The Silencing of Religious Articulations in the Formal Public Sphere: A Critical Response to Jürgen Habermas' Conception of a Postsecular Society

By

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Introduction

The so-called 'postsecular condition' was originally formulated by Jürgen

Jürgen Habermas' "Religion in the Public Sphere" (2005) was published as a response to the rise of religious fundamentalism and the proliferation of religious conflicts in the global arena. The article focuses on the role religion plays in shaping contemporary political life and how religion has been intensified as a result of its surprising political revitalization at the heart of Western society. Habermas develops an account of a liberal secular state grounded in an independent political ethic – postsecularism. The term suggests that liberal political thought needs to realize that faith discourses and those of public reason cannot be as clearly distinguished as many liberal democratic political theorists have assumed, which lends itself to the argument that religious forms of reasoning should be incorporated into public political discourses. Habermas' theory of a postsecular society is marked by the institutional translation proviso –

both parts, Habermas' postsecular account is fraught with normative lacunae. In sum, based on the four central arguments outlined above, I argue Habermas' conception of a postsecular society does not provide sufficient space for religious citizens to have their worldviews protected in public deliberations nor does it provide them with the discursive power to influence formal legislative processes.

In the second section of the paper I put Jürgen Habermas' institutional translation proviso to the test in the context of the American legislative debate over same-sex marriage, focusing on the implications of secularizing religious logic in opposition to same-sex unions. Jürgen Habermas' institutional translation proviso suggests that religious articulations are only acceptable outside of the institutional realm, meaning that religiously-grounded justifications in the informal public sphere must be secularly framed in order to impact formal judicial processes. Using recent scholarship from Eskridge and Spedale (2007), Schuman (2008), Smith (2010), and Reinbold (2014), I examine the language deployed in opposition to same-sex marriage throughout American courtrooms. In congruence with Habermas' institutional translation proviso, which suggests that religious citizens ought to split their religious and political identities in public deliberations at the institutional level in order to prevent the use of religious language in formal public discourse, I demonstrate how the US legal system is unable to tolerate pleas for sexual regulation when such articulations involve explicitly religious sentiments. I demonstrate how, as a consequence of this intolerance, religious pleas in the courtroom mask themselves behind secular language in order to 'smuggle' their convictions into a formal public discourse that rejects explicitly religious ideals. I conclude by arguing that the institutional translation proviso proposed by Habermas,

Chapter 1 –

"cannot reach agreement or even approach mutual understanding on the basis of their irreconcilable comprehensive doctrines". 10

Rawls' Liberal Conception of Democratic Citizenship

The liberal conception of democratic citizenship as proposed by John Rawls (1997) has developed within the framework of a tradition that relies on "natural reason" based on the assumption that all persons have equal access to a common human reason. 11 This framework serves as the epistemic base for public political argumentation to take place within a secular state that no longer depends on religious legitimation. 12 Liberal basTf (12.2 (ra) 0.

to contentious political issues, citizens owe one another good reasons for their political statements. ¹⁶

Objections to the Liberal Conception of Democratic Citizenship

The prima facie obligation not to advocate or support any law or public policy unless citizens are able to justify their positions with secular reasoning has been countered by several objections. Robert Audi and Ni

any set of reasons exist that are capable of convincing all rational adults within a liberal society.

the political] without destabilizing their existence as pious persons". This inability to undertake such cognitive divisions does not have to do with a lack of knowledge or imagination among religious individuals to find secular justifications for religious beliefs. Rather, it relates to the vital role religion plays in the lives of the religious. As Audi and Wolterstorff suggest,

It belongs to the religious convictions of a good many religious people in our society that they ought to base their decisions concerning fundamental issues of justice on

the independence of the secular from the sacred as a result of the institutionalized monopoly of modern science in its ability to make sense of states and events in the world; and (3) recognize the priority of secular reasoning in the political arena, which requires

normative questions about the ways in which one might envision a postsecular society to look like.

The Constitutive Effects of Habermas' Argument for the Recognition of Religion and the "Making of" Religion

When Habermas argues for the recognition of religious articulations within the informal public sphere, he does not reflect on the constructive or productive power of his arguments. As Patchen Markell (2003) notes,

'Recognition' is sometimes used to refer to the successful cognition of an already-existing thing, but [it also refers] to the constructive act through which recognition's very object is shaped or brought into being...recognition does not simply know its objects but makes them.³⁹

Habermas' argument for the recognition of religion in the public sphere does not simply remove religion from its privatized shackles; rather, he constructs religion by drawing boundaries around what is considered recognizably religious. Yet recognition is not merely constructive, it is also conservative: only those subjects that are recognizable are capable of being recognized because only those religious articulations or subjects that are already obviously religious can be recognized. The religion Habermas constructs is therefore necessarily a familiar one.⁴⁰ Additionally, Habermas' recognition of religion in the public sphere does not necessarily seamlessly incorporate religion into the civic milieu (as Habermas originally intends), but can have the adverse effect of reengendering its constitutive Otherness by isolating 'religion' as something foreign that

³⁹Markell, Patchen. 2003. Bound by Recognition. Oxford; Princeton, NJ;: Princeton University Press. 496. Cited in Birnbaum, Maria. 2015. Exclusive Pluralism: The Problem of Habermas' Postsecular Argument and the "Making of" Religion. Religion as a Category of Governance and Sovereignty 3. London: BRILL. 182-196.

⁴⁰Birnbaum. Exclusive Pluralism. 187.

deviates from the secular norm. 41 In his attempt to accommodate religious citizens, Habermas constructs a monolithic version of religion that negates the pluralistic tendencies of its constituency. This is because pluralizing religious worldviews would directly challenge Habermas' argument that religion is capable of representing a unified voice in dialogue with secular counterparts by providing shared moral intuitions with regard to communal forms of a dignified human life. A more nuanced account of the intricacies of religious worldviews may therefore have the adverse effect of antagonizing the very people he is trying to aid, but in doing so he ignores the ways in which he homogenizes religion's multidimensionality into a singular perspective. 42 This reductive characterization of religion has serious implications for allowing those religious individuals and worldviews that have remained dominant in political discourse to continue representing religious bodies with divergent views. In his negation of the diversity of religious articulations, Habermas overlooks the performative aspect of the term religion in that religion does not represent a fixed category or a pure state. Rather, religions are comprised of a multiplicity of voices in which identities are constantly shifting. As Roger Brubaker (2013) highlights, "religious pluralism entails deeper and more divisive forms of diversity". 43 Habermas' account of a postsecular society presupposes a unified religious ethos within the public sphere when no such unified ethos exists. This homogenization is even more precarious given increased religious pluralism within Western democracies.

⁴¹Birnbaum. Exclusive Pluralism. 188.

⁴²Harrington, Austin. 2007. Habermas and the 'Post-Secular Society'. European Journal of Social Theory 10 (4): 543-60. 556.

⁴³Brubaker, Roger. 2013. Language, Religion, and the Politics of Difference. Nations and Nationalism 19 (1): 1-20. 1.

In Habermas' negation of the performative aspects of religion, Habermas does not understand religion as "a practice that is lived within the context of particular communities and institutions" but rather as a distinctly intellectual enterprise. ⁴⁴Andrea Baumeister (2011) argues that Habermas' segregation of religion to the intellectual realm is strategic in that it allows him to avoid intervening or commenting on the internal affairs of religious communities. Habermas' conceptualization of religion as a particular mode of thought allows him to ignore the fact that religious communities do not operate on the level of the individual but are marked by distinct hierarchies and power relations. These realities directly implicate the ability of lay practitioners to freely debate and evaluate internal religious doctrines. ⁴⁵ In line with this argument, Baumeister adds that what constitutes "true" faith is a question that is highly contested within religious communities and is not necessarily solidified in the implementation of religious doctrines. ⁴⁶

secure greater freedom and equality within a religious context, these women push for a reinterpretation of the existing legal traditions based on alternative readings of comprehensive doctrines. They therefore seek to reform rather than reject their religious heritage. This is apparent in movements such as Women Living Under Muslim Law (WLUML), in which women seek to engage their religious communities on their own terms.

Habermas never explicitly defines the type of religions allowed to partake in public deliberations on consequential political issues. He does argue, however, that these religions are required to

where Habermas' postsecular account benefits a Judeo-Christian heritage simply because it is that specific heritage that influenced his own work.⁵⁴ However, Habermas uses the term 'religion' loosely so as to suggest that the cultural particularities of the Judeo-Christian heritage are not strictly relevant to what it is meant by the societal universality

modernization of religious consciousness refers to those religions that have incorporated into their worldviews the normative principles underlying the liberal democratic culture – a commitment to autonomy and a decentred, self-reflective attitude as it relates to their own beliefs and values. Habermas' commitment to liberalism is made palpable by requiring religious citizens to differentiate themselves from the wider body politic in order to develop from within their own worldviews the normative principles of a secular society.⁵⁷

Habermas' commitment to liberal democratic culture is problematic for his postsecular account because it remains doubtful whether religious citizens, with doctrines that claim universal validity, could ever accept the demands associated with a liberal political culture without having to completely revise or forego the very substance of these ethical commitments.⁵⁸ Andrea Baumeister (2007) uses contemporary abortion debates in order to illustrate the difficulty religious citizens face when forced to redefine their worldviews according to a particular liberal framework. For many Catholics and other pro-life supporters, the right to life of the foetus outweighs the right to self-determination on the part of the mother. Citizens who subscribe to religious worldviews will consider their claims regarding abortion as universally valid and applicable to everyone because these ethical commitments align with their conception of the good. For these citizens to relegate abortion to a matter of individual choice would require a significant revision of either the substance of their ethical commitments or the manner in which they hold their beliefs. Although religious worldviews may allow for the exercise of a certain degree of autonomy, the level of individual autonomy mandated through the

exactly what give most of religion's intellectual contributions potency and meaning for

everywhere could reasonably accept. Postmetaphysical thought can be used to achieve

standing translation programme of religious terminology, where key articulations of secular discourse such as "human rights", "freedom" and the very concept of "democracy," represent demystified secular expressions rooted in Judeo-Christian tenets. ⁶⁸ Yet if this is the case it seems unreasonable to ask religious citizens to articulate their moral claims in a discourse that is itself religiously inspired.

In order to better understand the practical consequences of the institutional translation proviso, Maeve Cooke (2006) examines the difference in content production between the informal and formal public spheres.⁶⁹ Cooke distinguishes between 'weak publics' and the organized public space of civil society. For Cooke, the weak publics of

affect of placing religious individuals in vulnerable positions, susceptible to the opinions and expressions of their secular counterparts so that they can be convinced otherwise.

If a postsecular society is one that is epistemically demanding in order for religious and secular individuals to be able to take each other's claims seriously, why would secular citizens take religious citizens seriously given the limitations of the institutional translation proviso on the expendability of religious language in processes of actual political significance? Religious language is excluded from formally organized public spaces so that its articulations are incapable of sifting through the weak publics in order to become viable mechanisms for enacting legislative change. More fundamentally, the institutional translation proviso

postsecular account – a philosophical attempt to carve out a space for religious individuals to speak freely.

Habermas' neat division between the informal and formal public spheres is not as differentiated as he would suggest. Formal public spaces set the precedent for the kind of conversations permissible in informal public deliberations.

Habermas' introduction of the phrase 'postsecular' signifies some kind of self-correction process, where the postsecular represents a necessary revisionist account of modernity. The secularization thesis was based on the hypothesis that there was a close linkage between the modernization of society and the secularization of its population.

seriously. As Cristina Lafont (2007) argues, if the political obligation of taking each other's contributions seriously in the public sphere obliges one to evaluate these contributions strictly on their merits and then engage them with counter arguments to expose the faults in their claims, then it should not matter whether secular citizens conceive of religious communities as archaic relics of premodern societies so long as they fulfil this obligation of citizenship. To example, defenders of evolution must be fulfilling their political obligations towards their fellow citizens by investing an incredible amount of work in providing counter evidence for the claims that defenders of creationism bring to the informal public sphere. They are fulfilling their obligations of citizenship "regardless of what their personal cognitive stance towards the cognitive substance of religion may be" because they have provided ons

regardless of whether they are actually taken seriously, as a means of curtailing religious extremism. Additionally, to return to the evolution versus creationism example, Habermas' inability to provide a clear un

how, as a consequence of this intolerance, religious pleas in the courtroom mask themselves behind secular language in order to smuggle their convictions into a formal public discourse that rejects explicitly religious ideals. I conclude by arguing that the institutional translation proviso proposed by Habermas, which is predicated upon the institutionalization of secular legalism, inhibits

America's moral foundations. ⁸⁷ This historical amnesia is largely the product of Protestantism serving as the moral foundation upon which a burgeoning secular state took shape. The intertwining narratives of Protestantism and secularism are made clear in Max Weber's The Protestant Ethic and the Spirit of Capitalism (1930), in which he notes the religious architecture of both the secular state and the free market. ⁸⁸ Weber explains how the Enlightenment, which was marked by "religion's retreat, [and] reason's advance", only happened as a direct result of the Protestant Reformation. ⁸⁹ Weber writes,

[It] is necessary to note, what has often been forgotten, that the Reformation re

The Unified Voice of Conservative Christianity Against Same-Sex Marriage

As of 2003, nearly six-in-ten Americans considered homosexual behaviour to be a sin. 91 These numbers increase exponentially when religion is factored in. Eighty-eight percent of white evangelicals, sixty-four percent of white Catholics, and seventy-four percent of black Protestants believe that homosexual conducts is sinful. 92 In no major religious group do the majority express favourable views towards same-sex marriage, and the most common reasons provided for objecting to same-sex marriage are moral and religious ones.93 When asked in an open-ended format for their main reason behind opposing same-sex marriage, twenty-eight percent of opponents explicitly cited the view that homosexuality is immoral, sinful, or inconsistent with biblical teachings, and an additional seventeen percent stated that the idea is simply in conflict with their religious beliefs. Only one-in-five Americans who oppose same-sex marriage explain their positions in amoral terms, citing that the constitutional definition of marriage involves a man and a woman (16%), or that the purpose of marriage is reproduction (4%). 94 By contrast, six-in-ten seculars (those who say they have no religious affiliation) hold positive views of homosexual relationships. 95 As a general rule, religious individuals in the United States oppose same-sex marriage. The overwhelming majority of this constituency is made up of Christians, and these Americans have dominion over the religious public sentiment in the United States. As of 2015, the United States remains

⁹¹Pew Research Ctr. For the People & the Press. 2003. Pew Forum on Religion & Public Life, Republicans Unified, Democrats Split on Gay Marriage: Religious Beliefs Underpin Opposition to Homosexuality. Web.

⁹²Ibid.

⁹³Pew Research Ctr. For the People & the Press. Pew Forum on Religion & Public Life, Republicans Unified, Democrats Split on Gay Marriage.

⁹⁴Ibid.

⁹⁵ Ibid.

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authority to intrude upon the right of privacy inherent in the marital relationship. ⁹⁹ The court cites Mr. Justice Douglas, author of the Griswold v. Connecticut majority opinion, that this criminal statute "operates directly on an

"marriage" between persons of the same sex was unthinkable and, by definition, impossible. 102

An additional application of biblical scripture in judicial opinions against same-sex marriage appeared in the 1991 case of Dean v. District of Columbia, where in a rejection to the plaintiff's challenge of D.C.'s prohibition against same-sex marriage, Superior Court Judge Shellie Bowers "issued an opinion replete with passages from Genesis, Deuteronomy, Matthew, and Ephesians". The use of biblical references in same-sex marriage legislation highlights how, in addition to the nation's pervasive religious character, many "Americans have historically conceived of marriage in both law and society as a sacred, religious, and pre-political institution that is the foundation of society". This belief in the power of traditional marriage began in the United States in the late 18th century as a result of the homogenized monopoly of Judeo-Christian values in conjunction with the fact that the American founders believed there to be "[a] symbiotic connection between family virtues and civic virtues". Maintaining traditional marriage would therefore ensure the smooth running of the Republic. 105

However, the application of biblical text and opinion in judicial decision-making processes drastically changed when conservative Christians began to realize the constitutional dangers of overtly religious argumentations against same-sex marriage in both litigation and legislation. This is because these articulations were believed to challenge the provision in the First Amendment to the US Constitution known as the

102 Adams v. Howerton, 486 F. Supp. 1119, 1123 (C.D. Cal. 1980).

¹⁰³Dean v. District of Columbia, 653 A.2d 307 (D.C.App. 1995).Cited in

Establishment Clause, as well as that of the Lemon Test. ¹⁰⁶ The Establishment clause states that "congress shall make no law respecting an establishment of religion", and the Lemon Test, which was formulated as a result of the 1971 Lemon v. Kurtzman case, resulted in the creation of a three-

arguments under a secular guise. When Smith (2010) refers to this process of smuggling he is speaking metaphorically. Smuggling is not a technical term, but refers to a sort of discursive shortcoming. Smuggling implies that an argument is strategically importing something that is left hidden or unacknowledged, such as an undisclosed premise or assumption. Conservative Christians, I argue, strategically smuggle their religious arguments against same-sex marriage under the guise of a modern secular vocabulary.

Secular Arguments Against Same Sex-Marriage

In their comprehensive book Gay Marriage for Better or

heterosexual ones. 114 By adopting policy x (incorporating homosexual unions) and abandoning policy y (strictly heterosexual unions), the state would be promoting homosexual conduct. The argument being that if the role of the state is to promote the most favourable conduct possible for its citizenry, homosexual conduct is not as favourable as heterosexual conduct and therefore policy y should be retained and policy x should be abandoned. 115 The stamp-of-approval argument is linked to the idea that samesex couples are seeking "special rights" in their legal battles. 116 Eskridge and Spedale refer to the third category as the "defense-of-marriage argument", which suggests that a society's moral ethos rides on the preservation of traditional marriage. 117 The defense-ofmarriage argument is psychological in nature, where civic society has direct interest in maintaining the institution of marriage in order to protect conceptions of responsible parenting and child rearing. 118 Accordingly, the government should be concerned with protecting the institution of marriage as a heterosexual union if such government has a vested interest in protecting children. Similar to any psychological argument that seeks to evoke fear, the defense-of-marriage argument is consequentialist. This fear of consequence often expands the defense-of-marriage argument to encompass the "slippery slope argument." If same-sex marriage no longer remains a morally contentious issue for the courts, it will serve as the first step in a long list of morally compromising unions that will inevitably be legalized following homosexual unions; if the Supreme Court makes

¹¹⁴Eskridge and Spedale. Gay Marriage. 21.

¹¹⁵Schuman. God & Gays. 2115.

¹¹⁶Ibid.

¹¹⁷Eskridge and Spedale. Gay Marriage. 21.

¹¹⁸Schuman. God & Gays. 2119.

same-sex unions permissible, then bigamy, polygamy, incest and bestiality will follow. 119 Eskridge and Spedale (2006) explain that in contemporary courtroom debates, these three

serve as the underlying justification for the Judeo-Christian belief that homosexuality is sinful. Leviticus 18:22 reads, "thou shalt not like with mankind, as with womankind: it is abomination". Similarly, Leviticus 20:13 reads, "if a man also lie with mankind, as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death; their blood shall be upon them". These passages have been interpreted and debated for centuries, but serve as the scriptural backbone upon which this sexual

adversaries of homosexuality was Paul of Tarsus, who similar to many early Jewish writers, viewed homosexual acts as a clear indication of divine betrayal and a rejection of the sexual distinctions created by God. If the Old Testament is too vulnerable to alternate interpretations, Paul does not miss the opportunity to make his views abundantly clear when he describes the actions of the Romans: "and likewise also the men leaving the natural use of the woman, burned in their lust toward another; men with men working that which is unseemly, and receiving in themselves that recompense of their error which was meet". And if this condemnation of homosexual acts is not sufficient, Paul also includes the Greek terms malakoi (effeminate) and arsenokoitai (male copulator) in his writing. Paul uses such vocabulary to refer "to the passive and active participants in a

the process of smuggling – the strategic importing of the notion that homosexuality is bad based on scripture that is left unacknowledged and hidden because it is rendered inadmissible by our modern secular vocabulary. Under the fog of secular semantics the most influential belief underpinning all anti-homosexual rhetoric in United States

Families is a non-for-profit Christian organization that seeks to promote socially conservative public policy in California, ¹³⁴ making them similarly representative of this conservative Christian majority. Third, one of Staver's arguments is a poignant example of the sedimentation of secular arguments as articulated by Eskridge and Spedale (2007).

States it might go the way of "some of the Netherlands," where "once [marriage] has been redefined, the institution starts to further denigrate or disintegrate [such that] less people of opposite sex enter into that relationship because it's no longer what it has historically been understood to mean." This argument fits under the category of Eskridge and Spedale's defense-of-marriage argument because it is psychologically motivating. It is both protectionist and consequentialist in nature, where legalizing samesex marr

Staver

the idiosyncrasy of heterosexual unions in ostensibly amoral terms, and maintain the secular discourse that Habermas postulates is necessary at the institutional level. 140

Lastly, Staver makes a surprising reference to integration in order to invoke rational principles. He states,

Not only are there rational, plausible, reasons for a rational basis, but there's compelling reasons as well for marriage, not the least of which is integrating of the sexes, not segregating them in single-sex relationships, but integrating the sexes. ¹⁴¹

Staver suggests that this principle of integration is directly related to "the natural interest that societies always have [in]...having children with the right to have biological parents". 142 This last argument is especially telling of the iron cage of legal secularism for two reasons. Firstly, Staver says the word 'rational' twice, 'plausible' once, and 'reasons' twice in the same sentence.

how the arguments he advances inadequately reflect his religiously-inspired opinions, as well as the authentic opinions of the conservative Christian group he represents. The same-sex marriage debates in the contemporary United States do not allow for religious argumentation to present itself in authentic terms by limiting the vocabulary allowed to engage in such discourse. Habermas' institutional translation proviso places similar limitations on religious citizens. In a Rawlsian fashion, the proviso forces conservative Christians to bracket their most fundamental convictions about what is true in "reasoning" over public matters. The debate on same-sex marriage in United States courtrooms puts Habermas' institutional translation proviso to the test and in doing so demonstrates how secular legalism renders religious articulations incapable of influencing legislative processes.

A Case for Religious Articulations in the Formal Public Sphere

In the article "Why Political Reliance on Religiously Grounded Morality is not Illegitimate in a Liberal Democracy" (2001) Michael J. Perry argues that based on a true understanding of the fundamental moral commitments of a liberal democracy, religiously grounded justifications are permissible. He supports this position on the basis that the two commitments at the heart of liberal democracy are (1) a commitment to the true and full humanity of every person, without regard to race, sex, religion etc. and (2) a commitment to certain basic human freedoms such as speech, press and religion. ¹⁴³ These commitments are axiomatic for liberal democracies, and in the United States almost all Americans cherish these two commitments by trumpeting them to the world as inviolable

¹⁴³Perry, Michael J. 2001. Why Political Reliance on Religiously Grounded Morality is not Illegitimate in a Liberal Democracy. Wake Forest Law Review 36 (2): 217-249. 226.

human rights.¹⁴⁴ Moral arguments, such as the debate over the legalization of same-sex marriage, do not necessarily take place between liberals and non-liberals. Many self-

religious perspectives to enter public discourse is beneficial because when individuals are

emergence of modern science, and the spread of positive law and profane morality. 155 More fundamentally, with the rise of nationalism, fascism, communism and other ideological movements, the twentieth century has made clear that one need not be a religious believer to be close-minded or even fanatical when it comes to fundamental beliefs. 156

Perry (2001) closes by arguing that religiously grounded justifications should be capable of entering formal democratic deliberative processes because in a society as overwhelmingly religious as the United States, people do present and discuss religious beliefs in the informal throngs of public culture. In fact, public culture depends on unconstrained discussion in which "the merits of competing moral, religious, aesthetic, and philosophical values are given a fair opportunity for hearing". 157 Therefore, rather than maintaining a strict separation between religious moral articulations, which inevitably take place in public culture, and public deliberations, liberal democracies should welcome religiously-grounded justifications in all areas of public life, including formal discourse on contested political choices. 158 For Perry, such discourse should not just be welcomed, but encouraged, so that these modes of thought can be tested, and so that they can test us. 159 In a democratic society, with its deliberative politics, there is surely virtue in allowing oneself to be confronted with positions with which one may

¹⁵⁵Habermas. Religion in the Public Sphere. 103.

¹⁵⁶Perry. Why Political Reliance on Religiously Grounded Morality is not Illegitimate in a Liberal Democracy. 233.

¹⁵⁷Ibid. 238.

¹⁵⁸Ibid.

¹⁵⁹Ibid. 239.

nonestablishment norm was put in place so that government may not bestow legal favour on or privilege one or more church(es). Perry (2001) writes,

Government may not take any action that favours one or more churches in relation to one or more other churches, or to no church at all, on the basis of the view that the favoured church(es) is, as a church—as a community of faith—better along one or another dimension of value (truer, for example, or more efficacious spiritually, or more authentically American.¹⁶⁵

Simply, the government does not have the jurisdiction to make decisions about whether one church is better than another church.

The question thus becomes, "[d]oes the nonestablishment norm forbid legislators or other policymakers, in voting to ban or otherwise disfavour a conduct...to act on the basis of their religiously grounded belief that the conduct is immoral?" Based on a legal understanding of the nonestablishment norm, it does not. The norm forbids government from privileging one church over another. It does not forbid legislators or policymakers from making a political choice disfavouring certain conduct on the basis of their religious convictions that this conduct is immoral. Douglas Laylock in "Freedom of Speech that is Both Religious and Political" (1996) argues that the US Constitution is not meant to limit the arguments free people can make in judicial debates, but rather limit what the government can do to the people. The Establishment Clause was enacted in order to limit political outputs, not political inputs, and moral constraints on arguments are ostensibly more burdensome on religious citizens than legal constraints. The right

¹⁶⁵Perry. Why Political Reliance on Religiously Grounded Morality does not Violate the Establishment Clause 668.

¹⁶⁶Ibid. 670.

¹⁶⁷Ibid.

¹⁶⁸Laylock, Douglas. 1996. Freedom of Speech that is Both Religious and Political. U.C. Davis Law Review 29 (3): 793-813. 795. ¹⁶⁹Ibid. 795.

the conquered.¹⁷⁹ For each of these minority or subaltern groups, the internalization of these depreciatory images has become one of the most potent instruments of their own oppression. Misrecognition is thus more than just a lack of due respect; it can inflict sustained wounds by "saddling its victims with a crippling self hatred". ¹⁸⁰ Due recognition of identity becomes not just a courtesy we owe people, but a vital human need.

The same point can be made in relation to the formation of individual religious identities in Jürgen Habermas' postsecular account, where the suppression of religious articulations from the institutional level stifles religious individuals from being able to actively participate in the institutional formations of their societies, and this absence of recognition causes religious individuals to develop depreciatory and skewed self-perceptions fuelled by feelings of exclusion and inadequacy. In Habermas' postsecular account, religious individuals participating in democratic deliberations become responsible for secularizing religious logics because those who exercise their power

question of recognition and identity formation, Habermas' account relegates religious discourse (and thus religious identities) to the informal level of the weak publics, and in doing so suppresses religious individuals from being able to develop a sense of self

society views us.

peculiar in each.¹⁹⁶ This conflict can be seen at the level of "difference-blindness", where the politics of universal dignity sought forms of non-discrimination that were blind to the ways in which citizens differ. The politics of difference redefines non-discrimination to

identities) but also, in a subtle and unconscious way, itself highly discriminatory. ²⁰⁰

Habermas' postsecular account is guilty of the politics of universalism beyond the institutional threshold. His inability to recognize competing forms of dialogue outside of the secular realm highlights the ways in which his account is predicated on a form of "difference-blindness" that refuses to recognize the identities of religious individuals. Based on the distorted self-image that can be internalized as a result of misrecognition, or lack thereof, religious individuals can develop genuinely damaged or distorted self-images as a consequence of feelings of exclusion from formal political processes as outlined in Habermas' postsecular account. In a similar vein to those feminist thinkers who have argued that women in patriarchal societies have been induced to adopt a depreciatory image of their own identities by internalizing a projected vision of their own inferiority, religious individuals undergo an analogous process of self-depreciation based on experiences of nonrecognition (systematic exclusion) and misrecognition (forced secular translation) in Habermas' postsecular account.

In her article "Dealing with Difference: A Politics of Ideas or a Politics of Presence?" Anne Phillips (1994) argues that in the post-communist world of the 1980s and 1990s, "liberalism and liberal democracy achieved an impressive ascendancy, and can more plausibly present themselves as the only legitimate basis for equality, justice or democracy." Phillips suggests that critics of liberalism and liberal democracies remain but the grounds of these criticisms have shifted considerably. For a number of years the central arguments against liberalism fell into three broad categories: (1) the liberal

²⁰⁰Taylor. The Politics of Recognition. 43.

²⁰¹Phillips, Anne. 1994. Dealing with Difference: A Politics of Ideas or a Politics of Presence?. Constellations 1 (1): 74-91. 74.

emphasis on individual rights and freedoms reflects a certain "self-protective and competitive egotism" that negates the need for any sort of wider community; (2) the liberal focus on political equalities systematically ignores, overlooks or even encourages large scale social and economic in

diversity a central organizing theme.²⁰⁵ Constitutional and representative democracies are systems that encourage and disseminate diversity because they promote the procedures of electoral competition, which lends itself to "a more sceptical attitude towards the basis on which competing claims are resolved".²⁰⁶ This cultivated a general tolerance of and affection for diversity as the source of regulated content and competition.²⁰⁷

Phillips (1994) argues that although difference may not be something new to us, it has been overly intellectualized in that it commonly equates to differences in opinions and beliefs, what Phillips refers to as a "politics of ideas" that has inadequately dealt with the politics of exclusion.²⁰⁸ Phillips writes,

The diversity most liberals have in mind is a diversity of beliefs, opinions, preferences and goals, all of which may stem from the variety of experience, but are considered as in principle detachable from this.²⁰⁹

The problem with relegating diversity to a politics of ideas is that what is to be represented takes priority over who does the representation. This is because issues of political presence—who it is representing the range of ideas—are discounted in terms of intellectual diversity. This means that "one person may easily stand in for another; there is no additional requirement for the representative to "mirror" the characteristics of the person or people represented". The only thing that concerns a politics of ideas is that the representative reflects a congruity of political beliefs and ideals, where the role of the

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²⁰⁵Phillips. Dealing with Difference. 75.

²⁰⁶Ibid.

²⁰⁷Ibid.

²⁰⁸Ibid.

²⁰⁹Ibid.

²¹⁰Ibid. 76.

politician is to carry a message. Therefore, the actual person representing that message becomes irrelevant so long as the message is reflective of those she is representing.²¹¹

realm ordered around a set of minimum shared presumptions. But the relegation of difference to the private world of private variation has been experienced as an injunction to keep peculiarities a secret, and the shared presumptions that control the public world have proved less than even-

themselves in formal political processes, but should demand that these representations truly reflect the shared experiences that shape their ideas and construct their identities.

In his article "Liberalism and Multiculturalism: The Politics of Indifference" (1998), Chandran Kukathas argues that diversity poses a challenge for societies of the liberal democratic West and for philosophers who are looking to find common ground among difference, because society's institutions have been challenged when a number of groups have demanded recognition. This recognition is more than just the demand for a seat at the political table, but reflects the need for recognition of their unique identities as members of distinct cultural communities within society. The conflict that emerges for liberal societies is one between two demands – recognition of the individual by respecting fundamental human rights and recognition of the groups or communities to which these individuals belong. ²¹⁸

Kukathas (1998) challenges the arguments outlined by Taylor (1997) and Phillip (1994) that the demand for recognition poses a problem for liberalism by arguing that it is

cultural diversity. It argues that diversity should be accommodated and difference should be tolerated in order to attain a more complete social unity. ²²⁰ Kukathas writes,

While liberalism is a term that is properly used to identify a particular

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