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INTRODUCTION

“Religious voices in public spaces” was the title of a conference in 2003 in Leeds (England) in which I participated. The title indicates that there is something uncertain and debatable about the legitimate place and role of religion in the public sphere, at least in Europe and North America. The least controversial role of religion may be the prophetic one: denouncing social evils, standing up for the poor, the weak, the disadvantaged, or for global justice and the protection of the environment. In Germany another task of religion is associated with the famous dictum of E.W. Böckenförde (1991:112): “The liberal, secularized state lives on prerequisites which it itself cannot guarantee” (1991:112). Another question would be about the contribution of religious schools to general education and consciousness formation.

The meaning of the religious voice might be particularly disputed in public debates on controversial political questions (with ethical implications), when this voice expresses positions of which the universal communicability is doubted. Issues of bioethics and biopolitics, marriage and family come to mind. The position of the church on these issues might appear to be a merely particular one, but nevertheless lays a universalistic claim which may collide with the ideological neutrality of the state, especially if the law forbids and sanctions a certain kind of behaviour. Authors like John Rawls and Robert Audi have demanded that religious arguments be kept out of these public discussions. Rawls demands that

... in discussing constitutional essentials and matters of basic justice we are not to appeal to comprehensive religious and philosophical doctrines – to what we as individuals or members of associations see as the whole truth (1996:xviii).

But is his demand not in opposition to the basic right of the free exercise of religion?

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THE IDEA OF PUBLIC REASON

For Rawls, the plurality of conflicting, rational, comprehensive doctrines, be they religious, philosophical or moral, is characteristic of a democracy. It is impossible to reach an agreement on these doctrines. Public reason in Rawls's conception neither criticises nor attacks those doctrines, except when they are incompatible with the essence of public reason and with a democratic state. Public reason is shared by free and equal citizens. Its concern is fundamental political justice. It is public by its very nature; its forum is the discourse of judges, political representatives and candidates for public offices; its background is the culture of a civil society which in a democratic society is not determined by any central idea or principle, neither political nor religious.

Rawls distinguishes between the idea of public reason and the respective ideal. The latter is realised if all members follow the idea of public reason and are ready to explain the reasons for their support of fundamental political positions. Citizens act according to this ideal when they recognise one other as free and equal within a system of social cooperation, if they cooperate even at the cost of their own interests. Political legitimacy has to do with reciprocity. Political power is exercised honestly only if we are convinced that the reasons we offer are sufficient and that our fellow-citizens can accept them reasonable. This idea Rawls also calls "deliberative democracy". It works only with sufficient education of the citizens and public information on pressing problems.

Public reason is not synonymous with secular (antireligious) reason. The latter presupposes a framework of a comprehensive non-religious doctrine. Liberal political principles are not of this kind; they refer only to constitutional essentials and matters of basic justice; they can be presented independently from all comprehensive doctrines. They have to be worked out as implications of the political culture of a certain constitutional system. Rational comprehensive doctrines, be they religious or not, are not totally excluded from the public debate; they may be introduced only if convincing political reasons which sufficiently support the political proposal are also offered. There might, however, also be positive reasons for introducing comprehensive doctrines; reciprocal knowledge of religious and non-religious doctrines may be useful for public culture.

But why does Rawls want to exclude certain convictions from the public debate? Because he regards them as dangerous. Religion tends to divide society, it arouses passions and endangers the stability of the state. If you want to preserve peace in a family, you sometimes have to avoid debate on certain matters. The same wisdom is recommended by Rawls in the case of a democratic society. On a critical note, however, it might be asked if Rawls's diagnosis is not more applicable to Europe of the 17th century than the Europe of today. We have after all, at least, some experience of religious tolerance.

More important might be the question of what is to be counted as “comprehensive doctrines” and if doctrines like these are the only or main divisive factor in societies. Regarding the first question, R. Audi speaks of an “absence of a clear notion of a comprehensive view”.³ Rawls (1996:xviii) mentions religious, philosophical and moral doctrines, amongst which he also includes his own “Theory of Justice”. It is noteworthy in this context that religious and antireligious convictions are most easily classified as belonging to this category. They can very easily be identified by their appeals to some authority (the Bible, the Koran, the Pope, etc.). One should, however, not forget that partially comprehensive convictions may be equally divisive, as was skilfully illustrated in a paper by Charles Murray at the Societas Ethica meeting of 2003 in Sigtuna (Sweden) on the theme of free market critique of the welfare state. Murray remarked on the ideal of equality that:

Here, I think that liberals and social democrats inhabit separate planets. I ... completely fail to understand why equality is a good thing. To feel inferior and degraded because one is utterly destitute – that I can understand. But to feel inferior because I make a decent salary that is smaller than someone else’s? To feel I am unjustly treated because others have ended up with more interesting lives than the one I lead? ... I am delighted to live in a world where people are vastly richer, more beautiful, more talented, and more charming than me ... For me, equality is boring (2003:74).

For Murray, this point of his reflects the difference between a US-American ethos and a European one, on which he remarked: “I do not so much disagree with your position as I am mystified by it” (*ibid.*:75). The reasons for this difference lie, for Murray, mainly in a different view of the human person. For social democrats, the human individual is something dangerous if not under the control and regulation of the state; for liberals, human beings are by nature benevolent and cooperative, whereas the state and its actions are regarded as something always dangerous. These differences make agreements on basic matters of distributive justice difficult.

It is instructive how Rawls classifies the problem of abortion. Comprehensive doctrines should not be introduced in that debate as it was the case in the debates on the abolition of slavery. But there is an important restriction: “The only comprehensive doctrines that run afoul of public reason are those that cannot support a reasonable balance of political values” (1996:243).

³ Audi in: Audi/Wolterstorff p. 125.

But what is the criterion for a doctrine to be reasonable,⁴ for instance in the debate on abortion? Rawls comments in a footnote:⁵

Suppose ... we consider the question in terms of these three important political values: the due respect for human life, the ordered reproduction of political society over time, including the family in some form, and finally the equality of women as equal citizens. (There are, of course, other important political values beside these.) Now I believe any reasonable balance of these values will give a woman a duly qualified right to decide whether or not to end her pregnancy during the first trimester. The reason for this is that at this early stage of pregnancy the political value of the equality of women is overriding, and this right is required to give it substance and force. Other political values, if tallied in, would not, I think, affect this conclusion ... any comprehensive doctrine that leads to a balance of political values excluding that duly qualified right in the first trimester is to that extent unreasonable; and depending on details of its formulation, it may also be cruel and oppressive; for example, if it denied the right altogether except in the case of rape and incest. Thus assuming that this question is either a constitutional essential or a matter of basic justice, we would go against the ideal of public reason if we voted from a comprehensive doctrine that denied this right".

This is a very restrictive judgment, to put it mildly. It is not a doctrine that introduces other values or denies the importance of the values on which Rawls relies, that would be unreasonable, but it already is a doctrine that weighs the values relevant for Rawls differently. Rawls, however, concedes that even an intrinsically reasonable doctrine may, in a special case, have unreasonable consequences. And yes, I would add, the opposite might happen as well. In addition, Rawls concedes: "Even where we agree fully about the kinds of considerations that are relevant, we may disagree about their weight, and so arrive at different judgments" (1996:56). This shows that religion or another comprehensive doctrine cannot be the only or the most decisive factor causing division and disagreement.

⁴ Wolterstorff in Audi/Wolterstorff, p. 98: "It would take a good deal of exegetic industry to figure out what Rawls means by 'reasonable,' and even more to figure out what he means by 'rational.'"

⁵ *Ibid.* note 32. Cf. V. Gerhardt's assessment of his own thesis, that birth is the act of anthropogenesis (p. 41): "Für diese schlichte und trotz aller Technik – immer noch intuitiv gewisse Überzeugung sollte man eigentlich gar nicht argumentieren müssen".

Rawls makes another disputable presupposition, namely that the legal regulation of abortion is a “matter of basic justice”. On the other hand, matters like environmental issues, our relation to non-human creatures do not belong to this category. Regarding these matters citizens are allowed to introduce “non-political values” (the idea of stewardship, for instance),⁶ if they regard other ideas as insufficient. In addition, an agreement on the question of what is to be categorised as “essential” or “basic” might not always be easy and might depend on the concerned “comprehensive doctrine”.

IDEAL AND REALITY

Rawls’s footnote on abortion might be regarded as a singular illiberal slip-up. It does, however, reveal a more basic problem. Rawls does not explain what has to be counted as “reasonable” and according to what criteria.⁷ Whoever accepts his contract model of justice might be regarded as reasonable by Rawls. According to Jean Hampton (1994:211), who agrees with Rawls’s view on abortion, Mill or a Millian would have said to another disputant: ‘Your conclusion is not unreasonable, but wrong for the following reasons.’ Rawls, however, would have accused him of not having judged according to reasonable standards, at least in the case being debated. But this judgement is based on private intuitions. And the idea of an “overlapping consensus” becomes questionable if that consensus is reached by way of the exclusion of convictions regarded as unreasonable according to a purely subjective intuition. Hampton entitled her essay “The common faith of liberalism”, thereby insinuating that Rawls’s political liberalism at least is a partially comprehensive doctrine whose central idea is “... that reason has the capacity to effect harmony in a society of conflicting lifestyles and points of view” (*ibid.*:214).

Even if reason might in principle have this capacity, it does not always work. Therefore, we often cannot find a consensus, but have to vote on the disputed matter, which means that there are winners and losers. For the latter, there is at least some hope of coming through with their opinion the next time. Reason does not grant a consensus, but at least a procedure for a fair handling of differences. And, as Hampton remarks, there might be a consensus on the values underlying such a procedure:

⁶ Cf. 1996:246.

⁷ Cf. Rawls, *ibid.*:132: “The basic requirement is that a reasonable doctrine accepts a constitutional democratic regime and its companion idea of legitimate law”. Is that a criterion for reasonableness or a standard every reasonable view has to match? For Rawls (1996:136f) citizens are reasonable if they reciprocally offer others “the most reasonable terms of fair cooperation”, the acceptance of which is at least a reasonable choice for their fellow citizens.

But we cannot hope for a liberal state that does not offend anyone; and if we are offended, we can only continue the debate, defending our view until we win, or until better views force us to stand aside and yield to them (*ibid.*:214).

N. Wolterstorff characterises the problem in a similar way in his critique of Audi, whose concern is mainly to avoid any coercion.⁸ Wolterstorff points to the difference between a *parliamentary session* and a *Quaker meeting*. The first operates by majority vote, the latter operates by consensus, which means *agreement*, not *acquiescence* – at least in theory. In fact, consensus is often reached by acquiescence. Audi seems to conceive of liberal democracy as analogous to a Quaker meeting, when he formulates the point as follows:

A liberal democracy by its very nature resists using coercion, and prefers persuasion, as means to achieve cooperation ... Thus, when there must be coercion, liberal democracies try to justify it in terms of considerations – such as public safety – that any fully rational adult citizen will find persuasive and can identify with ... (quoted by Wolterstorff in Audi/Wolterstorff, 1997:151f).

For liberals, the Quaker model is an ideal with which reality does not always correspond. Wolterstorff points out that in the recent years no law and no policy in the USA has had the consent of all rational citizens. If decisions that have not been consented to by all citizens lack an adequate basis, according to Audi, people would have to ask themselves if it makes sense to work on, and for, an important issue. Wolterstorff concludes:

The pervasiveness of disagreement and controversy in our society constitutes overwhelming evidence for the conclusion that, on such issues, there simply are not any considerations that all adult citizens who are fully rational and adequately informed on the matter at hand will find persuasive and can identify with (*ibid.*:154).

In addition, Wolterstorff reminds us, religious factors are not necessarily particular and incommunicable; a lot of modern movements had religious roots (abolitionists, dissidents in totalitarian states, opposition to apartheid). This is often regarded as being purely accidental, as Wolterstorff remarks ironically:

The people in Leipzig assembled in a meeting space that just happened to be a church to listen to inspiring speeches that just happened to resemble sermons; they were led out into the streets in protest marches by leaders who just happened to be pastors. Black

⁸ Cf. Audi/Wolterstorff, 1997:152.

people in Capetown [sic] were led on protest marches from the black shanty-towns into the center of the city by men named Tutu and Boesak – who just happened to be bishop and pastor, respectively, and who just happened to use religious talk in their fiery speeches (*ibid.*:80).

For the US, one could point to Abraham Lincoln and Martin Luther King Jr. The first regarded the civil war as a divine punishment for the sin of slavery. Did he violate the idea of public reason? No, says Rawls, what he said “has no implications bearing on constitutional essentials or matters of basic justice” (1996:254). This is indeed a strange assessment of the evil of slavery.

WHAT ARE RELIGIOUS REASONS?

Wolterstorff’s examples show that religious language must not be inaccessible to outsiders. However, there are rarely any considerations to be found on the questions as to what counts as religious reasons and about their relations to secular reasons. Audi (Audi/Wolterstorff, 1997:18) gives us an important hint, though:

If we assume a broadly Western theism, we can take God to be omniscient, omnipotent, and omnibenevolent. Might we not, then (at least given this set of divine attributes), expect God to structure us free rational beings and the world of our experience so that there is a (humanly accessible) secular path to the discovery of moral truths, at least to those far-reaching ones needed for the kind of civilized life we can assume God would wish us to live?

Helm (2001:1473) puts it more cautiously:

There must be some point of contact or overlap between natural and revealed morality; otherwise how would the revealed morality engage with everyday moral concerns of humanity?

There was a debate during the 1970s and 1980s among German-speaking Catholic moral theologians on the *proprium* of a Christian ethic. The position of a so-called “faith ethic”, according to which certain ethical norms can be understood only from Christian (or theistic) premises, did not prevail. Had it been correct, certain arguments did indeed have to be excluded from public debates. So far as I can see, there was no similar debate in the Anglo-Saxon world, even though there is a similar question to be discussed in the current debate on universalism and communitarianism – this fact might (partly) explain the lack of considerations regarding the characteristics of religious arguments. Audi pleads for a “theo-ethical equilibrium”:

Thus, a seemingly sound moral conclusion that goes against one's scriptures or one's well-established religious tradition should be scrutinized for error; a religious demand that appears to abridge moral rights should be studied for such mistakes as misinterpretation of what it requires, errors in translation of some supporting text, and distortion of a religious experience apparently revealing the demand (Audi/Wolterstorff, 1997:19).

Some examples may illustrate this kind of equilibrium:

1. Some countries or provinces (Switzerland, Salzburg) have added to their constitutions an amendment on animal protection in which animals are called "fellow-creatures". At a conference, I heard a twofold critique of this kind of religious language: firstly, that this language is not based on public consensus and, secondly, that the language is not precise, because plants or stones too are fellow-creatures. The latter argument is correct, in principle. But there is no risk of misunderstanding in the particular context. On the other hand, speaking of fellow-creatures already makes some presuppositions: that only animals, especially sentient animals, are meant; that suffering should be prevented or reduced; that not all creatures have the same standing. Speaking of fellow-creatures signals that the way we deal with animals is not a mere matter of our sovereign decision, it probably excludes positions of a radical ethic of animal liberation (Bentham, Singer) for which the ability to suffer is the decisive criterion. Those positions, by the way, would have to be regarded as no less "comprehensive" than religious ones. And even the answer to the question of whether animal protection is a "matter of basic justice" depends on the concerned comprehensive doctrine.
2. Another example is the traditional prohibition of killing, according to which killing is forbidden because God alone is the Lord of Life. This language is still used in (Roman Catholic) church documents, even though moral theology has pointed out its tautological character. God is Lord not only over the human life, as Ps 24:1 may illustrate:

The earth is the Lord's and all that is in it, the world and those who dwell therein.

There is nothing on earth which is not the Lord's. Nevertheless, we may use what is on earth according to his will. The traditional argument only says that human life has a special value, but it does not say why this is so. Helmut Weber (1990:91) objects to the accusation of tautology because it stands against spontaneous feeling: the argument may convince not logically, but emotionally.

That might be true, but it does not suffice. Our ethical intuitions can be true or false, plausibilities can be deceptive, as especially H. Sidgwick has shown.

However, Weber thinks that the argument is plausible only for those believing in God.

This assumption might appear too hastily made, if we read Anne Hendershott's remarks on suicide: "Anti-suicide laws do much more than simply affirm the sanctity of life; they also establish and support social boundaries" (2002:144). This corresponds to Durkheim's observation that suicide is rare in societies with strong social cohesion. On the other hand, the propagation of suicide or assisted suicide is done not only for reasons of autonomy and prevention of suffering, as Hendershott illustrates using the example of Oregon: "assisted suicide in Oregon has become primarily a replacement for caregiving" (*ibid.*:148). Regarding "Dr. Death" Jack Kevorkian, Hendershott quotes another author as saying: "In the Kevorkian worldview, the patient is a solitary figure, related to nothing or no one beyond himself [*sic*], with neither a past to honor nor a future to influence" (*ibid.*:151).

The emotional appeal of the traditional argument against suicide could be explained not only in the sense of rejection of human sovereignty or arbitrariness but also in the sense of a plea for social cohesion. In 1997 a group of American philosophers led by Ronald Dworkin demanded a constitutional right to die in a declaration sent to the Supreme Court in which we find the following remarkable statement:

Denying that opportunity to terminally ill patients who are in agonizing pain or otherwise doomed to an existence they regard as intolerable could only be justified on the basis of a religious or ethical conviction about the value or meaning of life itself. Our Constitution forbids government to impose such convictions on its citizens (in Jones *et al.*, 2002:232).

This opinion on what the constitution grants or forbids is, at least, debatable. Gerald Dworkin points to a gap in liberal arguments on this question:

There is a gap between a premise which requires the state to show equal concern and respect for all its citizens and a conclusion which rules out as legitimate grounds for coercion the fact that a majority believes that conduct is immoral, wicked, or wrong. That gap has yet to be closed (*ibid.*:236).

R. Dworkin's remark on the ethical conviction about the value of life is true. But, according to G. Dworkin, that would not be a reason for excluding it from public debate. And, on the other hand, does the plea for assisted suicide not imply an opposite conviction about the ideal of autonomy, the disvalue of a dependent life, loss of self-control, etc.? The people of Oregon are proud of the history of their

pioneers who went west and left their moral, social and religious traditions behind them. Religious groups sharing this attitude were in favour of assisted suicide as well. On the other hand, there were also non-religious groups opposed to assisted suicide – amongst the disabled, for instance, there were those who claimed to be “not yet dead” against the slogan “better off dead than disabled”. R. Dworkin and other liberals seem to have some sensitivity to personal bias in certain positions, but little sensitivity to the cultural bias of their own position. The result is, in Jones’s words,

that the privileged who wield power can, in the name of tolerance, paternalistically dismiss these “alien” gestures as mistaken, paranoid, unmannered, irrational or, as is popular among liberals, as ultimately grounded in some personal bias (such as strong religious or moral belief) that the protestors lack the discipline to bridle (*ibid.*:236).

The paper by Jones was presented at the annual meeting of the Society of Christian Ethics in Vancouver (Canada) where a central theme was the condition of the “First Nations”. One speaker quoted an indigenous chief belonging to a traditional religion who nevertheless regarded an indigenised form of Christianity as desirable for the survival and revival of his own culture. With this in mind, T. Anderson stated:

Secularism, then, not Christianity as conventional wisdom claims, is the chief vehicle of assimilation. According to this view (shared by many traditional elders of different First Nations but not often heard in public), if a restructured relationship is not to be simply a new version of assimilation through secularization, religious matters must be central in all aspects of the restructuring (2002:20).

3. A statement by theologians of different denominations on the status of human embryos submitted to the House of Lords refers to Ps 139:13-15:

Thou it was who didst fashion my inward parts; thou didst knit me together in my mother’s womb.

Even though these words do not tell *when* human life begins, they do “establish God’s involvement and care from the beginning, a concern that is not diminished by our lack of awareness of him” (Jones, n.d.:196).

The authors of this submission to the House of Lords in this way avoided fixing the debate on the question of the status of the embryo and on the categorisation of its use as the killing of a human being. Perhaps it is not yet sure what the real objections are. Our reservations could be against the materialisation and virtualisation of the embryo in stem-cell research and PGD, against the rededication for another purpose.

There is in this debate, of course, the argument of the genetic determination of the embryo, which Audi categorises as “tacitly religious” (Audi/Wolterstorff, 1997:29). The content is not religious, but Audi doubts that people are really motivated by that argument. He therefore demands,

that one has a (*prima facie*) obligation to abstain from advocacy or support of a law or public policy that restricts human conduct, unless one is sufficiently *motivated* by (normatively) adequate secular reasons, where sufficiency of motivation here implies that some set of secular reasons is motivationally sufficient, roughly in the sense that (a) this set of reasons explains one’s action and (b) one would act on it even if, other things remaining equal, one’s other reasons were eliminated (*ibid.*:28f.).

Audi refuses to regard the latter condition as being satisfied. For him, the secular argument is not convincing without assuming animation from the beginning.

CONCLUSION

In the light of the different viewpoints as explained above, the following conclusions can be drawn regarding the place of religious arguments in public sphere:

1. Where there is freedom of speech, anybody is free to present the reasons he/she regards as important and convincing. If he/she looks for followers, he/she will express his/her arguments in a way that is as accessible as possible. And then, as Wolterstorff says:

I see no reason to suppose that the ethic of the citizen in a liberal democracy includes a restraint on the use of religious reasons in deciding and discussing political issues. Let citizens use whatever reasons they find appropriate – including, then, religious reasons. (in Audi/ Wolterstorff, 1997:111f).

2. As Michael Perry points out, Rawls may overlook a fundamental difference when he demands to present only reasons, ideals and principles which no reasonable person can reasonably reject, since:

[m]any convictions, including (especially?) fundamental convictions about human existence – for example, the conviction that life is ultimately meaningless – are not shared. That a conviction is not shared does not mean that reliance on it in political argument is necessarily inconsistent with the accessibility standard” (Perry, 1991:119).

Stout (2004:70) makes the same point from a different perspective when he says that:

Rawls has overestimated what can be resolved in terms of the imagined common basis of justifiable premises ... He has underestimated what a person can reasonably reject, I suspect, because he has underestimated the role of a person's collateral commitments".

3. Mutual respect requires that one present one's position as clearly as possible and it also implies respect for the particularity of the other.

4. Liberal democracy has worked as an ideal. However:

[t]hat ideal has to compete with other considerations; often it has lost, and often it continues to lose, the competition. But it is and has been a member of the competition, and sometimes it wins. Sometimes we have acted as we have so as to bring the ideal closer to the earth. (Wolterstorff in Audi/Wolterstorff, 1997:71)

5. Though Rawls and Audi exclude even secular comprehensive doctrines, they sometimes demand "secular" reasons for the debate. One should rather distinguish as follows: secular reasons – publicly accessible reasons (*ibid.*:74) – acceptable reasons.

6. Every responsible participant in public debate has to be regarded as reasonable (Stout, 2004: 82).

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