

Response to Nussbaum

How much respect do governments owe to religion?

Professor Nussbaum's sensitive exploration of constitutional issues in the United States throws light upon matters to do with the liberal democratic state's proper role in dealing with issues of welfare and education. She mentions in passing her interest in related matters to do with religion of which she has treated elsewhere. In my contribution to the panel discussion today, I propose to take up questions about the place of religion in the public, and, more narrowly, the political sphere. It will not be a direct discussion of Professor Nussbaum's views, though it bears upon them (as I hope they bear upon it) and I will refer to them in due course. Of course, I can only scratch the surface of this topic in a short presentation. I should also say that, as someone who is both religious and liberal, I find her views on the topic both sensitive and stimulating.

A passionate interest in the topic of religion and its significance for public life has been a feature of debate in what are often called secular democracies (and for that matter secular autocracies) in the early years of this century in a way that was uncommon for most of the second half of the 20th century. This is not to say that apprehension about the destructive potential of religion was not a background factor in much thinking about public policy in the Western democracies and beyond in those years. Nonetheless, a general assumption prevailed amongst the enlightened that religion had pretty much been tamed as a factor in the formation of public policy and political options. This assumption was shaken somewhat by the totally

unexpected triumph of the Mullahs in Iran in the 1970s, but Iran had not been a democracy, so the assumption remained pretty much in place until the take-over by the militant religious right of the Republican Party in the United States led to the arrival of President George W. Bush and his devout cohort in 2000. And then there was 9/11. These terrible attacks helped put the issue of militant religion at centre stage in the Western democracies.

My truncated historical overview simplifies too much, but it catches important elements of a cultural shift in attitudes to religion and political life. That shift is also correlated with an upsurge in overt hostility to religion amongst secularist intellectuals. There has been a remarkable outpouring of books from philosophers, scientists, cultural critics and others arguing vehemently against the validity or intellectual respectability of religion, and explicitly or implicitly challenging any role for it in public life. The names of Daniel Dennett, A. C. Grayling, Richard Dawkins and Christopher Hitchens come readily to mind, and they are not alone. Parallel with these developments, though opposed to them and perhaps helping to fuel them, has been an increase in overt attitudes of support for religion and even a resort to religious language amongst politicians who would previously have exercised far more caution in such directions. So, the former Australian Prime Minister, John Howard and the current one, Kevin Rudd, neither of them anything like fundamentalist Christians, tend to invoke their religion (Christianity) and, certainly in Rudd's case, insist on its role in shaping their thought about politics. In this they resemble more Tony Blair (discreetly during his time in office and more explicitly now) than George W. Bush.

It would, however, be a mistake to think that the battle lines over the place of religion in the public life of a

pluralistic democracy are drawn between strong believers and strident unbelievers, since there are many believers who think that religion should have no place, or a very restricted place, in politics and public policy, and nonbelievers who take a similar position, but have no hostility to religion of the kind demonstrated by Hitchens and company. Nor is a commitment to what I shall call an "exclusionist" view necessarily inspired directly by a worry about the dangers of civil disruption and violence that religious conviction is sometimes claimed to promote. It may instead be regarded as implied by the ideals of fairness and respect for fellow citizens that liberal democrats should accept. One prominent thinker who takes an exclusionist view, is the American Protestant philosopher, Robert Audi. Audi is an avowed Christian who argues that a liberal democratic state requires not only a separation of Church and State but requires that religious believers should have and exhibit secular reasons and secular motives for their political policies. For Audi, citizens may have (and presumably offer) religious reasons for some public policy but they must have also at least one evidentially adequate and motivationally sufficient secular reason.ⁱ So Audi departs from those who would argue that citizens should not even be motivated at all by religious reasons in their approach to public policy. It is as well that he does, since that sort of restriction is both unrealistic and an attempt to deny religious citizens a full enjoyment of their religious commitments. Audi's position is a version of the idea that the state should be "neutral" between different religions and it forms part of a search for a concept of "public reason" that John Rawls and others have been concerned to promote. This is a concept that restricts the sort of reasons that can be offered for public policy or, in Rawls's case, for those constitutional essentials that help shape public policy. This point about constitutional

essentials is important because it distinguishes Rawls's view from Audi's more extreme position.

I think there is something in the idea of public reason, but I suspect that an exclusionist reading of it like Audi's, or even Rawls's more moderate one, is unsustainable. In the short time I have, I will concentrate on Audi (with an aside about Rawls), but first I want to say something about the violence issue. There is, I think, little point in denying that religions have contributed to shocking outbreaks of violence. One can indeed argue that, in many cases, the resort to violence betrays the genuine insights and doctrines of a given religion, but often there are other elements in the tradition that support the resort, and, in any case, religions are not just credal propositions but lived communal experiences, so that the Crusades, for instance, certainly arose from Catholic religious convictions, even if a suitably nuanced theology should have condemned them. Yet it is fair to point out, as is true even of the Crusades, that religion is seldom the only cause of the violence attributed to it. It is often remarked that the Catholic/Protestant divide in Northern Ireland's troubles had strong non-religious elements related to a colonial history of persecution and existing social and class inequities, and it is unwise to ignore the specific political elements in contemporary Islamist resorts to violence.

Even more significantly, the idea that religion is uniquely prone to promoting violence ignores the fact that secular ideologies such as Nationalism, Imperialism, Nazism, Fascism and Communism were the major contributors to massive violence in the 20th century, though this is not to ignore the support or complicity that Church authorities gave to some of these movements. Hostile critics also tend to ignore or downplay the positive contributions of religion to public

life, such as the powerful influence of religion upon progressive movements, from the abolition of slavery to the American civil rights protests and the opposition to apartheid. Religious groups are often at the forefront of distress relief in many parts of the world, and the heroism of religious leaders like the martyred Archbishop Romero has inspired social reformers everywhere. The opposed pictures of religion as universally malign or universally benign are equally simplifications of complex reality.

Bearing these considerations in mind, let us return to Audi's proposal and the exclusionist idea of public reason. Although religion's potential for violence and disruption is no doubt in the background of their thought, neither Audi nor Rawls base their position on it. There are obvious pragmatic reasons that dictate circumspection in the production of religious reasons for public policy in a pluralist democracy: such reasons are unlikely to appeal to one's fellow citizens who do not share your religion. But Audi and Rawls appeal to a more principled position. Audi insists that the equal regard for fellow citizens in a democracy and a concern for their equal freedom requires that they not be coerced for reasons that depend upon theological considerations or religious authority that they do not share. (Rawls's position is more complex but has a similar inspiration.) This has surface plausibility, but it seems to me that it is open to multiple objections.

First, there is the fact that consistency surely requires (as Rawls sees) that the same exclusion should apply to all comprehensive doctrines, i.e., broad political outlooks, ideologies, and philosophies upon which citizens cannot be expected to agree, even in principle, and which are based on insights, beliefs and principles that are intrinsically contentious. This is why Rawls restricts the scope of public reason to constitutional essentials and tries to base

the restriction on a free-floating political liberalism that does not depend on any philosophical foundation. For Audi's project, however, recognition of this point is surely fatal since it seems absurd to deny citizens the right to argue for proposals on utilitarian grounds or deep ecological grounds. Second, there is the danger that the insistence on finding what Audi calls "secular reasons" for proposals that have religious roots will lead to hypocrisy when religious people produce spurious secular reasons that serve to mask their real motivation. This is no idle prospect: the Vatican campaign against the use of condoms to prevent transmission of AIDS does exactly this when it claims that condoms are ineffective as preventives. Third, the exclusionist tends to treat religion as a purely private matter, but most religions not only have a communal dimension in worship, ritual and association, but they have ethical commitments that have inevitable public implications. It would be denying fellow citizens an appropriate respect to somehow rule out in advance any of their appeals concerning public policy to grounds that shape their lives and give them meaning at a deep level. This suggests that the idea of equal respect that Audi relies upon works against his proposal. Indeed, Nussbaum's capability approach captures this point in its account of the fourth and seventh central human capabilities. (EXPLAIN) Fourth, the picture of religion that underpins the exclusionist outlook is far too static, and so underestimates the positive effects of having the public expression of religious reasons for or against public policy exposed to the light of day. Although fundamentalists deny it, most religion has an essentially dynamic and developmental aspect relating to shifting criteria of interpretation of texts and authorities. This means that there can (indeed must) be an interaction between religious and non-religious thought, and in fact the history of theology is marked by this.

The experience of the interaction of religious thinking and reasoning with secular thought may be expected to have effects in both directions. Nor should we ignore the role of experience and imagination so fostered. It is arguable that Christian teachings about the equality of human beings as children of God (though not always realised in practice by Christians) supported the development of modern democratic institutions and cultures, and on the other hand the experience of living in liberal democratic societies has had a profound effect in spite of themselves upon the attitudes of Christians to politics and to the tolerance of diverse creeds and outlooks. How else to explain the astonishing shift in Catholic attitudes to liberal democracy? In the 19th century and well into the 20th, Catholic leaders regularly denounced liberalism, freedom of conscience, and the separation of Church and State in ways that are now simply unthinkable, (though Sydney's Cardinal Pell's strictures on "freedom of conscience" sometimes echo the old rhetoric). ⁱⁱ Consider the view that "freedom of conscience and of worship is the proper right of each man, and that this should be proclaimed and asserted in every rightly constituted society." This was *denounced* by Pius IX in 1864 in the Encyclical *Quanta Cura* (endorsing his predecessor, Gregory XVI's condemnation) as "insanity". ⁱⁱⁱ Nowadays, as a result of experiencing the merits of liberal democratic societies, and reasoning with fellow citizens, Catholics are as vociferous in support of these ideals as any other religious group. But they endorsed these values in practice, long before their leaders came to change their tune. The same process can be seen at work in attitudes to contraception (where the leaders are now mostly silent), abortion, euthanasia, and the new technologies of reproduction. }

On the other side, there are ways in which the presence of religious arguments in the public arena can reasonably impact upon unbelievers. The area of applying genetic

research, as well as the area of concern for the environment, have seen broadly religious ideas invoked by people who are not themselves conventionally religious. The idea, for instance, that there is something impious or hubristic about proposals to dominate nature in certain ways or to transform human reproductive processes with genetic technology has very wide appeal. It is natural for many people to invoke here strictures against "playing God". I do not want to endorse this manoeuvre wholeheartedly, for I find its application puzzling, especially in certain contexts, but I think that it offers something important to the debate, and I am sure that it needs to be better understood. ^{iv}

These considerations illustrate the importance of Nussbaum's emphasis in her paper on the significance of what she calls (borrowing from Aristotle) "perception". They also signal the need to recognise complexity, and what Nussbaum has called in this connection "difficulty", when trying to understand the importance of religion for religious people and in discussing norms for interaction between state and religion. This is particularly salient when we move from a discussion of the role of religious reason in public discourse to discussing the limits of state intervention in religious practice. Part of what is going on in seeking to understand these matters can be put in terms of the tension that can arise between some of Nussbaum's capabilities, in particular between those that concern protection of liberty of conscience and religious expression and affiliation on the one hand and on the other the need to have access to certain core rights such as an adequate education and matters associated with relevant participation in political life. Of course, respect for religious conviction cannot reach to permitting it to violate basic human entitlements, such as the right to life; any form of liberalism will prevent religious endeavours that seriously harm people;

this is connected with Nussbaum's emphasis on the way that the state's "compelling interests" can override religious imperatives, but just what constitutes "a serious harm" or "a compelling interest" will often be difficult to decide.

In discussing such problems we need to avoid the abstract formalism that Nussbaum criticises in her discussion of recent Supreme Court decisions and attend closely to the realities of peoples' lives and possibilities. A case that she discusses elsewhere is helpful in illustration. This concerns the practices of the Amish religion in the USA regarding education, and it is only one instance of what Nussbaum refers to as "numerous conflicts (that) have arisen between parents' religious education of their children and the state's interest in its future citizens." (p. 376 Rosenblum). The Amish seek to live in relative isolation from the wider society but conform up to a point with state requirements to educate their children. In the case of *Wisconsin v Yoder*, the Amish sought exemption from the Wisconsin state law that required them to send their children to school (public or private) until age 16 and instead wanted to withdraw them after age 14. This was because the Amish wanted to withdraw the children in order to teach them skills of farming and domestic work thereby imparting traditional attitudes favouring manual work and self-reliance. The court agreed with them and argued that the state's compelling interest in preparing citizens for participation in political life and society did not require these extra two years of schooling, given that Amish people generally turned out to be effective and self-reliant citizens. Nussbaum finds this a difficult case for her position, partly because the removal is dictated by central values of the religion but also discriminates against girls should they decide to leave the community because the domestic skills they learn have much less marketable value than those learnt by the boys. Where religion is a voluntary

affair and a right of exit exists there is more room for concessions that go against the general laws of the wider community. The sex equality issue to which Nussbaum draws attention is clearly a relevant consideration, but, given the importance to personal development and intellectual skills of the additional two years of schooling for the maturing adolescent, I should think that the state's interest is already compelling without this consideration, and the burden imposed on the Amish, though significant, is not substantial enough to outweigh it. There is another dimension to the case, not I think appreciated by the court and not mentioned by Nussbaum, which concerns what the children themselves thought of the matter. By age 14, the children were mature enough to form considered views about their future (which after all is what is being determined) and surely their views about how important the further years of schooling were to them should at least weigh in the balance of competing interests.

Finally, what of the discrimination against women imposed by the Catholic Church's ban on ordaining women priests? Here, Nussbaum is sympathetic to those who seek sexual equality but she rejects state intervention to achieve it, partly because membership of the Church is voluntary, and abolishing the male priesthood would impose a substantial burden on Catholic believers. She also hesitates to impose requirements of a comprehensive liberalism upon the Church when she regards herself as an advocate of a Rawlsian political liberalism instead. The tricky philosophical issue of the status of political liberalism I must leave aside today, but I would call attention to some complicating features of the case that also need attention. One is that the priesthood issue cannot be isolated from issues to do with the exercise of widespread power and authority in the Church so that the equality issue is felt very deeply as an insult and disempowerment by many Catholics, and not only

women. A second is that leaving the Church over the issue is a possibility, but for many Catholics it is unrealistic because of their attachment to other features of Catholicism that they (rightly, I think) see as more central to their Christianity. And third, in consequence, it is arguable that the requirement to ordain women would not be a substantial burden upon Catholics in countries like Australia since it is unlikely to disturb deeply the majority of Australian Catholics, though it would of course create distress to current Catholic authorities. I do not say that these points licence a state intervention, since, for one thing, I think that there are powerful pragmatic or prudential reasons for non-intervention, and I have a preference for internal evolution regarding institutional reform. Nonetheless, I think that the points mentioned can be easily overlooked, particularly given the common tendency to think of a religion as a monolithic entity whose identity and character is defined by its authority figures. This tendency often bedevils state policy towards ethnic groups, but it can have troubling effects in religion as well.

ⁱ Robert Audi, “Liberal Democracy and the Place of Religion in Politics”, p. 25.

ⁱⁱ See Australian Broadcasting Corporation: Radio National, “East Timor’s Forgotten Father”, *The Religion Report* [Radio Broadcast 30 August 2000]. Produced by John Cleary. [Access Date 5 March 2002] Transcript available from <http://www.abc.net.au/rn/talks/8.30/relrpt/stories/s169312.htm>.

ⁱⁱ Pius IX, “*Quanta Cura*”, *Papal Encyclicals*, 1894. See: http://www.saint-mike.org/Library/Papal_Library/PiusIX/Encyclicals/Quanta_Cura.html [Access Date 9 April 2002]. Also quoted in Maureen Fiedler and Linda Rabben (eds.) *Rome Has Spoken: A Guide to Forgotten Papal Statements and How They Have Changed Through the Centuries*, Crossroad Publishing Co., New York, 1998, p. 48

ⁱⁱⁱ Pius IX, “*Quanta Cura*”, *Papal Encyclicals*, 1894. See: http://www.saint-mike.org/Library/Papal_Library/PiusIX/Encyclicals/Quanta_Cura.html [Access Date 9 April 2002]. Also quoted in Maureen Fiedler and Linda Rabben (eds.) *Rome Has Spoken: A Guide to Forgotten Papal Statements and How They Have Changed Through the Centuries*, Crossroad Publishing Co., New York, 1998, p. 48

^{iv} For a fuller treatment of the “playing God” appeal see my “Playing God” in