by civic institutions or particular associations and groups to which citizens belong. Here, primary goods can be interpreted as limited to what citizens need as free and equal participating members of society. This also secures the limitation of state competencies because the state is only concerned with political goods. It is not an expert on music, arts, or religion.

However, part of Rawls's conception of a citizen as I have argued includes the person's higher-order interests: her ability to form, pursue, and revise a conception of the good and basic social facts. Rawls's idea of a citizen is broader than a Quongian view. For instance, some believers maintain churches and related properties as part of enjoying the internal goods of religion. This counts as part of their higher-order interests which enable them to practice their religious faith. Without fair access to income or religious liberty, for example, believers are severely impeded in their engagement with religious goods.

Consider the case of Jewish public funerals. Part of the good requires believers to have access to land for burial. They also have to maintain plots of land as a cemetery in accordance with their religious customs. Although they can form an association in order to pool their resources and maintain some collective goods like a cemetery and its related properties, they would still be affected by social policies

of taxes on land and properties covering all groups. Under Quong's model, religious burial would be treated in parallel with any private non-religious activity pursued by a certain group. Without reference to the centrality of religious burials and their distributive implications, Quong's approach, means that believers would have to come up with reasons other than their religious needs, and argue that their interest in land use is based on public benefit.[75]

Moreover, Rawls explains that the parties in the original position should have a rough sketch of the conceptions of the good which citizens pursue (TJ §2). What this means is that part of the acceptable arguments in the original position is an idea of the kind of conceptions of the good available in society. Religion, for example has essential component goods. This is important in looking into the conceptual flexibility in understanding primary goods. If considered part of needs, then some goods necessary for the person's advancement of conceptions of the good like religion can be considered in finding appropriate and fair distributive approaches. Rawls's notion of a rough sketch is flexible enough to accommodate an interpretation of primary goods which covers essential component goods of religion.

It is not therefore implausible to subscribe to an expansive notion of primary goods. This includes other goods which serve the needs of a person to enable her to pursue a conception of the good jointly with others. Although particular social institutions have the primary responsibility to address the needs of their members, their ownership of property and income, the use of public space, and share of goods have a serious impact on the rights and opportunities of non-adherent citizens. Religious communities are not entirely exempt from state scrutiny and the distribution of primary goods. Rawls himself supports a more expansive notion of income and wealth as primary goods:

The primary goods of income and wealth are not to be identified only with personal income and private wealth. For we have control or partial control, over income and wealth not only as individuals but

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[75] I will discuss this further in Section 8.2.3.

also as members of associations and groups. Members of a religious sect have some control over church property; members of faculty have some control over a university's wealth viewed as means for carrying out their aims of scholarship and research. As citizens we are also the beneficiaries of the government's providing various personal goods and services to which we are entitled, as in case of health care, or of its providing public goods (in the economist's sense), as in the case of measures ensuring public health (clean air and unpolluted water, and the like). All of these items can (if necessary) be included in the index of primary goods. (JF, p. 172)

Recall the case of public funerals conducted by believers. They involve access to land, the permissibility to perform rituals and procession in public places, and the maintenance of structures following religious norms. *Pace* Quong, the state subsidy of public parks, art museums, and churches can be justified based on a wider interpretation of primary goods than that which he allows. This is compatible with the account I have set out where relevant considerations in public deliberation includes individual and collective goods based on a complex notion of needs. If applied in the case of religious burials, some of the practical considerations may include the permissibility for the use of public space and a reasonable allocation of land for cemeteries. This enables, to take an example used by Maja Hultman, Jewish funerals which are conducted in secular public places in Sweden to create a 'third space' in which Jewish and non-Jewish citizens interact (Hultman 2020, p. 6). Hultman claims that 'the ritual and musical practices, partly performed by non-Jewish participants, in the synagogue, on the street and in the cemetery' has brought together Jewish and non-Jewish citizens to pay solemn respects to departed believers who have left a mark in society as poets, scientists, musicians, politicians, bankers, and philanthropists (Hultman 2020, p. 14). The permissibility of a public religious funeral does not necessarily privilege believers because it addresses a collective need to pay respects to their dead. It is a relevant practical consideration in situations where the state needs to balance the interests on land use (and taxation) together with other claims for a football stadium or an

opera house. A wider understanding of primary goods can include religious goods based on needs.

8.1.2 Religious goods and primary goods

What are the arguments in favour of incorporating religious goods as part of primary goods? First, as I have pointed out, some religious goods are necessary goods. This overlaps with the purpose of primary goods as addressing the needs of citizens. The set of primary goods, if it were to accomplish its aim of attending to what citizens need, ought to at least protect the essential components of religion. A reliance on a descriptive view of religion can help define the needs of believers.

A critic might raise a concern. She would assert that the set of primary goods is a basket of universal goods based on the objective features of persons as free and equal. In other words, religious goods do not qualify as part of primary goods because they are (1) particular to religion and this would permit an appeal to substantive, partial doctrines, and therefore (2) they rightfully belong to the non-political arena which is entirely under the responsibility of individuals and groups. Now, I agree partly that not all religious goods implicate state responsibility. To treat them as solely part of the state would severely diminishes religion as an independent way of life. Believers would want other citizens to view religion as an independent way of life and not entirely subsidised by social welfare as I have mentioned. However, primary goods are involved in cases which can affect religious goods through social policies. If the state adopts a policy of collecting taxes on land use without exemptions, then some religious communities like monasteries can suffer severely and might close. Given that believers need primary goods to help them realize religion, it is important for the state to refer to what religion *is* when envisaging the needs of those who have faith.

Furthermore, religious liberty is considered a fundamental right and its fair value is determined by the religious goods involved in justice claims. In some legal approaches, a descriptive view of religion has been a useful reference for the state to weigh religious claims, examine individual sincerity concerning a religious practice, and ground an

integrated approach which minimizes the negative impact of policies on religious goods (Bittker 2015, p. 357). An appeal to a descriptive view of religion does not necessarily ground an objectionably partial judgment of the state regarding a justice claim. A descriptive view can contain elements which most religions share and which make religion in general a distinct good. This is necessary whenever the state balances the impact of policies on religious goods against other interests. On the contrary, a state which has a disaggregated view or a neutral conception of religion can endanger religious goods through its policies and action because it does not rely on any meaningful understanding of religious needs.

I have mentioned that part of Rawls's just society is for each citizen to advance reasonably her conception of the good. The state, through fair distribution of primary goods, can either limit or aid a citizen's engagement with religious goods. This occurs through regulation and policy distribution of resources at institutional and individual levels. At the institutional level, the access of faith communities to primary goods determines the extent to which they can realize religious collective goods in society. At the individual level, without appropriate interpretation of primary goods to include religious goods, the believer is left with insufficient means to pursue religion as a substantive conception of life.

In sum, religion as a distinct good is not entirely an abstract conception. It is a concrete way of life for some citizens. This implies that the arrangement of social institutions and distribution of primary goods should also address some needs of believers. A reliance on a descriptive understanding of religion, for instance, helps in identifying the needs of a religious citizen and its distributive implications.

In the next section, I shall examine Kymlicka's recommendation of including religious goods as a separate category of primary goods.

8.1.3 Religion as a separate item in the index of primary goods

Kymlicka argues that a liberal should be concerned with maintaining cultural goods because these goods help citizens recognize,

in a vivid way, available options for a meaningful life and not because of the moral status of cultural and religious goods *per se* (Kymlicka 1989, p. 165). Although individuals will ultimately decide the kind of life they live, this decision, according to Kymlicka, involves a selection of what we believe to be the most meaningful among the range of options that are available to us (Kymlicka 1989, p. 164). The range of options available in society is partly determined by its cultural heritage (Kymlicka 1989, p. 165).

Kymlicka's argument underscores two important points. First, a person's choice of a conception of the good occurs against the backdrop of a plurality of options. The extent of the range of meaningful options is affected significantly by the arrangement of social institutions which determine the distribution of liberties and all-purpose means. Liberties and social conditions are important because they are means to sustain a range of goods citizens need in order to realize their conception of a good life. Second, it highlights the social dimension of individual choice. Kymlicka argues that in deciding how to lead our lives, we do not begin empty-handed but, following Rawls's thought in political liberalism, we examine different forms of the good life that have been developed and tested for some time by previous generations (Kymlicka 1989, p. 164). For example, as children we are brought up to be familiar with cultural forms of life, some of which may impress us as worth living (Kymlicka 1989, p. 165). Cultural and religious goods are important because they form part of the *context of choice* (Kymlicka 1989, p. 166). Following Kymlicka's arguments, the choice that individuals make with regards to their conception of the good cannot be abstracted totally from the available forms of life or meaningful options in society. Some individuals are largely bound by the cultural narratives in their family. Others are born and reared into a religion which influences their construction of life plans. This aligns with Raz's theory which recognizes the normative importance of maintaining a range of options as part of protecting a citizen's right of self-determination. For Raz, the value of individual autonomy largely depends on a diversity of valuable options available for a person to choose from and how her life would turn out because of the engagement with those options

(Raz 1988, p. 204). Essential goods, for Raz, have value because they are a set of goods which enables citizens to realize a conception of the good (Raz 1988, p. 204). Liberty *per se* has no value if the goods that these liberties protect are inaccessible or lacking in society.

Kymlicka suggests that cultural membership should be an independent category of primary goods (Kymlicka 1989, p. 166). He argues that Rawls has overlooked the normative implications of cultural membership in access to liberties and all-purpose means. Kymlicka claims that parties in the original position should recognize cultural membership as part of equal concern for individuals (ibid.). In addition, parties in the original position would want to avoid social conditions (this includes cultural membership) that would undermine self-respect (ibid.). He argues that the identification of cultural membership as part of the list of primary goods is compatible with political liberalism. It does not obligate the state to impose a particular conception of a good life to protect the purity of culture, or mean that the cultural group is more important than the individual (Kymlicka 1989, pp. 167–68).

There are several conceptual advantages to Kymlicka's proposal. First, his approach entails that the arrangement of social institutions and the basis of some social policies should sustain a range of meaningful options in society. Cultural and religious goods are included in the range of options which the state should take interest in as part of protecting its citizens' right to self-determination. Second, the inclusion of cultural membership as an item in the list of primary goods ensures that this good is protected by the state and made available to citizens. State protection of cultural goods implicates a level of sensitivity to the kinds of goods they are. Without such epistemic resource, it would be very difficult to present cultural goods as vivid options to citizens. For example, the lack of reference to cultural goods in the public school curriculum negatively affects the proper discernment and evaluation of children about the value of culture and religion in their life plans. Similarly, a policy which bans cultural festivals or subsidies for museums limits the understanding and enjoyment of citizens of cultural goods.

Although I agree with Kymlicka's main arguments, I am less convinced about his recommendation that culture or religion be identified as an independent category in the list of primary goods. First, his interpretation of goods related to self-respect seems to depart significantly from Rawls's construal of it. Rawls points to the social bases of self-respect as part of the set of primary goods that each citizen would want as a means to pursue her life plan. These goods are essential to the person's cultivation of self-worth and her advancement of chosen ends with confidence (Rawls 2001, p. 59). This definition already admits a variety of goods related to self-respect that are integral to one's realization of a conception of the good. This includes some essential religious and cultural goods. Contrary to what Kymlicka claims, one does not need to mark cultural and religious goods as *separate* items since they are already included in the goods related to the social bases of self-respect.

In addition, social indices of self-respect, as Rawls argues, are largely circumscribed by social and political circumstances and thus, may vary from society to society (Rawls 2001, p. 59). He emphasizes *appropriateness* rather than the exact identity and equality of the index of primary goods in different societies (ibid.). This means that there are societies in which the goods related to social bases of self-respect include religious and cultural goods, and there would be others which do not include them. The state does not conceive a determined list and then distribute goods accordingly to equalize preference satisfaction of citizens with different conceptions of the good life. Rather, it distributes primary goods strictly following the principles of justice. The list of primary goods is only specified at the legislative stage following the constitutional agreement framed by the principles of justice. Religious and cultural goods are protected derivatively according to these principles.

Corollary to this, and as the second point, Kymlicka's proposal of making culture and religion separate categories is controversial because not all citizens are engaged with religion or some particular subcultures. By making religion a separate item in the list of primary goods, social institutions should be arranged in such a way that the

state is forced to distribute them. This is contrary to his claim that the state will not be obligated to support some cultures. This puts the state in the dangerous position of advancing religion as a conception of the good over others. In Kymlicka's approach, it is unclear how it preserves the conditions of impartiality of state action. There is a serious contradiction in Kymlicka's approach of identifying religious goods as a separate item in the list of primary goods and their justification as being advantageous for all.

Quong also argues against employing Kymlicka's approach. As an option, he suggests that cultural and religious goods can be a requirement of justice if those who are engaged with them are denied of the opportunity enjoyed by the majority to combine their cultural and religious pursuits with civic opportunities (e.g. education, employment) (Quong 2006, p. 62). In other words, for Quong, cultural and religious goods warrant fair treatment only if they can advance claims of egregious violations of the equal opportunity principle. Citing the case of Jeff, a liberal protestant, and Jonah, an orthodox Jew, who both desire to become police officers but face unequal opportunities due to religious beliefs,[76] Quong argues that equal opportunity requires that one can pursue a career as a police officer without prejudice to religious beliefs which is the main issue of justice (Quong 2006, p. 64). In his suggestion, the state need not refer to what religious and cultural goods are because it is the standards of equal opportunity which will determine just compensation. The interpretation of primary goods remains neutral in relation to conceptions of the good.

Notice that in Quong's approach it is the conditions of equal opportunity which exclusively define the access and distribution of primary goods. This is not entirely implausible because it secures

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[76] 'The duty rotation requires everyone to work a certain number of weekends — no one likes working weekends, and so it is necessary to ensure everyone works at least two weekends a month. This, of course, conflicts with one of Jonah's religious requirements: no working on the Sabbath. As things currently stand, Jonah will not become a policeman, but Jeff will' (Quong 2006, p. 64).

each citizen's fair access to means which enable them to realize their conception of the good. Furthermore, unlike Kymlicka's proposal, it absolves the state of the obligation to preserve religious goods. In Quong's view, the state avoids being entangled deeply with religion. However, Quong's approach does not recognize religion as part of the factor which determines social policies. Jonah could, and probably should have been granted an exemption based on religious accommodation. His concern for equal opportunity can be resolved with reference to his religious beliefs. Even if Quong argues that it is equal opportunity principle that determines the practical outcomes, the state cannot do without a profound understanding of what religion and religious goods are to determine to what extent a violation of Jonah's religious practices constitutes a substantial denial of his religious liberty.

Although Kymlicka correctly highlights the relevance of the social, cultural and religious context for individual choice, his recommendation of including cultural and religious goods as separate categories conflicts with the impartiality of state action. Quong is right to level that complaint against Kymlicka, but he does so by returning to a model of preference satisfaction and strict neutrality. In what follows I will explore a different option to those of both of these authors.

8.2 A needs-based distributive approach

I offer a needs-based account based on Wiggins's framework as an alternative approach to accommodate religious goods. From this perspective, religious goods are approached from the perspective of a descriptive view of religion. The employment of a descriptive view of religion helps determine the kinds of primary goods involved in a religious claim and their corresponding relationship with the needs of a believer as an individual and as part of a faith community. This does not require the state to posit religious goods as a separate category. In addition, the state can employ Wiggins's conditions of needs as a useful reference to define the extent of its responsibility concerning the claims of religious citizens. This includes, but it is not limited to

subsidy, public health care services which involve religious beliefs, tax treatment of churches and their properties, and the security of sacred shrines. I shall argue that these are not instances of objectionable partiality to religious conceptions of the good**.**

8.2.1 Wiggins's conditions of need

As we saw in Chapter 6, Wiggins provides a general stipulation about the qualification of some *x* as a need: 'a person needs *x* [absolutely] if and only if, whatever morally and socially acceptable variation it is (economically, technologically, politically, historically. . . , etc.) possible to envisage occurring within the relevant time span, he will be harmed if he goes without *x*' (Wiggins 1998, p. 38). There is plenty to unpack in Wiggins's stipulation.

First, the principle of harm qualifies *x* as a plausible need and its corresponding weight. Wiggins cashes this out as the conditions of *badness* or *gravity* of the frustration of needs: 'How much harm or suffering would be occasioned by going without the thing in question?' (Wiggins 1998, p. 38). If applied to religious goods where permission to perform a religious public funeral or allocate a portion of the land for cemetery is withheld, the gravity of the harm in question is partly determined by the status of religious burials as an essential component good for the Jewish community. The gravity of harm supplies strong reasons for believers' claim to permissibility or assistance. This forms part of the practical considerations in state deliberation and a reasonable basis for claims to primary goods. Wiggins also includes *urgency* – how soon must this thing be supplied? – as part of delineating the conditions of harm (Wiggins 1998, p. 38).

Second, there is a condition of *substitutability*. This refers to thing *y* as a substitute with respect to *x* in which *y* is a slightly inferior potential substitute (Wiggins 1998, p. 39). If applied to some religious goods, one might ask whether some other place qualifies as a sacred shrine for a faith community if the present location involves high expenditure or if it generates serious conflicts with other groups. Although substitutability might be difficult to appeal to, given the deep and long tradition of beliefs that determine a sacred shrine, it

might be useful to ask these in cases where religious claims require high expenditures.

I want to highlight important implications regarding my reliance on Wiggins's framework. First, the concept of needs aligns with Rawls's notion of primary goods. As I have mentioned, primary goods should address citizens' needs regardless of the conception of the good they pursue. It seems that the dominant interpretation for many theorists is the emphasis on the uniformity of primary goods. This is not an entirely mistaken position because the principles of justice which govern the distribution of primary goods should be independent of metaphysical doctrines and conceptions of the good. However, my interpretation of primary goods which is sensitive to religious goods is not incompatible with impartiality of state action. I argue with Wiggins that making the concept of needs real and concrete in terms of justice and state policies involves setting parameters (Wiggins 1998, p. 36). In Wiggins's approach, the parameters of needs are largely defined by the harm principle. This I have argued in Chapter 6 and 7 where the harm principle is interpreted in terms of believers' needs, which can be individual or collective, and they count as relevant considerations in the deliberation of state policies.

Second, a descriptive view of religion helps the state to (1) approximate the gravity of harm, (2) determine proper substitutes, and, following Wiggins's thought, (3) consider how morally acceptable it is to propose alternatives and thresholds to what we consider as harmful, properly functioning, or standards of a minimally decent life (Wiggins 1998, p. 38). The conditions of acceptable substitutes and the determination of the gravity of harm are largely supplied by a descriptive view of religion. For example, religious burials are central to believers. Part of the reason is that in performing religious burials, they actualize their relationship with the transcendent in a sacred manner as a faith community. The desecration of cemeteries and policies which ban public funerals and the allocation of portions of land for cemeteries prevent believers from practicing religion in an appropriate way. These are forms of harms for believers.

Third, the relativity of needs addresses the concerns of some critics about the distinctiveness of religion. By employing Wiggins's needs framework in combination with a descriptive view of religion, public deliberation of social policies is more sensitive to the distinctiveness of religious goods. For example, Rawls includes, as part of income and wealth, a government's provision of health care services. Recall the case of Jehovah's Witnesses' claim for alternative blood treatments. Public health services can include these alternative blood treatments as part of their menu of services on the basis of meeting the needs of Jehovah's Witnesses, alongside reasons arising from a public benefit test.[77] If applied in the case of sacred lands, state adjudication is not limited to the economic benefits which indigenous people would accrue if farm-to-market roads are built or if part of the land is leased to agricultural companies. It can include in its practical considerations the disruption to the way of life and collective needs of indigenous people.

In sum, Wiggins's needs framework provides the state with a plausible distributive approach. Religious goods are interpreted to address the needs of believers. This helps maintain the coherence of religious goods. Combined with a descriptive view of religion, the state can appropriately assess justice claims which involve religious liberty. This is compatible with Rawls's notion of primary goods because they are construed as meeting citizens' needs.

In the next section, I apply my proposal to religion construed as a collective good.

8.2.2 Collective needs of believers

Recall that Quong interprets primary goods exclusively in individualistic terms. This excludes goods related to joint enterprises of citizens, from the range of primary goods. If adopted, Quong's view of primary goods would not fully sustain communal forms of religion. Here, we encounter a problem of insufficiency in terms of

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[77] See Chapter 7.2 for further discussion.

meeting the needs of citizens who pursue a conception of the good collectively.

This is a complex distribution problem. On one hand, Quong is partly correct in considering that what is crucial is that each citizen has access to all-purpose means. In this view, social goods, be it cultural or religious, are best left to groups or associations. Against this, I have mentioned Rawls's developed notion of income and wealth as primary goods. As we saw, it is a broad category which includes collective goods such as public services, university funds, and church properties. Given this broader understanding of income and wealth, it is not implausible to suggest a conception of primary goods which accommodates the social dimension of religion. For example, if a state is unaware of the importance of faith schools[78] in helping parents transmit religious tradition to their children, then these schools are in danger of being treated like any other school catering to individual preferences. The general policies and regulation of educational institutions affects the viability of faith schools in society. Without reference to religion, the purpose of faith schools would not be considered as part of the relevant practical considerations. This is not to support any claim for the total exemption of faith schools from state scrutiny. In taking into account the social dimension of religion, a state policy of subsidising schools could adopt a nuanced position based on needs. It could, for example, give the state limited scrutiny (e.g. ensuring that children are also being exposed to liberties and rights, and checking interpretations of religion which can be harmful to society). Another plausible social policy is the inclusion of religious education as an elective in the general curriculum of public schools.

Quong might argue that even if we accept such a broad interpretation, it does not entail that state responsibility should extend to include collective goods. One can rely on the approach

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[78] For instance, Islamic schools or *madrasa* schools are learning institutions in which students learn about the tradition, beliefs, and practices that form part of Islamic tradition. Through their education, students understand what Islam is and what being a good Muslim entails (Panjwani and Niyozov 2018, pp. 191).

which asks citizens who share common pursuits or preferences to pool their individual resources. The set of primary goods, therefore, is still interpreted in an individualistic manner which is only sensitive to common pursuits in terms of individual preference satisfaction. If applied to the case of faith schools, they are regulated the same way as other schools. They should subscribe to the same curriculum which may include religion. Or the state need not extend assistance and instead, it can consider faith schools as private joint enterprises and therefore, religious citizens should be able to manage them on their own. Quong considers that these strategies preserve impartiality because faith schools are treated equally as non-religious schools.

Let me offer an *institutional* perspective as a reply. The idea of primary goods as the basis for interpersonal comparison is part of Rawls's aim to correct what he calls *background injustice*. Background justice or injustice occurs in an institutional context. For Rawls, the primary subject of the principles of justice is the design of basic social institutions in society. Although the aim of the principles of justice is to ensure that each person has fair access to resources, their focus and application regards institutional arrangements, rather than individual transactions. Social institutions include civic organisations, religious, universities, and the arts. Each of these institutions produces different collective goods which help advance the good of citizens who jointly pursue them. For example, university goods, religious goods, cultural goods, and goods related to arts are made accessible primarily through these institutions. Distributive approaches and state policies concerning primary goods have a serious effect on the viability of social institutions because these are all-purpose means that enable them to produce particular goods necessary for those who are engaged in them.

An important implication of the institutional perspective is the necessity of understanding the purpose of the social institution so that the state can determine appropriately the impact of its policies to the viability of a social institution. A plausible way of evaluating the nature and purpose of a social institution is through the set of needs they address. Social institutions exist primarily because they

serve particular needs of citizens who are engaged in a shared pursuit of a conception of the good. And here is where Wiggins's needs framework offers a significant complement (rather than alternative) to the institutional view of primary goods when applied to religious goods.

In addition, I suggest another condition based on Wiggins's needs framework. Let me term this the *responsibility* condition. We ask, 'How much harm can be targeted by the parties involved?' The responsibility condition says that the parties (e.g. church, university, state) identify the extent of their responsibility in meeting a set of needs. One advantage of this is that it helps the state delineate the boundaries of its responsibility. For example, having a church for common worship is an essential good for some believers. Yet, it would be unreasonable if they claim a huge portion of primary goods to fund a magnificent cathedral to the detriment of non-adherent citizens. The responsibility condition acts as a constraint by taking into consideration the extent to which the faith community can fund the building and maintenance of magnificent cathedrals independent of state assistance. It also gives the state a reasonable and clear approach in assessing claims for public funds. This responds to Quong's concern about possible egregious violations of a person's fair share of primary goods over collective goods.

A serious challenge can be raised against this approach namely that there is a wide range and variety of religious practices which could claim an unreasonable share of primary goods. However, this should not worry critics on two counts. First, only those religions that meet the criteria of a reasonable comprehensive doctrine are included. This already excludes citizens whose forms of religion have ambitions to employ an unreasonable share of state resources for their survival and advancement. Second, state responsibility regarding collective goods is limited by the institutional approach and harm principle. For instance, religious practices that violate the right to life or bodily integrity (e.g. infant sacrifice, female genital mutilation) would be firmly excluded from state permission. Similarly, the claim for subsidy

for pilgrimage to holy shrines would be excluded, if it endangers the fair share of primary goods of non-adherent citizens.

Take the case of the *Madrasa* schools in East Africa. *Madrasa* schools are faith schools which are guided by the mandate of ethics and worldview of Islam (Panjawi and Niyozov 2018, p. 193). In their observation, the current curriculum in *madrasa* schools aims to harmonize three aspects of the education of Muslim students in Kenya: Islam, the *Swahili* culture, and values of modern state (Panjawi and Niyozov 2018, p. 195). In *madrasa* schools, although Islam provides the religious vision, it is applied to and integrated with society and culture. This helps Muslim children, according to Panjwani and Niyozov, to acquire necessary skills, improve awareness of cultural values and basic human rights, whilst remaining Muslims, 'true to their faith' (2018, p. 196). If the responsibility condition is applied, it would not be unreasonable for the state to assist *Madrasa* schools if they claim for financial assistance. State scrutiny of funds which assist faith schools may include the demand that faith schools ensure that students acquire basic skills for employment and are aware of their rights. Rawls recommends the same concession when responding to the case of Amish and to those who wish 'to withdraw from the modern world in accordance with the injunctions of their religion' (PL V, §7 ff.). He argues the state's concern with the education of children lies in their role as future citizens, so they should acquire the necessary skills to participate in political life. This minimal requirement, according to Rawls, does not seek to cultivate distinct liberal values of autonomy contrary to religion.

In the next section, I examine the public benefit approach as a response to this problem.

8.2.3 Public benefit test

A sceptic of a needs-based approach might offer an alternative, public benefit, argument. They would, that is, offer the view that a liberal polity acknowledges its dependence on civil society and its institutions for the character formation of its citizens. These institutions include families (nuclear and extended), clubs and societies, churches

and religious associations, and schools and universities. Religious associations and churches are engaged in character formation, since they achieve it both directly (providing moral teaching to members) and indirectly (providing moral support to parents, families, schools, etc.). In addition, religious organisations can contribute to social cohesion and public benefit through the opportunities they provide people to associate with others and their delivery of social services. It follows then that a liberal polity should be interested primarily in benefitting from the varied contributions that religious organisations could make to public life and the good functioning of a liberal polity. This entails that the state has no interest in facilitating religion to the extent that it undermines the functioning of a liberal polity (e.g. inculcating hatred or racism, or encouraging violence) nor would it support religious practices (e.g. pilgrimages, maintenance of convents) that do not deliver social benefits. Any funding for religious groups would be exclusively based on the positive contributions of religion to society.

Religion does have positive effects on public life and some of these benefits can be measured and compared with those provided by non-religious organisations. However, the public benefit argument fails to sufficiently account for the capacity of citizens to engage with goods in society. Only religious goods that pass a public benefit test would be permitted or supported by the state. Believers have to offer a convincing calculation of this benefit in favour of their claims. For example, the alternative blood treatment for Jehovah's Witnesses would only be considered part of health services if it can be shown to benefit non-adherent citizens. Or the maintenance and protection of holy shrines would only be permitted based on public gain (e.g. security, tourism, part of cultural or national patrimony).

Moreover, the use of public benefit test highly favours aggregative thinking and calculation. This means that the interests of citizens are measured through an impersonal accounting of cost and benefit. This undermines the recognition and attention to some particular needs of citizens related to their pursuit of a substantive conception of life. In a public benefit test, the needs related to conceptions of

the good would only count as preferences which can be averaged to determine the balance of benefits and burdens to overall well-being. I do not discount the usefulness of a public benefit test. It can be a supplementary reason for the state to employ in resolving some claims for permissibility or state support. I only caution that an exclusive reliance on it ignores conditions that help some citizens engage with religion as a good.

Consider the case of charity laws in the UK. A claim for charitable purpose should meet the standards of public benefit test (i.e. the activity or purpose ought to serve a class of persons determined as 'public' by the state and it should produce a positive effect or 'benefit' on general welfare) (Harding 2014, p. 11–13). In the case of *Gilmour v. Coats*, the House of Lords refused to recognize the intercessory prayers of Carmelite nuns as having public benefit because spiritual effects escape calculation and do not admit of the evidence normally used by the state to determine a positive effect on the welfare of non-adherent citizens (Harding 2014, p. 22). Furthermore, current state deliberation excludes an appeal to religious authorities for an understanding of particular beliefs and doctrines crucial to determining the value or importance of a religious practice (Harding 2014, p. 22). What often prevails in state deliberation is determined by an exclusive reliance on a cost-benefit analysis based on calculable evidence regardless of the nature of activity or purpose (Harding 2014, p. 11).

In a needs-based distribution approach, the state would investigate the nature of religious claims by outlining the needs involved and in consultation with religious experts. In the case of *Gilmore v. Coats*, the vocation of Carmelite nuns is a particular religious life that largely relies on donations and alms. Such a lifestyle in a non-profit and poor religious community is an option for women to consider as part of their conception of the good. The convent addresses a collective need of believers who choose to live a Carmelite way of life. The effects of a tax policy could be assessed in part on the needs of nuns as a faith community. If the non-application of a status of charitable purpose contributes significantly to the cessation of the faith community because they could not afford to maintain their convent, then the state

could consider granting them tax exemption. In addition, through the responsibility condition, the state could draw a reasonable limit to its remit by evaluating the extent to which Carmelite nuns are accountable for sustaining their own convents. In this case, the state addresses the needs of its citizens fairly by ensuring that social policies do not unjustly impede them in their realizing of life plans. In this way, state interest is not limited to the social and political benefits it accrues from some of its citizens' common pursuits.

In sum, a public benefit test is limited in accommodating religion because its main focus is the determination of benefit or burden the state might incur in its distribution of goods. This removes the distinctiveness of religion because, in a public benefit test, the interests of citizens are aggregated in order to account for the total cost and benefit of a social policy to public welfare. In contrast, my proposal of a needs-based approach accommodates religious goods in a unified way.

8.3 Objections and challenges

In what follows, I briefly consider some challenges and objections against employing a distributive approach based on needs. First, a critic might argue that an expansive notion of primary goods which includes collective goods puts the state in danger of over-extending its responsibility. Second, a liberal neutralist would warn about the importation of some perfectionist ideas in deliberation of social policies because of the relativity of needs. Lastly, a sceptic would be concerned that in my proposal, religious goods are only protected derivatively because it is the concept of needs that does the normative work. I respond to each of them in turn.

8.3.1 The over-extension problem

A critic would raise a worry about over-extending the idea of primary goods to range over collective goods. The concern is grounded on the fact that various social goods fall entirely under the responsibility of each institution because these are goods which address particular needs. Such a set of social goods can be construed

as private since it only benefits those who are engaged in such joint pursuits. For example, universities enjoy goods which are different from religious communities, and the arts. This is different from the notion of public goods which all citizens enjoy. An interpretation of primary goods that includes the notion of collective goods seems to over-extend its aim. It would be better, the critic might continue, to adopt Quong's position and employ an individualistic notion of primary goods because it offers a clearer rationale. Other goods can be addressed once citizen's primary goods are secured. At the legislative stage, the state may allocate some resources to sustain public goods or to some goods or social institutions.

Now, I partly agree that there is a range of goods particular to institutions like universities, churches, and the arts, and that these institutions should take responsibility in maintaining those goods. However, part of their production and maintenance rely on (Rawlsian) primary goods. As I have explained, income and wealth affect collective goods. Although the state need not involve itself with the nature of some collective goods, its policies which regulate property, whether private, collective, or public, can limit and shape the way in which social institutions produce goods. For example, the state has partial interest in church property or university funds because without scrutiny or even some form of regulation, it could affect the distribution of wealth and income to the detriment of the least advantaged. Or, without reference to religion, state policies could impede the access to goods of religious citizens in the case of religious funerals. So the view I am arguing for is that we need a more complex interpretation of primary goods as meeting some needs of citizens understood collectively.

A needs-based approach with a reliance on a descriptive view of religion helps in clarifying which collective goods are subject to state support and whether they are reasonably justified. In addition, the responsibility condition helps ensure that the claims for support are based on needs. This acts as a safeguard in maintaining the fair share of primary goods of other citizens.

8.3.2 Avoiding the pitfalls of perfectionism

Liberal neutralists favour a strict interpretation of primary goods. This implies that the justification of the distribution of primary goods should not establish a standard of excellence based on particular ends or values that citizens pursue in order to secure fairness. For them, there is no room for perfectionist ideas in social policies because the conceptions of the good are, in nature, disputable (i.e. there is no rationally acceptable framework that can adjudicate their claims unlike those of the right) (Chan 2000, p. 9). The employment of a needs-based approach which relies on a descriptive conception of religion allows the state to rely on perfectionist ideas.

Liberal neutralists are correct in pointing out that the enforcement of some perfectionist ideas is incompatible in maintaining the conditions of fairness of a social policy. For example, reliance on a religious doctrine to justify state policy is difficult to endorse. It also causes conflict among citizens who do not adhere to such doctrine or even find it offensive. However, state power as applied in the distribution of primary goods has wide-ranging effects in limiting or broadening one's exercise of liberties like religious liberty.

In particular, Nussbaum argues that religious freedoms are predicated on two fundamental considerations: what she calls the equality and vulnerability premises (Nussbaum 2012, p. 67). Nussbaum maintains that liberties are usually protected under the assumption of equality of persons (Nussbaum 2012, p. 67). This leads to an employment of sets of normative concepts that determine policy departures from equality (e.g. non-discrimination, resources, or respect). However, it is not only a citizen's equal access to liberties that is at stake. Nussbaum argues that certain liberties such as freedom of conscience are vulnerable if social conditions are not sufficient to protect important related liberties of belief, expression and practice (Nussbaum 2012, p. 67). The framers of the US constitution might have considered that the protection of the liberty of conscience demands free exercise for all and this commitment is to *ample* or sufficient liberty and not exclusively to equal liberty (Nussbaum 2012, p. 68). In a needs-based account of distribution sensitive to these

background conditions, the state helps maintain the social conditions which enable its citizens to exercise their liberties in an ample way.

Given the wide-ranging effects of its authority, a liberal state cannot avoid making references to goods in order to estimate the kind and degree of harm involved. A descriptive view of religion provides the state with an epistemic resource to understand religion coherently. The main aim is to maintain the necessary conditions that would enable some of its citizens to engage with religion without incurring onerous burden to others. In addition, the responsibility condition helps draw the limits of state assistance because it emphasizes the extent to which a social institution is responsible in addressing the needs of those who are engaged in it.

8.3.3 Religious goods as part of the diverse range of goods in a liberal polity

A different, opposed critical perspective would point out that the distinct character of religious goods does not perform much of the normative work. From the perspective I defend, religion is only protected and supported by the state insofar its essential component goods are identified as part of citizens' needs. In other words, what I offer is not a strong position and most religion advocates would not endorse it.

Now, I offer two notions of distinction: *internal* and *external* distinctions. An internal distinction refers to the uniqueness of religion as a good as compared to music, arts, culture. However, as goods in a liberal polity, they are assumed to fall under a general category of goods that citizens engage with or that they are part of the range of conceptions of the good. By contrast, an external distinction refers to a strong interpretation of the uniqueness of religion as an entirely separate category. Here, religion is construed as a complex good that is totally different and independent from culture, arts, or music which merits special treatment. Religion is its own category.

I concede that from the perspective I offer, religion is one among several goods in a liberal polity. This does not entail that religious

goods are equated to non-religious goods. The essential component goods of religion which make it a unique and multidimensional good are covered in a needs-based approach. From an institutional standpoint, the arrangement of social institutions is such that the state protects religion as a unified good like other goods in a liberal polity. By adopting a needs-based distributive approach, the state is not limited to using a public benefit test. Nor does it need to appeal to perfectionist ideas to weigh religious claims. Although it is the concept of needs that does most of the normative work, my approach allows the state to refer to religion when necessary. In cases where substantial burden to religious liberty is at issue, a needs-based approach provides sufficient room for religious goods to be reasonably accommodated.

8.4 Conclusion

I have discussed the plausibility of a needs-based approach as a response to the distribution problem involving primary goods and religious goods. Wiggins's stipulations of what counts as needs is a helpful guide in designing social institutions in such a way that the distribution of primary goods is fair. In addition, a descriptive view of religion makes Wiggins's approach more accommodating of the needs of believers without necessarily privileging them. It is also compatible with political liberalism. In particular, the needs-based account employs an expansive notion of primary goods. It also maintains an objective position in which the state is not forced to treat religion in an exceptional way. Nor does it obligate the state to impose religion as an intrinsically valuable good to non-adherent citizens.

Furthermore, a state which relies on a needs-based distributive approach maintains, to a wide extent, religion as a distinct good. This is compatible with the political conception of a person as having two moral powers, in particular her capacity to form and pursue a conception of the good. Unlike Kymlicka's approach which treats religion as an independent category of primary goods, a needs-based distributive approach adopts a more nuanced position. It provides the state with good reasons to protect religion which are compatible with a wide interpretation of primary goods. Part of it

includes an institutional argument to accommodate collective goods. *Pace* Laborde, the state need not disaggregate the component goods of religion. Nor is it limited to employing a public benefit test or a preference satisfaction perspective to treat religious and non-religious goods fairly. Without prejudice to non-adherent citizens, the state could act partly on the basis of the aim of protecting religion so that some of its citizens can engage with it and help maintain religion as part of a diverse range of goods in a liberal polity.

9

CONCLUSIONS

How should the state treat its citizens who have faith and who belong to a faith community? Recent attempts like Laborde's disaggregation approach, Patten's neutrality of treatment, and different interpretations and models of Rawls's political liberalism have shed light on some of the aspects of the topic. It involves the problem of adopting a view of religion, proposals of distributive frameworks to accommodate religion and its component goods, and the proper role of religious reasons in public reason. This thesis has attempted to provide new interpretations and approaches to contribute to this crucial on-going debate.

The frequent response to the question of how the state should treat its citizens who have faith is for the liberal state to adopt a conception of neutrality. There are practical advantages to a neutral approach, especially in cases of conflicts and rivalry. However there are overly severe conceptions of what neutrality demands. The danger is that in placing neutrality as a central liberal principle, it is considered that the state must do away with *any* reference to religion. Even in Laborde's disaggregation approach, it is not religion or the dimensions of it that do the normative work. Instead, it is the main elements of liberal individual rights that provide the framework for justice claims. This means that there is a danger of misinterpreting what religion is and what its component goods are. Believers could only realize religion in a narrow and disaggregated way.

Most political liberals follow Quong in interpreting political liberalism as a comprehensively neutral account. They then apply this

perspective to the question of the compatibility of religion and liberal justice. However, it is possible to read Rawls's notion of reasonable comprehensive doctrine, political conception of a person as free and equal, and idea of public reason in a manner different to that adopted by Quong, and deny that these ideas demand that religion be completely ignored. Religions are part of the category of reasonable comprehensive doctrine. Believers can draw out reasons partly from religion and offer them as permissible arguments in public reason. Although religion does not enjoy special status and some of its forms are incompatible with political liberalism, believers can participate in public reason so long as they meet standards of reasonableness. A non-overly neutral interpretation of political liberalism opens the possibility for a wider normative role of religion in providing reasons for believers who can support reasonable terms of justice.

However, critics have highlighted some limitations of political liberalism. In particular, the burdens of judgment, the strict requirements of political constructivism, and some challenges in the original position are features which could exclude reasonable believers. I have introduced an alternative reading of political liberalism to address this. I have argued for a thin account of what is reasonable. It retains Rawls's political conception of a person as the main element. It is compatible with a wide view of public reason which allows believers to draw partly from religion and offer arguments in public reason. My reading of political liberalism and its demands permits religion and other reasonable comprehensive doctrines to play a wider normative role in grounding principles of justice. It aligns with one of Rawls's important aims which states that the terms of justice should not conflict too sharply with citizens' reasonable comprehensive doctrines.

The revised account of political liberalism I argue for allows believers to endorse views of justice partly framed from their religious perspective which non-adherents can also understand and accept. Religion, understood in MacIntyre's conception of tradition, is a source of reasons for action, practices, and doctrines which aim at a religious ideal of life. It also provides meaning and value to religious practices and social norms. Despite working from a particular

perspective, that of faith, religion can support universal values such as freedom, toleration, and equality which liberals and non-adherents share. Believers can combine ideas of the good with political values as part of the arguments they offer in public reason. To give just one example, Islamic distributive justice models overlap with Rawls's second principle which is concerned about the interests of worse-off citizens. Religious views of justice can be considered reasonable (in the sense given by Rawls to this term), without requiring believers to translate or even abandon religion in arguments advanced through public reason.

A closely related and important aspect of the issue of reconciling religion and justice involves the construal of religious goods and the distributive implications that follow. Liberal theorists often rely on the concept of preferences to ground distributive approaches to religious and non-religious goods. Some advantages of this are that (1) it ranges over individual interests, and (2) it relies on individual citizens to determine the importance of certain goods in terms of their own well-being. If it adopted this perspective, the state could eschew *any* reference to religion. In its place, the state could substitute an individualistic concept (e.g. personal integrity or choice) to determine the weight of claims for religious goods. Against this, I have offered the concept of needs as basis for interpersonal comparison. In this perspective, religious goods are understood as part of a person's needs. This is more appropriate because religion is not entirely under individual choice and preference. Moreover, religion is not only a personal conception of the good. Some goods of religion require state attention and in some cases, assistance, because these goods are essential in meeting the needs of believers as part of a faith community.

I have proposed a needs-based distribution approach as a plausible response to the problem of distribution and religious goods. It relies on a multifaceted conception of needs: individual and collective. In this framework, harms to citizens are defined from the perspective of their needs. I have pointed out that a needs-based distributive approach is compatible with a political liberal's notion of primary goods. The set of primary goods, in Rawls's definition, aims to address citizens'

needs. Part of the needs of citizens is defined by their pursuit of a conception of the good, some of which are communal as in the case of religion. To address the worry about the extent of state responsibility, I have developed Wiggins's needs framework by adding a responsibility condition. Through the responsibility condition, the state can draw reasonable limits to how far it should rule and distribute. Although the state could refer to some features of religion to identify its essential component goods, it does not entail that religious claims would trump other claims. They would still be balanced with other interests that are salient from the perspective of distributive justice. The important difference between the view here argued for and other liberal views is that the normative features of religion are part of the relevant practical considerations in public deliberation about social policies. It is my hope that the view developed here helps treating believers with fairness and envisaging religious goods in a more coherent way.

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