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## **Religious Accommodation, Social Justice, and Public Education**

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Kevin Vallier's *Liberal Politics and Public Faith: Beyond Separation* stakes out a distinctive and significant version of political liberalism and offers important proposals for structuring democratic societies. The book is wide-ranging and scholarly, engagingly written, and a valuable source for understanding much of the major literature on the topic. Both in its characterization of a range of positions in political philosophy and in its detailed discussion of certain forms of religious accommodation, it is an excellent point of departure for my task in this paper: to clarify principles we might reasonably bring to the topic of religious accommodation and to bring some of these to bear on some of the concrete problems currently facing modern democracies, especially regarding public education, and particularly in the U. S.

### **I. Vallier's Convergence Liberalism**

Vallier develops his own "Post-Secular" liberalism by comparison and contrast with leading extant positions, Rawls's and mine, among several others. He opens with a *Public Justification Principle* (PJP) that is to be clarified and, as clarified, retained. This "master principle of the book" is that

[C]oercion is permissible only when each member of the public has sufficient reason to endorse the coercion (p. 4).

This principle figures in a master argument underpinning much “public reason liberalism,” where that view is represented by Rawls and many others—Kent Greenawalt, Charles Larmore, Michael Perry, and Paul Weithman are among prominent writers included, but although I am associated with them in favoring a kind of restraint in citizens’ reliance on religious reasons in political decisions, Vallier rightly sees me as rejecting some important elements in the view. This master argument (though not accepted by Vallier) is a good point of departure. It has three complex elements:

- (1) PJP → Accessibility/Shareability Requirement
- (2) Accessibility/Shareability Requirement → Principles of Exclusion
- (3) Principles of Exclusion → Principles of Restraint (p. 52).

Vallier sees this argument as accepted by both public reason liberals and their main critics, and he attacks it partly on the basis of a case against accessibility and shareability requirements for “public reasons,” where these are understood as the kind appropriate to serve as a basis, both in policy-making and in the thinking of citizens in democratic societies, regarding what laws and public policies their society should have.

Crucial for Vallier’s view is a conception of intelligibility—a category intended to be more permissive and more readily understood than those in which contrasting theorists characterize reasons appropriate for what we may broadly call *political decision*. These are

*Intelligibility*: A’s reason  $R_A$  is intelligible for members of the public if and only if members of the public regard  $R_A$  as epistemically justified for A according to A’s evaluative standards (p. 106).

and

*Intelligibility Requirement*: A’s reason X can figure into a justification for (or rejection of) a coercive law  $L$  only if it is intelligible to all members of the public (p. 106).

In clarifying these standards, Vallier says that “John regards Sarah’s reason  $R_S$  as justified for Sarah if he believes that she is epistemically rational to affirm it” (p. 108). Here John may be

taken as a representative member of the public (see p. 107 for an indication that the notion of an evaluative standard applies to the public).

In the light of these intelligibility standards, Vallier's overall convergence liberalism employs a standard of justificatory reasons in politics (for ordinary citizens as opposed to judges, who must meet higher standards) on which the intelligibility requirement is central (pp. 6-7). More specifically, "The *convergence* conception ... holds that the set of justificatory reasons includes all reasons that citizens can see as justified for some member of the public according to her own reasonable evaluative standards, even if other members of the public do not accept those evaluative standards" (p. 29). This is a "remarkably permissive" standard (p. 257), but Vallier says much to defend it. There is, however, an ambiguity in the formulation that should be mentioned here, though I think one can see how one reading emerges as intended. The phrase 'reasonable standards' is used as if it were objective and its reference is to be determined by intersubjective sound standards, yet in 'her own reasonable standards' it is placed so as to allow (given much else Vallier says) reading it subjectivistically, as designating the standards the members of the public *take* to be reasonable. In the light of the highly permissive liberalism of the book and the overall convergence view, this subjectivist reading seems intended—though Vallier doubtless meant it to be constrained by limitations on what can even *seem* a reasonable standard to a normal adult citizen. Using a crystal ball, for instance, seems out of bounds as an evidential standard.

## II. Vallier's Conception of Appropriate Accommodation of Religion

In the U. S., religion has been treated by the courts as special. This is partly because the Constitution specifically prohibits congressional abridgment of religious liberty and also establishing religion. One result has been more accommodation of religious practices, whether in law or in public policy, than is found regarding other kinds of practices. Here it is no surprise that, even if he regards religion as significantly special in many ways, Vallier says, "I seek to *upgrade* respect for nonreligious comprehensive and moral belief to the level presently extended to religious belief" (p 219). This is a reasonable aspiration. After all, the

intelligibility requirement is neutral between religious and non-religious views, and in any event we may presuppose equality of moral status on the part of secular and religious persons. To see an application of his principles to some current problems of accommodation, I would mention two cases, abortion and public education. Consider first an argument some regard as *prima facie* plausible and of which Vallier says (without endorsement), “some members of the public at the right level of idealization affirm [it] with an adequate degree of epistemic justification” (p. 114), so that it might, on his view, be a citizen’s proper basis for supporting legal restrictions on abortion:

- 1) The existence of God can be rationally demonstrated.<sup>1</sup>
- 2) God gives each human body a soul that provides a human life with intrinsic worth.
- 3) The least arbitrary candidate for the union of soul and body is the first presence of a unique biological potentiality, i.e. conception.
- 4) Thus, persons with intrinsic moral worth exist at conception.
- 5) All persons, therefore, fetuses included, must not be destroyed (p. 114).

One of his main points about the status of this argument is the uncontroversial one that “If fetuses are persons, then it is easy to see why they should not be killed” (p. 115).

Regarding public education, Vallier’s overall position is that the “American education system [has evolved] into a system of school choice where government retreats from the provision of public education” (p. 8). His seventh chapter considers this proposal in detail and discusses creationism, intelligent design, sex education, and other important topics. He concludes that Americans should have a school choice system, including home schooling, but he does not say that government should not provide *any* public education, as one might have thought from the initial use of the term ‘retreat’. (The issue is pre-college education, and that is what I shall address below.)

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<sup>1</sup> Regarding this first premise, Vallier says that the Roman Catholic Church has maintained for centuries that the existence of God can be demonstrated by an appeal to natural reason. He cites Aquinas as a philosopher who provides good enough argumentation for premise 1 to make it rational to accept it. Regarding premise 2, he might have noted that it can be defended on metaphysical grounds not dependent on theism.

### III. The Permissiveness of Convergence Liberalism

Since ‘convergence’ suggests coming together from different directions, I would begin by noting that the agreement Vallier apparently has in mind is on his principles, not on any particular kind of (first-order) reason or set of laws or of policies. This can be seen by examining the intelligibility criterion, on which “A’s reason  $R_A$  is intelligible for members of the public if and only if members of the public regard  $R_A$  as epistemically justified for A according to A’s evaluative standards” (“her own reasonable standards, one assumes here). I will assume that—despite the reference to “all members of the public” in the companion principle—the intention is to refer to “normal adults” with the kind of idealization suggested in Chapter 5. Idealization is needed in any case since (1) not every member of the public will have any attitude of epistemic “regard” toward the relevant reasons, and (2), a person would presumably qualify as an adult eligible to vote without even having enough sophistication to have the attitude Vallier apparently has in mind (p. 109). My greater concern here is with (a) the absence of any objective standards for truly or even justifiably so regarding someone and (b) the same absence concerning the projected evaluative standards of the person(s) to whom the attitude is directed. Let me take these in turn.

First, one can be both wrong and unjustified in taking a position to be justified by someone’s standards. It is very easy to mistake what is implied by epistemic standards, even if they are not notably vague (they are bound to have some significant vagueness). One good kind of evidence of this is the extent to which our own revisions of our views derive from changing our view of what we are committed to by our basic claims. Second, those standards may be so low that a rational, adequately informed person might be justified in thinking that the standards are quite unreasonable or even irrational.<sup>2</sup> Third, these two points do not undermine the intelligibility of any of the attitudes or standards in question, hence do not depend on presupposing that intelligibility alone—roughly, making enough sense to interpret and judge—guarantees a

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<sup>2</sup> To his credit, Vallier tries to deal with this problem. He notes, e.g., on 105 that “justificatory reasons must be ‘minimally moral’ or meet some conceptual threshold that qualifies the reason as a moral reason. But he does not so far as I can see show that one can explain and defend this condition without assuming, as many moral theorists would insist we must, that certain principles and rights must be presupposed in an ethics of citizenship. Cf. pp. 147-48 where reasonableness for idealized agents is considered against the background of Rawls’s view of it.

minimally adequate objective standard. Vallier's intelligibility criterion is, then, not just pluralistic and permissive, but subjectivistic in a way that is highly relativistic.

It is possible that Vallier would grant all this, but he does not directly address it. My view on standards for the ethics of citizenship is pluralistic but also objectivist, yet at one level I can agree with him: at the level of moral rights, especially as operating in a democratic framework. I have long maintained, regarding citizens eligible to vote in a democratic society,<sup>3</sup> that there is a moral right (a defeasible one, to be sure) to vote on any conscientiously chosen basis (though I have not addressed what limits are imposed by conscientiousness or the criteria for eligibility to vote in the first place). But in interpreting the normative force of rights I have also argued that there are "wrongs within rights" and that citizenship ethics requires meeting a higher standard than simply not violating anyone's rights or going beyond one's own. If Vallier agrees that we can exercise rights in a way that deserves normative criticism, then he will grant that he must either restrict his principles to the domain of rights or answer the objection that his principles are too permissive. Consider a racist who has a rationalization for the bigoted racist views in question. I could regard certain racist policies as justified according to the standards the racist uses. Should I not still argue that the standards are unreasonable and that the person is ethically deficient in relying on them in supporting coercive laws and coercive public policies?

A related point concerns the master principle itself. When Vallier says, "[C]oercion is permissible only when each member of the public has sufficient reason to endorse the coercion," he does not tell us as much as he might about what it is to "have" a reason. One might think he has in mind that where coercion, say legal coercion, is justified, we would all have the reason that it is supported by a majority of considerations meeting their proponents' own standards. This might be thought to be a normal accompaniment of being voted into law by a representative majority. But this interpretation will not sustain the claim that liberals agree on the principle. There is a use of 'have a reason' on which it takes account of point of view but is also objective. This is illustrated by my asking an informed friend, 'Do I have any reason to fear his breaking the

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<sup>3</sup> I leave aside here questions about whether eligibility is reasonable: political philosophy cannot presuppose that eligibility as a merely legal notion has the weight I presuppose here. One can imagine legal eligibility for people so rationally deficient or so morally corrupt that they likely should not be said without qualification to have a right to vote.

agreement?’ But this is roughly equivalent to the objective ‘*Is there any reason to fear that?*’<sup>4</sup> Liberals likely do agree on the master principle in that objective form, but they then differ among themselves on what counts as an objective reason. Having a reason may also be taken to mean roughly (1) being able to arrive at such a reason by reflection on what one knows or believes, (2) having interests that are well served by taking the reason to be such, or (3) accepting a consideration one *takes* to be a reason. It matters greatly how one understands this notion. Most writers on the topic would likely not agree that mere accord with one’s own epistemic standards makes a consideration one endorses objective or even “justificatory.” To be sure, such “internal” accord with a standard is an objective reason of a limited kind: a reason not to prevent a citizen conscientiously driven by the standard to vote accordingly. But a right-based permission to do something is far from a reason to approve the doing of it.

My suggestion here, then, is that Vallier and I likely tend to converge on the existence of a moral right (and a related legal right) to act on the basis he identifies, but would not converge on prima facie obligations—a kind of obligation strong enough to sustain an appropriate moral education of those being socialized into a democratic society and criticism or those who fall below its reasonable (and even defeasible) requirements. The relevant education may occur in homes or in schools or both and it concerns the scope and application of the obligations. On my view, the relevant obligations of citizenship are in one way like those of beneficence; for instance, just as one can wrongly abstain from giving to charity though one has a right to abstain, one can wrongly vote for a coercive law on a standard one has a right to hold but ought not to bring to bear in this way on law-making.

It should help here to develop my points on this difference in relation to the two important cases of accommodation discussed in Vallier’s book and noted above. Let me take these in turn.

Vallier’s example of an ensoulment argument is quite instructive. This is certainly a case in which I would grant a person’s right to vote accordingly but would deny that there is adequate natural reason—secular reason if you like—for the conclusion and, certainly, for coercion of fellow citizens. Here are some reasons to think this. I bypass premise 1 despite how controversial

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<sup>4</sup> Parfit’s *On What Matters* is a recent work in which this terminology appears.

it is. But premise 3 is not plausible, as is perhaps evidenced by the different times of ensoulment endorsed in the history of the Roman Catholic Church.<sup>5</sup> There is also the point that live birth has always been the point at which a major change in human development is granted. More important, ‘least arbitrary’ is presumably not intended to be normative; it does not, for instance, imply reasonableness—and if it did, an argument for the premise would be needed—as it may be in any case. If ‘least arbitrary’ is not normative, then it does not follow that beings “with intrinsic moral worth exist at conception”—and, in any case, from that it would still not follow that *persons* exist then. Thus, if the least arbitrariness premise is normatively understood, then it needs defense and cannot stand on its own; and even if it could, it is too weak to establish personhood at conception. Finally, the conclusion, that “persons ... fetuses included, must not be destroyed” is both ambiguous regarding the strength of ‘must’ and reflects a shift from what is described as an “ensouled human being” to persons. The point is important because proponents of the rights of pregnant women—who are unquestionably persons—to have legal freedom to obtain abortion is plainly consistent with a *prima facie* obligation not to kill a fetus or *conceptus*. Interestingly, Vallier himself, a page after presenting the argument in terms of ‘must’, says of fetuses that it implies that they “should not be killed” (p. 115), terminology that is easily understood as referring to a *prima facie* obligation.

#### **IV. A Liberalism of Natural Reason**

Vallier is not only providing an alternative liberal view of important aspects of the ethics of citizenship; he also provides far-reaching critical appraisals of the work of others. Since I am among those who receive some critical scrutiny, it is appropriate to respond to some of the points he makes and to show how, extensionally, our positions are equivalent for some cases and complementary for others.

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<sup>5</sup> A list of some different proposed times of ensoulment is provided by H. Tristram Engelhardt in "The Ontology of Abortion," *Ethics* 84 (1974), 217-34, reprinted in Samuel Gorovitz, et al., eds., *Moral Problems in Medicine* (Englewood Cliffs: Prentice-Hall, 1976). If one wishes to include Biblical references, one is Genesis, 2, 7, where God is said to have “breathed into his nostrils the breath of life; and man became a living being.” This is sometimes read as suggesting that life begins with our initial (independent) breathing, in which case live birth would normally be the crucial point (and a period before which breathing is possible would not even be a candidate). In any case, it comports with piety to suppose that God need neither have decreed ensoulment during pregnancy. For discussion of the issue of legalization of abortion in democratic societies, see ch 7 of my *Religious Commitment and Secular Reason* (Cambridge: CUP, 2000).

The ethics of citizenship principle of mine on which Vallier and many others have centered critical attention is

*The principle of secular rationale (PSR):* Citizens in a democracy have a *prima facie* obligation not to advocate or support any law or public policy that restricts human conduct, unless they have, and are willing to offer, adequate secular reason for this advocacy or support (e.g. for a vote).<sup>6</sup>

Here secular reasons are conceived in a way that warrants calling them *natural reasons*, following a usage dating to the Medievals. If, however, we distinguish (as I have always thought desirable) between *secularity* as characterized epistemically in terms of the independence of the reasons in question from religion and theology, and *secularism* as an ideology tending to be hostile to religion, then ‘secular reason’ is appropriate. Noting how I have qualified this principle, for instance in bringing out that it states only a *prima facie* obligation and does not exclude religious reasons from political deliberation, Vallier grants that “the PSR is considerably less demanding than its critics have often supposed” (p. 56). He believes, however, that the latitude this principle provides for religious citizens is reduced by my

*Principle of religious rationale:* Religious citizens in a democracy have a *prima facie* obligation not to advocate or support any law or public policy that restricts human conduct, unless they have, and are willing to offer, adequate religious reason for this advocacy or support (e.g. for a vote).<sup>7</sup>

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<sup>6</sup> This formulation is drawn from my *Religious Commitment*, p. 86, though I published essentially the same version much earlier in “The Separation of Church and State and the Obligations of Citizenship,” *Philosophy & Public Affairs* 18, 3 (1989), 259-296. The principle has been widely discussed, e.g. by Wolterstorff, op. cit., Weithman, op. cit., and Christopher J. Eberle in *Religious Convictions in Liberal Politics* (Cambridge: Cambridge University Press, 2002), esp. 84-151, and “Basic human worth and religious restraint,” *Philosophy and Social Criticism* 35, 1-2 (2009), 151-181. In the earlier formulations I used the phrase ‘free democracy’ since I assumed that a significant degree of freedom is entailed by what I call a (normatively) sound democracy and certainly by a liberal democracy. Some minimal political freedom is required for any democracy, but there is no reasonable way to specify a minimal level with exactitude. In any case, the phrase ‘free democracy’ is not needed here: even in a democracy barely deserving the name the principle would hold, even if the *prima facie* obligation were weaker than in a liberal democracy.

<sup>7</sup> This principle derives from my “Religiously Grounded Morality and the Integration of Religious and Political Conduct,” *Wake Forest University Law Review*, 36, 2 (2001), 251-277.

This principle does require something of religious citizens; but it surely does not bear automatically on how much moral freedom they have under the PSR. Whether their religious ethical standards enable them to find adequate secular reasons for coercive laws or policies they support is entirely a matter of the individual issue in question in relation to the religion in question. The principle will burden religious citizens differentially depending on what laws or policies they support and what constitutes the ethical content of their religion; but I doubt that anyone would seriously argue that religious citizens whose religion *has* an ethic, as most do, should not be concerned with its bearing on major interpersonal standards they support, such as principles of veracity and fidelity and rights to equal treatment or freedom of speech or even such specific sociopolitical notions as that one is to render unto Caesar what is Caesar's and to God what is God's. (If a religion should have no ethic, this principle does not apply to it, but by 'an ethic' I do not mean a set of explicitly stated principles but moral standards that are internalized by conscientious adherents. This kind of ethics is found in any full-scale religion and is usually reflected in both moral education and scrutiny or criticism of adult behavior.

What needs special attention here is whether the PSR is open to the "integrity objection," according to which it induces a disturbing tension in certain religious citizens. On this issue, the main thing Vallier adds to criticism I have already replied to (e.g. in *Religious Commitment and Secular Reason* and later in *Democratic Authority*) is this:

The internalization of Audi's principles requires significant effort due to their remarkably cognitive emphasis. In other words, they [religious citizens] must be capable of a high degree of introspection with respect to which reasons are sufficient to justify their actions...a citizen likely needs to be able to *explicitly determine* whether her non-religious reasons for political action are epistemically adequate (p. 65).

Four points are appropriate here. First, citizens who are conceptually incapable of following the PSR are excusable for any wrong they do by virtue of failure to adhere to it, just as citizens in general are excusable if they make a mistake about the character or weight of their reasons when they could not reasonably have been expected to avoid it. Second, in practice the distinction between religious and natural reasons is often easy to make, as illustrated by the most common rationales offered to support requirements for school prayer. Third, any plausible principle of

this kind will require some judgment of evidential sufficiency—including Vallier’s principle, which involves judging the adequacy of someone’s adherence to that person’s own standards—nor is it asking too much of citizens to adhere to a standard requiring good rather than bad reasons. No epistemological sophistication is needed to make an effort in this direction, and different people will be excusable or criticizable for failures to make sufficient effort. Fourth, the issue of sufficiency of reasons is not one of introspection, though to be sure one needs some degree of self-knowledge to have reasonable beliefs about what one’s reasons in fact are. Let me pursue this last point.

It should be emphasized here that, often, people will readily offer their main reasons for a position on a major law or public policy, at least to intimates. Reasons of this sort are discoverable by self-consciousness—simply asking oneself, in the context of the issue, what one holds and why—and need no introspective self-study. Dialogue is in any case a good way to see what reasons one has—in the broad sense of considerations that presumptively support what they are (presumptively) reasons for (I allow for the existence of bad reasons but do not take *irrelevant* claims to be or express reasons at all in the appropriate sense, even if they can influence cognition or action and, in that sense, be motivational reasons). Moreover, if one seeks to be guided by the PSR, one will at least consider what reasons one has, and it would be very unusual, and commonly abnormal, for none to come to mind with a bit of reflection, even if not all of them do. It is an empirical question how good we are at determining what reasons we have, but there is no good evidence to think we are unable to determine some (subjectively) major reasons we have, if we do have reasons, and that alone is significant.

I want to grant that if the question is not just what reasons we *have* but also what reasons do or would *motivate* action or belief—roughly in the sense of partially causally grounding it—then a measure of introspection is often required and determination is more difficult. The latter matter comes up in connection with a related principle I have long held:

*The principle of secular motivation:* Citizens in a democracy have a (prima facie) obligation to abstain from advocacy or support of a law or public policy that

restricts human conduct, unless in advocating or supporting it they are sufficiently *motivated* by adequate secular reason.<sup>8</sup>

Vallier could have had this principle in mind as a commitment of proponents of the PSR. It is not: one could hold the former and reject the latter. It is also less important for the ethics of citizenship. Nonetheless, is it not salutary to ask not only what reasons one has and whether they depend on one's religious commitments, but also which of them influences one and how much? Since the obligation to abstain from acting on non-motivating reasons is *prima facie*, one may excusably fail to fulfill it. This reduces whatever burdensomeness adhering to the principle has.

Moreover, an important normative standard is met by adhering only to the PSR rather than stopping short of accepting the motivation principle. If one *has* an adequate reason for, say, outlawing assisted suicide, then even if one does so from purely religious disapproval, one does not impose an unjust requirement on people. One is not acting *on a moral basis* and indeed might be unable fairly to object to others' acting, on their religious convictions, to restrict one's own liberty; but that does not entail coercion that is not morally justifiable (or anyway justifiable by natural reason). The motivation principle, then, would have people ask such questions as 'Why am I doing this?', 'Why do I believe this?', and 'Why am I so upset about allowing abortion and assisted suicide?'—questions of a kind we commonly have about others. It should be noted, too, that sometimes the search for our reasons yields an empty field—or a field overgrown with prejudices.

The principle of secularism is a good companion for the PSR. Even if adhering to the latter yields coercing only for adequate natural reasons, if they do not motivate it, they are rationalizations. Rationalizations tend to have a hollow sound, especially if they are not offered as such, in which case there is commonly insincerity. Other things equal, they also do not contribute as much to stable agreements as do deeds that are motivated by the reasons offered to justify them. One reason for this may be the difference between them in *civic voice*. Our voice is determined not just by what we say but, often even more, by why we say it. Public voices,

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<sup>8</sup> I first proposed this principle in "The Separation of Church and State" and have defended it in *Religious Commitment* (the next few paragraphs draw on the second defense). It can be seen as articulating a standard easily justified from the point of view of virtue ethics, but even some who accept a virtue ethics may think it overdemanding.

written as well as oral, tend to be different when their basis in the citizen is reasons of a kind that any rational adequately informed citizen can share independently of religious conviction. It need not conceal motives and it comes from sharable grounds. Such grounds also provide a sharable basis for laws and public policies that govern all of society.

This is an appropriate place to consider whether even the PSR gives an unwarranted priority to secular over religious reasons. That it does might be called the *privileging objection*. As Vallier puts it, “Restraint requires privileging shared/accessible reasons over religious reasons” (p 65), where secular reasons are, for me, taken to be accessible even if not shared. The term ‘privilege’ is misleading here. It suggests that my view implies that secular (natural) reasons are epistemically better than religious reasons. This claim is not entailed by my view and I reject it. It is true, however, that secular reasons are differentially emphasized over religious ones in the PSR; their role in justifying coercion—but not in general—is in that way privileged. Is this limited kind of privilege unreasonable from the point of political philosophy?

Almost everyone who thinks about this matter of privilege—which I believe might better be called *priority*—in the spirit of the do-unto-others principle can see good reason for affirming it. Almost everyone finds repugnant the idea that coercive laws and public policies might be instituted on the basis of someone *else’s* religious reasons, whereas there are certain justifications of coercion—including protection from murder and rape—that virtually every remotely normal person can see as reasons for certain coercive laws.

## **V. Public Education and Education of the Public**

The topic of accommodation of religious liberty brings up an issue related to that of the proper basis of coercion but different in that normally such accommodation does not yield restrictions of liberty. To be sure, suppose (to cite just one example) that accommodation of religious objections to, say, providing contraceptive services, would lead to their absolute unavailability in a given country and that legislative protection from providing them would force most female citizens of child-bearing capacity who do not want children (or more than a certain number) to act in ways they would find at best burdensome. Vallier and I agree, however, that accommodation of

religion is a high priority for government. Not only is liberty of citizens itself a top priority; it is also true that governments may give special consideration to avoidance of burdening the exercise of liberties that are, in ways religion often is, central to the lives of citizens. This standard is *neutral* in the conceptual sense and in the way standards guiding democratic policy should be, but it allows differential emphasis on freedoms depending on their importance for citizens in the indicated way.

The issue of what constitutes neutrality raises a question that bears further discussion. It concerns the *distinctiveness question* or *special status question*—whether religion is special in any sense importantly relevant to political philosophy. I believe it is, in a certain way, even if not in every possible kind of circumstance. On my view, we should accept a

*Protection of Identity Principle*—“the deeper a set of commitments is in a person, and the closer it comes to determining that person’s sense of identity, the stronger the case for protecting the expression of those commitments tends to be.”<sup>9</sup>

This does not require a government that accepts it to abandon neutrality toward religion, but it does allow for deep if contingent differences between religious and other commitments. To be sure, insofar as something not called a religion but, say, a “philosophy of life,” approaches satisfaction of all the criteria for being a religion, it becomes plausible to call it a religion. Moreover, the principle does not require denying the possibility that a non-religious outlook plays a key role in someone’s sense of identity.<sup>10</sup> As a matter of human psychology, however, it may be a deep though contingent fact that the sense of identity is rarely as closely tied to a non-religious life-orientation as to a religious one, with its characteristically wide and deep reach into the conduct of human life.

As applied to vouchers for private schooling or home schooling, this principle and others I hold (such as the liberty principle, on which democratic governments must protect liberty) lead me to maintain that there is no good justification for a democratic government’s insisting that religious citizens—or other citizens with sufficiently deep objections to public education—have their children attend public schools (the issue of justifying taxation of all for public education is

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<sup>9</sup> *Democratic Authority and the Separation of Church and State* (Oxford: Oxford University Press), p. 42.

<sup>10</sup> This issue is discussed in my *Democratic Authority*. See esp. p. 71.

different and cannot be dealt with in this paper). The protection of identity principle, then, is appropriately neutral toward religion. So far, Vallier can agree, but his rationale concerns accommodation for comprehensive views (though he allows both for differences among them and in the strength of the case for accommodating them in a particular case). I do not find that notion adequately clear, and I arrive at the permissibility of vouchers mainly on the joint basis of the governmental obligation to respect religious liberty, the protection of identity principle, and the neutrality principle requiring government to treat religious and the non-religious citizens equally.

Two elements in Vallier's view on public education are unclear to me. Does he propose, or anyway prefer, that government should phase out public schools or only that a voucher system be widespread? Second, what is the basis of the curricular requirements government may impose on private education?

On the first, my view is that a democratic society should have public pre-college education, as well as higher education (though that is not the issue here).<sup>11</sup> It is worth asking whether there is even a human right to an education or at least such a right *for* citizens in a democracy capable of providing it. Even if not, democratic governments should, on my view, require sufficient education for development of at least two things: first, what we might call responsible citizenship and, secondly, meaningful work. It does not follow that they must provide schools, but I see no overall reason why they should not, and there are at least some reasons to think that their not doing so deprives some citizens of the option to have their children educated in a pluralistic environment of a kind that government cannot properly require in private education.

On the second question, government's providing education adequate for responsible citizenship and meaningful work requires both moral education—or at least reinforcement of certain basic moral standards, such as non-injury, veracity, and fairness—and science education of a kind that introduces evolutionary biology at least in an elementary way. I have discussed

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<sup>11</sup> It is an interesting question whether the 'should' betokens a *right* on the part of children (at least of citizens) to be educated in a certain way. Its application does not entail that. That children have a right to an education, including scientific education, was suggested by Michael Tooley in a symposium devoted to Vallier's book at the Pacific Division meetings of the APA in 2015. I believe there is such a right, though the level and kind of education is difficult to specify. But the right can be fulfilled by government's guaranteeing, say by a voucher system, access to the relevant kind of education; that government must *provide* education in government schools is a somewhat separable matter.

science education elsewhere. But I have also argued for ways to do this that do not undermine theism in general.

An important general point pertinent here is that science is not intrinsically anti-theistic if indeed it is intrinsically metaphysical at all. Religion, however—or at least religious scriptures and clerical authorities—may make claims that are scientifically testable. On these claims, an appropriate government neutrality does not require that governmental standards preclude allowing science teachers to support contrary views. Even rigorous scientific education in biology and cosmology, however, does not always require flat denial of all the relevant religious claims—this will depend on how comprehensive those claims are and, in particular, whether they are inconsistent with specific laws or theoretical propositions taken as scientifically established. In any case, in teaching evolutionary theory, one can ask students to provide answers to questions like ‘According to the theory of evolution, what is...?’ Answering in this way does not require unconditional assertion, but it can show as much about understanding as answering questions presupposing the truth of the theory. I am not suggesting (as some have) that the theory be taught not “as fact” but as “theory” in a sense that entails being hypothetical and not known. But even where something is taught as true, making people affirm it is very different from making sure they understand it and the case for it.<sup>12</sup>

The issue of vouchers is only one among many important issues that concern the appropriate kind and degree of accommodation of religion in democratic societies. I have also mentioned the matter of contraceptive coverage [N to my paper in *J of Pract Eth*]. The courts in the U. S. continue to deal with matters of dress code,<sup>13</sup> and there is continuing debate over the legal permissibility of “oral suction circumcision,” practiced by some Orthodox Jews. Here health concerns arise concerning infant herpes, of which seventeen cases since 2000 were linked to the practice by New York City health officials.<sup>14</sup> Is the public health rationale difficult to see as a secular reason, and is not the well-being of children of high value even in the denomination that practices that kind of circumcision? More than one rationale might apply to the headscarf case,

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<sup>12</sup> On this issue much of relevance here is said in my “Religion and the Politics of Science: Can Evolutionary Biology Be Religiously Neutral? *Philosophy and Social Criticism* 35, 1-2 (2009), 23-50.

<sup>13</sup> For a description of one recent case, that of a Muslim woman wanting to wear a headscarf in a branch of Abercrombe and Fitch in Tulsa, OK, see *The Economist* (Feb 28, 2015), p. 26.

<sup>14</sup> This is reported by Verena Dobnik for the Associated Press, *St. Louis Post-Dispatch* (February 2, 2015), p. A 22.

but here—as opposed to a machine shop setting in which a headscarf might be dangerous—its accommodation in the workplace can be justified on the basis of equal treatment before the law.

## VI. An Overlapping Consensus

Our discussion so far has not directly addressed the very large question of how ethics, conceived as moral philosophy, is related to political philosophy. I include the ethics of citizenship in both fields and consider it one among other areas of overlap between political philosophy and general ethics. On my view, what partly explains the overlap is that there is a sense in which ethics is normatively more basic than political philosophy, and, quite apart from this, it appears that democracy as a form of government can be morally well founded.<sup>15</sup> With this in mind, I have proposed a convergence view quite different from Vallier's. Let me explain.

I believe that we can identify a moral position that appeals wholly or mainly to less controversial basic standards than, say, Mill's principle of utility or some version of Kant's categorical imperative. Doing so is an advantage in providing a moral foundation for liberal democracy. If, in addition, its basic standards are largely common to the other plausible moral approaches, that would be an additional advantage. My own work in ethics supports such a convergence strategy, which in turn supports my principles in the ethics of citizenship, most clearly the principle of secular rationale. [n to N D J of Ethics paper.] The principle does not, however, *depend* on the possibility of convergence. It depends on *some* viable notion of normative reasons, including evidential reasons, but it leaves open how well that notion can be systematized and how much convergence there is on it.

It is crucial here that we make a distinction often overlooked or underemphasized: it is between agreement and disagreement *on* reasons and agreement and disagreement *in* them. The former is higher order and theoretical, the latter concrete and practical. On Vallier's theory of justificatory reasons, they may be drawn from inside a citizen's perhaps ill-considered epistemic standards. I do not take any kind of genuine justification to be subjectively constituted in this way, but I am sure Vallier and I agree that preventing a deadly epidemic is a good reason to

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<sup>15</sup> This point is developed in some detail in ch 1 of my *Religious Commitment*.

require well-tested, reliable inoculations, and that keeping black and white people apart is not a good reason for requiring them to attend separate schools. We converge here in reasons, even if not *on* them, say on whether they are grounded in utility, human rights, or divine command. Similarly, there may be agreement on children's need for—even right to—education that includes the humanities, mathematics, and at least basis science, even where the parties have incompatible theories of the basis of reasons or of rights or both. Divine command theorists, for instance, may agree with secular humanists in these matters.

To be sure, if we consider the question whether children should have education that includes evolutionary biology, there will be much disagreement, at least if it is thought that the theory of evolution is taught as true or taught in isolation to criticism from the intelligent design perspective. Some of this disagreement is likely to disappear, however, if it is made clear that even teaching the theory as true does not imply that there is no God. The teaching should not be done in a way that suggests this. There is no brief or easy way to specify exactly how science should be taught at the precollege level, but even elementary training in epistemology and philosophy of science can provide insight into how to distinguish cases in which religious people make claims that are scientifically appraisable and those in which they express religious views that, like theism itself, are not proposed as (and presumably cannot be plausibly be viewed as), scientific claims.<sup>16</sup>

Quite apart from what we take the relation of ethics and political philosophy to be, we can distinguish what citizens have a moral right to do—and should have a legal right to do—from what they ought to do. This distinction does not require any specific account of rights and oughts and is generally observed in moral and political discourse. The question of the proper limits of rights to free exercise of religion is one on which liberals generally take only strong governmental interests to bear. Here some version of Mill's harm principle seems plausible and almost common ground among liberal thinkers. My sense is that Vallier takes principles for the citizenship ethics in relation to coercive laws and public policies to sanction virtually any conscientious exercise of one's liberty in accordance with one's epistemic and other normative standards. In my judgment, by contrast, although he has identified a region of moral rights, it remains true that ethics and

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<sup>16</sup> Science education is discussed more detail in relation to these issues in my "Religion and the Politics of Science." See also Kent Greenawalt, *Does Religion Belong in the Public Schools?* (Princeton: Princeton University Press, 2004).

certainly civic virtue require more of us than is needed simply to live within these far-reaching rights.

### **Conclusion**

In the light of this framework for thinking about ethics and political philosophy, I have tried both to bring out differences between Vallier's view and mine both at the level of accommodationist policy and in relation to some very broad methodological and normative questions. Our agreement on many substantive issues concerning accommodation is considerable, and I regard his critical discussion of leading liberal positions as informative and helpful in moving discussion forward. I accept some of his points about the burdens of internalizing the principles I propose. But I am convinced that the mutual clarification and, often, reinforcement of natural reason interacting with religious sentiment and thinking is a desirable element in democratic societies. For secular citizens, identifying reasons for law-making and considering their adequacy is valuable both for clarifying their own thinking and for communication with other citizens. This holds whether or not the reasons are secular, but the latter are in general more likely to be understood across a culturally pluralistic population. For religious citizens, the search for adequate religious reasons may clarify those reasons and, in some cases, lead to their modification, much as can happen with secular citizens considering their secular reasons. For most people, whether or not they are religious, the required thinking is sometimes easy, sometimes difficult. But it is surely not a requirement for a good ethics of citizenship that realizing it be easy.<sup>17</sup>

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<sup>17</sup> Acknowledgments