



Religion in the Public Square

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Abstract

This article gives an overview of the debate about the “restraint principle” that political liberals urge on those who are inclined to use distinctive moral and theological doctrines in public square debates about politics. It clarifies such central concepts as “public reason” while surveying the main arguments and highlighting three different proposals for possible convergence in this conflict.

Period: 1980s onward

The debate about religion in the public square is similar to but not the same as the debate about the separation of church and state. The latter has become a legal dispute about interpreting the constitution. If my deeply held religious convictions are not merely private preferences but are integrated with definite implications for my political choices, then to forbid my appealing to them in my political advocacy and voting seems to rub against my first amendment right to free exercise of religion. On the other hand, if I and my co-believers leverage a majority to vote our distinctive religious convictions into coercive law, that seems to invite something like the establishment of religion, forbidden by the first amendment. Of course, if the establishment clause is interpreted narrowly as forbidding only the establishment of an ecclesiastical institution, then religiously inspired legislation might not create any constitutional problem, but the Supreme Court has interpreted it more broadly. *Lemon v. Kurtzman* (1971) forbids legislation that does not have a legitimate secular purpose, or that has the primary effect of advancing or inhibiting religion, or that results in an excessive entanglement of government and religion. This interpretation has been attacked by several current Supreme Court justices, but as long as it stands it may well forbid coercive legislation that is based solely on distinctively religious visions of the good life (Perry 66–70). Of course, rulings can change and the constitution itself can be amended (theoretically, even by a minority of citizens that live in the three-fourths of states that have lower populations than the twenty-five percent of states with the highest populations). So, entirely apart from the legal issues, we have the moral issue of the extent to which it is appropriate for citizens to use their distinctive doctrines in the public square.

Let “the public square” refer to those locations and forums where one votes or advocates for political candidates, for legislation, or for any public policy that would result in the right of government to use coercion to control the behavior of its citizens. The public square is often contrasted with the “background culture” of a society – the religious, educational, and cultural institutions, including the media, the journals, the magazines, the sermons, the entertainment industry, and all those venues in society where, among other things, we try to *explain* our views and also try to *influence* opinions and behavior through persuasion, advertising, and so on. Obviously, the contrast here does not concern the distinction between public and private, but concerns the extent to which one’s aims are political. A sermon or letter to the editor, for example, can be in either category, depending on how directly it addresses issues and candidates up for a political vote, and there are likely to be many borderline cases. It is not a matter of when and where but of “conversational pragmatics,” including intentions, unspoken conventions, uncoded practices, etc. (Weithman, *Religion and the Obligations* ch. 5).

The debate about debate in the public square focuses on whether we have prudential or moral reasons for imposing on ourselves some sort of restraint on the types of arguments we use in the public square, or whether, in a pluralistic and deliberative democracy, we should engage each other with arguments that are frankly and unabashedly based on our religious, moral, and other distinctive particularities. The late John Rawls insisted on various versions of a restraint principle as a defining feature of political liberalism. A general version of the restraint principle is that conscientious citizens ought to restrain themselves from using non-public reasons to advocate or vote for coercive legislation unless they also are willing and able to provide public reasons for it. This principle comes in many variations; for example, some apply it mainly or only to advocacy, and less or not at all to voting (Greenawalt, *Private Consciences*; Weithman, *Religion and the Obligations*); some apply it only or mainly to public officials, rather than ordinary citizens (Greenawalt, “Religion”), while others draw the line between executives and judges, on the one hand, and legislators and ordinary citizens, on the other (Wolterstorff 117); some, restrict it to constitutional essentials and matters of basic justice (Rawls, *Political Liberalism*), while others apply it to all coercive legislation (Eberle); some restrain theological reasons but not controversial secular reasons (Audi), while others restrain all controversial doctrines (Rawls, *Political Liberalism*); and some restrict acceptable reasons to those that actually are sufficient to motivate the advocates (Audi), while most others allow advocates to use any public reasons that they think could convince the intended audience, even if the advocates are actually motivated by other reasons. In all cases the proposed restriction is a moral and internal restraint, not a legal and external constraint.

As stated above, the restraint principle is not a call to the narrow version, privatization of distinctive doctrines. Instead, it is a call for what Rawls calls the “wide” and what others call the “inclusive” version: one is welcome to

appeal to distinctive religious and moral doctrines in the public square, as Martin Luther King did in quoting the Hebrew prophets, as long as one meets the “proviso” that one is willing and able to provide public reasons for the legislation or legislator that one favors. This does not mean that advocates must “translate” their distinctive doctrine into public reason; they simply must be willing and able to give independent public reasons for the same conclusion they advocated when using their distinctive doctrines.

Public reasons, according to Rawls, are those that advocates in the public square can reasonably expect their compatriots could reasonably accept. They need not be reasons that compatriots *actually* accept, since the latter may make mistakes about the implications of their own views. And since the range of reasons one could reasonably accept is wider than the range of reasons one cannot reasonably reject, it is important to phrase the restraint in the wider sense.¹ Of course, if I think that I am reasonable, there is a sense in which I think that anyone could reasonably accept almost any of my own beliefs, which is why the restraint principle must be understood as applying to my compatriots *given* their reasonable but distinctive and conflicting moral and religious views (what Rawls calls their “comprehensive doctrines” and what is often called their “evidential set”). As Rawls puts it, we must be able in a sincere and non-manipulative way to conjecture that our compatriots’ reasonable comprehensive doctrines allow them to endorse the public reasons we offer, even if, in fact, they reject them (*Law of Peoples* 156).

That comprehensive doctrines can contradict each other and still be mutually reasonable is part of reasonable pluralism, which not only recognizes diversity as an empirical fact but also claims that there are features about the human epistemological condition (what Rawls calls the “burdens of judgment”) that explain why one can expect persons to disagree on almost any interesting cultural or political issue and still think that all sides are being reasonable. Rawls admits that sheer prejudice, selfishness, false consciousness, and what many theists see as “the cognitive effects of sin” can also be epistemological problems, but he thinks that “these sources of unreasonable disagreement stand in marked contrast to those compatible with everyone’s being fully reasonable” (*Political Liberalism* 58). Furthermore, Rawls insists that “reasonable” is not the same as “rational,” in that the former includes a normative commitment to reciprocity: reasonable persons “desire for its own sake a social world in which they, as free and equal, can cooperate with others on terms all can accept” (50), whereas merely rational persons could be simply self-interested. For Rawls, this means that a reasonable citizen will appeal to the idea of public reason (62).

The actual content of public reason includes not only the empirical findings of the sciences but also normative beliefs that have become part of the public culture:

We collect such settled convictions as the belief in religious toleration and the rejection of slavery and try to organize the basic ideas and principles implicit in the convictions into a coherent political conception of justice”. (8)

This collection then becomes a “reasonable overlapping consensus” which might be regarded as true by one or more comprehensive doctrines but which can also be formulated as “a freestanding political conception having its own intrinsic (moral) political ideal expressed by the criterion of reciprocity” (xlvii). In his final publication on public reason, Rawls says its content includes a rather fluid *family* of political conceptions of justice which might include Jurgen Habermas’s discourse conception of legitimacy “as well as Catholic views of the common good and solidarity” (*Law of Peoples* 142). Some liberals, such as Gaus, propose that Rawls is too loose – even populist – in his view of public justification, so they call for more stringent epistemological restrictions for what is sometimes called “justificatory liberalism,” but many critics find even Rawls’ view too restricting, so I will focus on it.

Assuming that “public reason” is well enough defined to be used in some version of the restraint principle, what are the justifications for proposing such restraint? One prudential consideration might be the avoidance of conflict, analogous to an argument for religious toleration based on avoiding religious wars. Rawls and other political liberals do sometimes sound as if their main concern is stability, expressing worries that, if a majority of citizens leverage their controversial views into a majority that encodes sectarian practices into law, we risk at least political divisiveness and perhaps even a high enough degree of alienation that results in violence and religious wars. Many critics think that this fear is overblown; they think that there may have been times in history or there are geographical locations today (this worry is sometimes called “argument from Bosnia”) in which the risk of violence or divisiveness calls for restraint or even the privatization of religious appeals, but that there are no such monsters under the bed in liberal and pluralistic societies (Eberle ch. 6). Indeed, the point is often made on behalf of those who insist that they live *inside* their traditions, not *alongside* them (Wolterstorff 89), who insist that their religious commitments are overriding and totalizing obligations with definite and important implications for their political deliberations (hereafter “integrated believers”), that asking them to restrain this central feature of their identities in the public square – while welcoming secular arguments – is itself a recipe for significant alienation, resentment, and divisiveness (Weithman, *Religion and the Obligations*; Eberle). This point raises the empirical issue of whether having one’s own distinctive religious beliefs discounted in the public square causes as much or more destabilizing resentment as the risk of being coerced by another’s distinctive religious belief, an issue on which there is more anecdote and testimony than empirical research. It is true, as Rescher, puts it, that

People of radically different ideas can co-operate without agreement and coexist without consensus . . . Consensus-seeking societies will aim to maximize the number of people who approve of what is being done; acquiescence-seeking societies seek to minimize the number of people who disapprove very strongly of what is being done. (189)

But which policy – discounting religious arguments or being coerced by them – is more likely to cause the sort of resentment and alienation that undermines even sullen acquiescence?

In any case, lately the main type of argument that political liberals use for the restraint principle is the moral one that appeals to civil respect toward one's compatriots. Thus Rawls insists that the sort of stability society needs is not simply a *modus vivendi* in which minorities begrudgingly but reliably acquiesce to offensive coercive legislation, but stability for the right reasons (*Political Liberalism* xliii), which requires the moral and political ideal of reciprocity, which in turn associates with civil respect and even civic friendship (xlvii–li). Given reasonable pluralism, reciprocity calls for what Weithman calls the civic virtue of a “liberalism of reasoned respect” (*Religion and Contemporary Liberalism* 5). What it means to respect our compatriots as free and equal is to refuse to coerce them unless one can give them reasons that one reasonably believes they can not only understand (as Servetus could understand why Calvin decided to burn him at the stake) but which one reasonably believes they reasonably could accept whatever their reasonable comprehensive doctrine might be. Lest this view seems overly indebted to Kantian “recognition respect” toward the autonomy of others, it is worth noting that theists have made similar claims based on the Christian ideal of agape (Dombrowski 21) and on the doctrine of persons' being created in God's image (Langerak 518), and integrated believers have appealed to recognition respect in arguing their own cases (Eberle ch. 4). Moreover, Audi provides a well-reasoned “theo-ethical equilibrium” argument, defending a theist belief that God sees to it that people using only secular reason are aware of the basic norms that should shape good legislation, and that therefore theists should be suspicious of any sectarian arguments that they cannot back up with public reasons (ch. 5).²

Critics of the argument for political restraint based on civil respect object that political liberals beg the question on the sort of respect we owe to compatriots. Rawls, for example, seems to build the restraint principle right into the notion of “terms all can accept,” which he in turn associates with reasonable persons regarding each other as free and equal, which is an essential part of civil respect. Critics claim that with these moves Rawls implies that anyone who has important reasons for rejecting his notion of civil respect is by definition unreasonable (Stout 67). This point underscores how distinctive is Rawls's notion of reasonable. Meanwhile, integrated believers argue that true reasonableness requires that we respect each other in our particularity, and we do this only if we give each other our true reasons for our political decisions, including our distinctive moral and religious ones (Wolterstorff 110; Eberle ch. 5). Sometimes called the “consocial” view (Wolterstorff 114) or – at its radically inclusive extreme – the “agonistic” view (from the Greek *agon*, meaning both “assembly” and “contest”), it advocates frank and full public square discussions of all our differences. After vigorous debate, rather than appeal to a non-existent

consensus, we should simply vote and expect the minority respectfully to acquiesce without undue resentment, given that their distinctive views were not automatically discounted as illegitimate and that constitutional safeguards protect their basic rights against ill-considered majority decisions. For these critics, respect in the public square involves exchanging *substantive* ideas on religion, and not merely *methodological* ideas about religion's role in the debate. The liberal hope that a consensus about the latter will substitute for the lack of consensus about the former is vain, according to the critics. Rather than hoping for a community consensus – be it substantive or methodological – we need to live with a politics of multiple communities (Wolterstorff 109).

Moreover, encouraging all sincere integrated believers to include their theological commitments in public square debates allows public criticism of what otherwise would likely be hidden, but powerful, motivators. It also prevents the fundamentalists and fanatics – who rush in where liberals fear to tread – from being the only religious voice heard in the square (Sandel 246). True, there will be costs involved in this radically inclusive approach: sometimes a majority may legislate religious views about marriage, for example, that seem to minorities to impinge on their freedom. But, especially when political liberals base their arguments for restraint on the value of civil respect rather than avoiding violence and instability, liberals must be willing to weigh the costs and benefits of an inclusive public square against a restricted one; just how valuable is the liberal ideal of civil respect compared to the cost of asking integrated believers to compromise – as they see it – values central to their moral, religious, and (thereby) political identity (Sandel 244)?

In addition to discounting worries about violence and instability, disagreeing about what respect requires for political advocacy, and weighing differently the costs and benefits of a religiously inclusive public square, critics of the restraint principle are also skeptical of the resources of public reason to settle controversial political issues, either because of paucity or because of indeterminacy (Wolterstorff 102; Greenawalt, *Religious Convictions* 65; Perry 57). Political liberals reply that, given Rawls's latitudinarian concept of public reason mentioned above, while there can be reasonable debate over exegeting public reason, it is a guideline that works better in practice than in theory, and that a look at the debate over hot-button issues such as abortion, euthanasia, and gay marriage shows that fair-minded believers can and do engage in public reason arguments about them.

Recently there have been at least three moves that can be interpreted as suggestions for convergence in this debate. First, Weithman calls for a reexamination of what responsible citizenship implies.³ Noting that voting and advocacy are not mere power plays, but are role-specific collective undertakings of determining political outcomes, he insists that responsible citizenship involves taking all compatriots' interests into account, and that therefore it requires adequate reasons for impinging on their interests. To

determine what reasons are adequate, we should not put the cart before the horse, as do political liberals when they begin with intuitions about civility or moral claims about political justifications: we must simply look at the healthy debate in a pluralistic democracy and only then decide what kinds of arguments we can reasonably expect (*Religion and the Obligations* ch. 4). Thus, rather than ask what we can reasonably expect others could reasonably accept, we should simply ask what arguments we can reasonably expect in the public square. “Reasonably expect” should not be interpreted as “what a reasonable person can expect”; this would be an empirical issue but, given the quality and types of arguments actually used in American politics, it would be an unpromising route to political guidelines. Instead, Weithman takes a normative route:

What expectations are reasonable depends, in turn, on how it is reasonable for citizens to think of their role and on what citizens can reasonably expect others to believe about the reasons they owe each other. (135)

Notice that using a normative filter for what is reasonable is a step away from a radically inclusive agonistic approach, and a step toward something analogous to Rawls’s restraint principle. It’s just that for Weithman the filter applies not to what we reasonably expect others to reasonably accept, but to what we can reasonably expect to find in the public square, given “what disagreements political philosophy should regard as reasonable and upon empirical data about the societies in question” (136). So Weithman is offering a broader criterion for reasonableness than does Rawls, but it is not clear how much broader it is without more detail about what political philosophy *should* regard as reasonable.

A second step toward convergence is to grant political liberalism the content of its restraint principle, but make it an obligation of *pursuit* rather than *restraint*. This is the proposal of Eberle (chs. 4 and 5), who addresses two different audiences: First, he “has no interest in providing aid and comfort for a mindless or intransigent sectarianism,” so he tries to persuade the “anything goes” crowd that they are morally obliged

to exit their parochial worldviews, to do what is within their power to inhabit the respective points of view of their compatriots, and to attempt to articulate reasons . . . that are convincing to their compatriots. (82)

Second, he wants to persuade the political liberal that, if citizens have sincerely pursued public justification but have failed to find public reasons, then they are not morally bound by the restraint principle, and they may in good conscience vote and advocate for coercive legislation based only on their distinctive religious beliefs. Eberle claims that people too often collapse the pursuit ideal into the restraint principle, thinking too hastily that any obligation to pursue public reasons implies the obligation to restraint if one cannot find them. He also argues that if integrated religious believers were disposed to satisfy the pursuit ideal, resentment toward religiously based coercion would be reduced, acquiescence toward it would be more palatable,

and many political liberals would be more sympathetic to the overriding of the restraint principle when public reasons for coercive legislation cannot be found. Notice that if political liberals are right in thinking that public reasons can usually be found for political decisions, the results of the pursuit principle itself would largely overlap those of the restraint principle, and if public reasons cannot usually be found, that would underscore the cost the restraint principle imposes on integrated believers.

A third route to convergence is to admit that at least sometimes the pursuit of public reasons will fail, but, rather than reject the obligation of restraint, claim that it is an important *prima facie* obligation that can be reluctantly overridden in certain carefully considered circumstances. This approach simply develops what a number of political liberals and integrated believers themselves say. Audi, for example, concedes that integrated believers have a moral *right* to vote and advocate solely on religious grounds, and that what the restraint principle proposes is an ideal that yields only a *prima facie* obligation, the conscientious overriding of which is excusable (95, 114, 203). Meanwhile, Weithman agrees repeatedly that political liberalism proposes an appropriate ideal or excellence of citizenship (*Religion and the Obligations* 129, 151, 211). At the same time, he raises the important question of how one moves from ideals to obligations, even *prima facie* obligations (161–3). Eberle, on the other hand, sees no problem in moving from the “ideal of conscientious engagement” to claiming that that it consists of “constraints . . . that each citizen ought to obey” because “as Robert Audi has helpfully argued in this context, a citizen who doesn’t violate anyone’s moral rights might nevertheless be morally criticizable” for disobeying an ideal that they are “morally obliged to obey.” Eberle explicitly recognizes that Audi’s restraint principle is a *prima facie* one, and he ecumenically makes his own proposed right for religious citizens to go against it a *prima facie* one: even though they have the moral (and, of course, legal) right to reject the restraint principle, they “ought to be extremely reluctant to impose coercive laws on their compatriots” (56, 105, 188).⁴

This *prima facie* obligation approach could be implemented by conscientious citizens with the following types of considerations, which can be put on spectrums with sliding scales of importance:

1. What is the degree and type of coercion (or vulnerability⁵) that would be imposed on the minority? Even taxation is enforced with the sword power of the state, as Henry Thoreau’s prison experience reminds us, but being forced to pay a small percentage of one’s income is generally not as coercive as, say, forbidding abortion after a rape. Audi (88–9) provides a set of distinctions that can help us think through this consideration; for example, taxation may be less coercive than forcing one to be inoculated, but unlike hunting fees, it is unconditional, so it may raise more resentment when it funds abortions or other things that are abhorrent to a taxpayer. Eberle agrees that the degree of rational

- justification required for coercive legislation rises with how averse those affected are to the proposed coercion (93).
2. How basic and far-reaching is the legislation? When we consider all coercive legislation, and not just Rawls's constitutional essentials and matters of basic justice, some proposals, such as amendments to the constitution, have more potential for good or ill than others do. Thus even Weithman, not one to generate obligations out of mere responsibilities, agrees that "when the consequences of political outcomes are important enough . . . responsible commitment to political outcomes becomes obligatory" (100). So those who reject the restraint principle as a general rule may be willing to give it some weight when deciding on basic constitutional issues.
 3. What is the type and degree of harm the legislation is proposed to prevent? Sabbath observance is very important to ultra-orthodox Jews in Jerusalem, but for most of us it does not involve the type and degree of harms forbidden by the commandments against stealing and murder. In the abortion case, however, disagreement over the moral status of the fetus entails disagreement over whether abortion involves the harm of murder. Hence even those who deny that abortion is murder can appreciate why it is higher on the agenda of some integrated religious believers than is Sabbath desecration or divorce, both of which some believers have had reasons to see as legislative issues.
 4. How distinctive is the norm appealed to? It may be borderline public reason or one of the more distinctive parts of one's thick theories, one that, if legislated, would seem to be an especially sectarian imposition. Noting that some distinctive doctrines, or parts of them, are more widely shared than others are, Eberle suggests that we can appeal to the less controversial parts to make it as easy as possible for others to acquiesce to disagreeable legislation (127). Even those who reject the restraint principle as a general rule could agree that, when they have to go against it, the scales on the rest of these spectrums should be more compelling than when the pursuit principle is sufficient, especially when the reasons used are narrowly sectarian.
 5. How central to one's identity and integrity is the belief to which one appeals? Perhaps political liberals can all agree that no one is obliged "to violate his deepest convictions" or to annihilate essential aspects of his very self (Eberle 147–50). By the same token, integrated believers can distinguish between, on the one hand, convictions central to one's integrity, the compromising of which would do psychological damage, and, on the other, those that might involve strong feelings – as matters of sex, for example, often do – but which are possible subjects for principled compromise or toleration.
 6. How volatile is the social and political situation? Eberle agrees that in some areas of the world or periods in history religious differences should be politically restrained or even privatized; given that these areas and

periods are volatile precisely because integrated believers are in conflict, it means that what he calls the “overriding and totalizing duty to obey God” (149), yields only a *prima facie* duty to integrate one’s religion with one’s political advocacy, since God is also interested in peaceful conflict resolution.

7. How certain is one of the truth of the relevant belief, and how readily do others who are in a similar cognitive position agree that one is entitled to affirm it confidently? Even those who believe the Bible is inerrant can be fallibilists about their apprehension of it. And the more exegetical debate there is among those who share one’s basic beliefs, the less certain one should be about the wisdom of legislating one’s interpretation of the disputed religious demands.
8. Is one deciding or advocating as a citizen, a public opinion leader, a member or leader of a religious or secular organization, a legislator, or a government official? One need not draw bright lines here to agree that roles are relevant to how strong a *prima facie* duty one has to exercise restraint. Many religious believers who reject the restraint principle for ordinary citizens would get nervous about having legislators exegete Scripture on the floor, or having judges rely on it in court decisions.

I do not claim that these eight considerations are exhaustive, and I certainly do not claim that using them as spectrums with sliding scales yields an algorithm for decisions about exercising restraint in the politics of a pluralistic society. In discussing Audi’s example of a religiously inspired law that protects dandelions as sacred, Eberle agrees that he would be resentful about such a law, but mainly because of the content of the law, rather than the distinctly religious rationale (138–9). He says he would feel as much frustration if environmentalists got the law passed on the grounds that dandelions are an endangered species. I do not share his view, since I think I could argue with environmentalists in a way that I could not with the Dandelionists. In both cases, I could challenge the validity of inferences, but with the environmentalists I could also argue about the premises with a much higher probability of using reasons both sides could reasonably believe the other side could accept. But in any case, I think the above eight considerations could help us decide the extent to which we should encourage or discourage the Dandelionists to use restraint.

That the vague and sometimes conflicting considerations provide less an algorithm than a way to muddle toward discernment would be a devastating problem if we were talking about legal rules. Instead we are talking about civic virtue and responsibilities that yield, at most, *prima facie* moral obligations, the strength of which can a matter of thoughtful disagreement among those genuinely interested in the implications of civil respect in a pluralistic democracy.

Short Biography

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Notes

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¹ Rawls's phrasing is sometimes ambiguous, and other political liberals unambiguously use the narrower interpretation (4) so it is understandable that some interpreters use the narrower interpretation for Rawls (Stout 65), but I think the wider interpretation is fairer. Also, it follows (*pace* Wolterstorff 106) that if you reasonably believe a compatriot reasonably could accept your reasons, you also reasonably believe that about your conclusion, since the inferences from reasons to conclusion can be debated using only public reasons, even when one realistically expects disagreement to remain.

² Integrated believers fear that this argument does not have a robust enough regard for the cognitive effects of sin and other difficulties in our epistemic situations (Eberle ch. 9).

³ Weithman marshals an impressive array of empirical research to show just how important religious convictions and institutions have been in enabling people – especially minority and low income people – to achieve what he calls “realized citizenship” and “full participation” in their society. Since the latter is a great good for a democracy, political liberals must either rebut Weithman's claim that this good comes as a package with the tendency to use religious arguments in the public square or admit the tradeoffs for the health of democracy that the restraint principle might impose.

⁴ Mellema's *Beyond the Call of Duty* argues for a spectrum of levels of responsibility, including “quasi-supererogatory” responsibilities, whose non-performance is blameworthy in a way that the non-performance of supererogatory ones are not but in some lesser way than is the non-performance of obligatory ones. Mellema suggests some level of responsibility for living up to even high ideals, at least in the sense that we are morally criticizable if we develop a disposition to never go the second mile (119). I suspect that if Audi, Eberle, and Weithman (and the spirit of Rawls) could discuss a suitably nuanced approach to levels of moral responsibility, they would find a fair amount of common ground.

⁵ “Vulnerability” is added because some integrated believers argue solely on theological grounds for agapic pacifism; if this became national policy one could interpret it coercing non-pacifists from forming an army; in any case it would thus make them very vulnerable to aggressors.

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