The Role of Religion in the Public Sphere: The Use Of Public Reason By Religious and Secular Citizens

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Abstract:

Habermas’ recent reflections on the role of religion in the liberal public sphere are marked by an uncomfortable tension between his continued commitment to strict political secularism and his picture of a postsecular society characterised by a critical engagement between religion and the traditions of the Enlightenment. The ensuing difficulties compromise Habermas’ commitment to the equal standing of all citizens. In the light of these concerns the paper argues that in a postsecular society a re-assessment of the separation between state and organised religion is best conceived of as a two way process. Not only must we re-evaluate the exclusion of religiously grounded arguments from the public realm, but we must also re-examine the notion of religion as a ‘sovereign’ sphere in which the principles of reason, freedom, and equality that govern the public realm do not apply. While the liberal state cannot directly bring about the requisite change in mentality on the part of religious and secular citizens, it can, contra Habermas, play an important role in developing the institutional and structural framework that can facilitate critical engagement, debate, and reflection.

One of the most influential lines of defence of the liberal separation of state and organised religion has centred on attempts to ground the liberal secular state in an independent political ethics. This line of reasoning, most closely associated with the work of Rawls and Habermas, seeks to resolve deep and persistent disagreements regarding worldviews and religious doctrines by an appeal to the idea of public reason, which insists that in the political realm decisions must be justified in terms of reasons that are equally accessible to all.

Indeed, Habermas, in his recent reflections on the role of religion in the liberal public realm, develops a subtle and sophisticated account of a liberal secular state grounded in an independent political ethics. While Habermas seeks to defend the traditional liberal separation between state and organised religion, he argues that this form of political
secularism must be distinguished from the advocacy of a secularist perspective in society at large. Indeed Habermas’ characterisation of modern liberal societies as postsecular reflects not merely the realisation that as a matter of fact ‘society must anticipate that religious communities will continue to exist’ and that such communities can contribute to the reproduction of desirable attitudes’, such as a sense of solidarity and normative awareness, but also rests on the normative claim that both secular and religious citizens have good cognitive reasons to ‘take each others contributions to controversial public debates seriously’.¹ In this context Habermas develops two distinctive arguments for an expanded role for religion in the public realm: (1) At a procedural level Habermas aims to show that, contrary to the claims of critics such as Wolterstorff and Weithman, properly conceived the burdens the liberal state places on religious believers are neither discriminatory nor grossly asymmetrical.² On Habermas’ account, not only is the state neutral vis-à-vis conceptions of the good, the normative expectations of the liberal state require a significant change in mentality on the part of both secular and religious citizens and as such place an equitable burden on both. (2) At the same time he sets out to show that on a substantive level ‘religious traditions have a special power to articulate moral intuitions’ and as such constitute a ‘serious vehicle for possible truth contents’ from which all citizens, secular as well as religious, can learn’.³

While Habermas’ careful delineation of the implications of a commitment to freedom of religion for both secular and religious citizens gives rise to a much more nuanced account of the role of religion in both the formal and informal public realm, the paper argues that Habermas does not resolve the uncomfortable tension in his approach between his continued commitment to strict political secularism and his picture of a postsecular society characterised by a critical engagement between religion and the traditions of the
Enlightenment. This tension is clearly apparent in Habermas’ conception of reason and religion as two separate sovereign realms. The paper argues that the ensuing difficulties compromise Habermas’ commitment to the equal standing of all citizens. In his conception of religion as a separate sovereign realm Habermas fails to clearly distinguish between the epistemic and institutional sovereignty of the religious realm. This failure leads him to misconstrue the complex relationship between law and religion. His subsequent reluctance to intervene in the ‘internal’ affairs of religious institutions and organisations threatens to compromise the equal rights – including the right to freedom of religion – of traditionally marginalised members of religious communities. In the light of these concerns the paper argues that within the context of a postsecular society a re-evaluation of the separation between state and organised religion is best conceived of as a two way process. Not only must we re-evaluate the exclusion of religiously grounded arguments from the public realm, but we must also re-examine the notion of religion as an institutionally sovereign sphere in which the principles of reason, freedom and equality that govern the public realm do not apply. This interplay, however, has more far reaching implications for both religious and secular citizens than Habermas acknowledges.

The ‘public use of reason’ by religious and secular citizens

In *Between Naturalism and Religion* Habermas sets out to explore the implications of the separation between state and church upon the role religious traditions, communities and organisations can play in the civil society and the public political sphere of a liberal constitutional states. Habermas insists that in the face of ongoing and deep-seated disagreements regarding worldviews and religious doctrines the liberal state must remain neutral vis-à-vis conceptions of the good and thus cannot tolerate religious justifications in the legislative process. Hence in the formal political sphere the constitutional state must rely
‘exclusively on arguments that claim to be equally accessible to all persons’ (Habermas 2008: 120). However, while the principle of the separation between state and church demands that ‘politicians and officials within political institutions … formulate and justify laws, court rulings, decrees and measures exclusively in a language that is equally accessible to all citizens’, the liberal state cannot reasonably expect citizens, to whom it grants freedom of religion, to justify their political statements independently from their religious convictions. After all to lead a devout life implies the belief that one ‘ought to base … decisions concerning fundamental issues of justice on [ones] religious convictions’ (Wolterstorff, cited in Habermas 2008:128). Thus, if the necessary institutional separation between state and church is not to give rise to unreasonable mental and psychological burdens upon religious citizens, a liberal state committed to protecting all religious forms of life equally, ‘must release religious citizens from the burden of having to make a strict separation between secular and religious reasons in the political public arena when they experience this as an attack upon their personal identity’ (Habermas 2008: 130).

However, in order to safeguard the institutional separation between state and church, religiously grounded justifications expressed in the informal political public sphere must be ‘translated’ into secular reasons accessible to all if they are to impact upon formal political processes and citizens may only ‘express themselves in a religious idiom under the condition that they recognise the institutional translation proviso (Habermas 2006:10). That is not to suggest that religious citizens can only express their religious convictions if they themselves can find a secular ‘translation’. On the contrary, Habermas conceives of the ‘translation proviso’ as a cooperative effort that requires secular citizens to ‘take part in the effort to translate relevant contributions from religious language into a publicly accessible language’ (Habermas 2005:28). Thus, as long as religious citizens can be ‘confident that their fellow-
citizens will cooperate in producing a translation’ even ‘monolingual’ religious citizens can understand themselves as participants in the legislative process (Habermas 2008:130).

Nonetheless, ‘the requirement to show equal respect to each citizen regardless of his ethical self-understanding or his life-style’ is liable to place a ‘heavy burden’ on religious believers (Habermas 2005:27). While a ‘secular citizen with limited metaphysical baggage, who can accept a morally “free-standing” justification of democracy and human rights’ can easily recognise that the “right” enjoys priority over the “good”, for a religious believer, ‘whose ethical self-understanding derives from religious truth claiming universal validity’, ‘other ways of life appear not just different but mistaken’ (Habermas 2005:27). Thus the institutional precedence of secular over religious reasons requires religious citizens to make an effort to learn and adapt ‘that secular citizens are spared’ (Habermas 2008: 236). Habermas contents that ultimately religious citizens will only be able to fulfil the normative expectations of the liberal state if there has been a corresponding change in mentality on the part of religious citizens. If religious citizens are to be able to accept the priority that secular reasons enjoy in the formal political realm they must ‘embed the egalitarian individualism of modern natural law and universalistic morality in a convincing way in the context of their comprehensive doctrine’ (Habermas 2008:137). Thus, not only must the religious community ‘differentiate itself from the wider political community’ and abandon the claim to comprehensively shape life (Habermas 2003:6), adherents to religious worldviews must develop from within their own perspective reasons that explain why they ‘may realise that ethos inscribed in that view only within the limits of what everyone is allowed to do and pursue’ (Habermas 2004:13).
However, according to Habermas, these burdens do not discriminate against such worldviews. Although the liberal political culture is not value neutral (Wertneutral), Habermas insists that it is neutral in its aims vis-à-vis conceptions of the good (Weltanschauungsneutral). Indeed, for Habermas (2004:7), the normative frame of the liberal state is best thought of as a module ‘constructed purely with the help of neutral reasons that do not draw on any particular worldview’ and which can be incorporated into a diverse range of belief-systems without denying the absolute truth claims that characterise these worldviews or ways of life.4

Besides the burdens associated with the norm of equal respect and the ‘translation proviso’ are not one sided. Just as believers must ‘reckon with the persistence of disagreement in dealing with believers of other faiths’, so secular citizens must acknowledge that religious convictions are not irrational (Habermas 2005:27). This requires a corresponding change of mentality on the part of secular citizens. Indeed:

On the normative premises of the constitutional state and of a democratic civic ethos, the admission of religious assertions into the political arena only makes sense if all citizens can be reasonably expected not to exclude the possibility that these contributions may have cognitive substance’ (Habermas 2008:139).

Only if citizens come to understand their disagreement with religious conceptions as reasonable will they be ‘willing to enter into a political discussion of the content of religious contributions with the intention of translating potentially morally convincing intuitions and reasons into generally accessible language’ (Habermas 2008: 140). To achieve this change of mentality secular citizens must engage in a self-critical assessment of the limits of secular reason. Thus, while maintaining the strict demarcation between faith and knowledge, secular citizens must develop an agnostic mindset that does not pass judgement on religious faith and that does not exclude religious doctrines from the genealogy of reason. Secular citizen must be open to the possibility that they may learn from religious contributions; that religious
traditions may have a special power to articulate otherwise buried moral intuitions and thus have the potential to act as a ‘serious vehicle for possible truth contents, which can … be translated from the vocabulary of a particular religious community into a generally accessible language’ (Habermas 2008:131). In this context Habermas stresses the extent to which philosophy has repeatedly learned through its encounters with religion and has received ‘innovative impulses when it succeeds in freeing cognitive contents from their dogmatic encapsulation’ (Habermas 2008:142).

While Habermas accepts that it would only be reasonable to expect all citizens to uphold his proposed ‘ethics of citizenship’ if both religious and secular citizens have already undergone the complementary changes of attitude that enable them to engage with each other, he recognises that these processes are far from inevitable. Indeed for Habermas (2008: 144) ‘the requirement of complex mentalities highlights an improbable functional imperative whose fulfilment the liberal state can scarcely influence through the legal and administrative means at its disposal’.

More troubling still, not only are the requisite mentalities pre-political in origin, the changes in attitude required of religious and secular citizens can only be described as a ‘learning process’ from the perspective of a specific and contested self-understanding of modernity. Thus for Habermas (2008:145), in the final analysis ‘only those concerned and their religious organisations can decide whether a “modernised” faith is still the “true” faith’.


While Habermas’ careful delineation of the implications of a commitment to freedom of religion for both secular and religious citizens gives rise to a much more nuanced account of the role of religion in the public realm, there remains an uncomfortable tension in his
approach between his continued commitment to strict political secularism and his picture of a postsecular society characterised by a mutual learning process brought about by a critical engagement between religious doctrines and the traditions of the Enlightenment. This tension is clearly apparent in Habermas’ conception of reason and religion as two separate sovereign realms. The ensuing difficulties arguably have far reaching implications for the equal standing of some member of religious communities, including their equal right to freedom of religion.

For Habermas a clear separation between state and organised religion is vital, not just in order to safeguard the neutrality of the state, but also to protect religion from undue state interference and thus safeguard the right to freedom of religion. Yet, despite Habermas’ assurances, it is not clear that in practice his framework will indeed secure an equal right to freedom of religion for all citizens. Clearly at one level the state neither can nor should attempt to influence religious belief. As Locke already recognised in his ‘Letter Concerning Toleration’, the state cannot employ the law to coerce citizens to believe certain things or to think in a certain way, nor should a liberal state committed to freedom of religion attempt to determine the content of religious doctrines. In this regard Habermas’ emphasis on the epistemic sovereignty of religion is well placed. However, religious communities are marked out not merely by an abstract set of beliefs and values, but also comprise a set of institutions with distinctive hierarchies and power relations. Yet the picture that emerges from Habermas’ discussion of religion is a distinctly intellectual one that scarcely touches on the notion of religion as a practice that is lived within the context of particular communities and institutions. This failure to systematically explore the institutional character of religious communities arguably has significant repercussions. In the absence of a careful critical appraisal of the institutional aspects of organised religion, Habermas fails to draw a clear distinction between a due regard for the epistemic sovereignty of religion and the right of
religious communities to structure and organise their internal institutions as they see fit. This arguably gives rise to an uncomfortable slippage whereby the legitimate concern with the epistemic sovereignty of religion leads to an implicit presumption in favour of a broad degree of de facto institutional sovereignty for religious communities. Indeed Habermas’ recent reflections on religion are characterised by a marked reluctance to intervene in the internal affairs of religious communities per se. Thus when Habermas argues that it is for religious believers and their organisations to decide what does and does not constitute ‘true’ religion, the fact that religious communities are marked by distinct hierarchies and power relations and the impact this may have upon the ability of religious believers to freely debate and evaluate religious doctrine is not addressed. Yet, it is precisely in relation to religious institutions and practices that the notion of a ‘sovereign religious realm’ is liable to give rise to a tension between the principle of freedom of religion and the core liberal commitment to secure equal rights for all citizens. After all the strict separation of state and organised religion not only confines religion to the private sphere, it also protects religion from critical scrutiny. Once ‘privatised’ religion is viewed, at least in part, as outside the legal jurisdiction of the state – an area within which the principles of reason, liberty and equality that govern the public realm do not apply. However, this picture of a settled religious realm that is both epistemically and institutionally sovereign is misleading on at least two counts: (1) it obscures the internal contestations and power struggles within religious communities and (2) fails to realise that what is recognised as the religious realm is at least in part construed by law.

The question of what constitutes a ‘true faith’ and how established doctrines, beliefs and practices should be interpreted is often highly contested within religious communities. What is more, these debates frequently reflect conflicting interests and power relations. For example, recent feminist discourses not only point to the detrimental effects of many
established religious practices upon women, but have also highlighted the difficulties women members of religious communities face in their attempts to secure greater freedom and equality within a religious setting. For instance, within the context of contemporary debates regarding the origin, nature and interpretation of Jewish and Muslim personal and family law, women members of these communities have repeatedly challenged the dominant interpretation of those aspects of religious family and personal law that discriminate against women. For many members of these communities – including women – adherence to religious personal and family law constitutes a vital aspect of their religious identity. Women members who seek reform typically do not reject their religious heritage, but try to secure greater freedom and equality within a religious context via the reinterpretation of existing legal traditions based on alternative readings of religious texts and by pointing to inconsistencies in current practices. Thus, for example, the feminism of many Muslim feminists remains firmly rooted in Islam and movements such as Women Living Under Muslim Law (WLUML) have demanded not just a right to the equal treatment of their religious community, but also the right to engage in their communities on their own terms. While Habermas stresses that decisions regarding the character of ‘true faith’ must be in the hands of religious organisations and communities, feminists like Sunder argue that a genuine commitment to freedom of religion requires the state to take active steps to empower previously marginalised voices. Indeed feminists such as Shachar and Deveaux have pointed to a variety of political and legal mechanism that can be employed to encourage intra-community processes of critical reflection upon dominant conceptions of religious norms and values. The aim of such mechanisms is not to involve the state in determining the content of religious doctrines, but to secure the equal standing of all members within the community, so that the voices of those traditionally marginalised can be heard and that contested issues can be debated. Thus on the basis of these proposals, a due regard for the epistemic sovereignty
of religion need not entail a presumption in favour of the institutional sovereignty of religious communities. While the mechanisms proposed by feminists like Shachar and Deveaux aim to bring to bear the principles of freedom, equality and reason within religious institutions, they respect the right of religious believers to determine the content of religious doctrines.

Regardless of the potential strength and weaknesses of specific institutional proposals, the interesting point here is that such an emphasis on contestation and debate is not only liable to enhance the religious freedom of previously marginalised community members, but is also likely to encourage precisely the kind of critical reflexive attitude within religious believers that Habermas regards as a vital prerequisite for his ethics of citizenship. Indeed the interventionist stance favoured by feminists such as Shachar, Deveaux and Sunder may be better attuned to Habermas’ overall enterprise than his implicit assumption in favour of the institutional sovereignty of religious communities and organisations. What is more it suggests that Habermas’ contention that there is little the state can do ‘through the legal and administrative means at its disposal’ to facility the change in mentality required by his new ethics of citizenship may well be too pessimistic. Ultimately his failure to critical analyse the impact of power relations within religious communities and institutions leads him to overlook some of the ways in which the state can influence the background conditions which can help to bring about the change in mentality he advocates.

In the face of such criticism Habermas may, of course, wish to argue that such an interventionist stance compromises the institutional boundary between state and organised religion and thus undermines the principle of state neutrality. However, such a response arguably obscures the extent to which law inevitably shapes ‘the boundaries of religious jurisdiction and the amount of autonomy and equality that are permissible within the religious
sphere’. Given the special weight the liberal state attaches to the principle of freedom of religion, it cannot help but come to a view whether the claims citizens make are religiously or culturally grounded and whether particular religious practices do or do not constitute an unacceptable violation of citizens’ fundamental human rights. For example, because of the weight attached to religious obligations, religious organisations frequently enjoy exemptions from anti-discrimination laws dealing with gender and sexual orientation. Yet, adjudicating such claims inevitably involves the state in decisions that delineate the scope and character of the religious realm and require an assessment of the extent to which a proposed law impacts upon the core of religious practices. Should, for instance, religious organisations be allowed to set up their own schools and, if so should they be permitted to discriminate in the employment of staff on religious grounds? Should exemptions on religious grounds from sex discrimination legislation be restricted to the appointment of priests, or should religious organisations be free to follow their traditional practices, even if this means that women are effectively debarred from a whole range of positions? Given the weight that some religious communities attach to religious, family and personal law, should such religiously grounded norms have legal standing? Some of the difficulties in this regard are illustrated by the recent controversy in the UK surrounding demands by the Catholic Church for Catholic Adoption Agencies to be exempt from aspects of the Equalities Act (Sexual Orientation) Regulations 2007, which apply the principle of non-discrimination on the grounds of sexual orientation to access to a whole range of goods and services, including access for gay and lesbian couples to the services of adoption agencies. While Cardinal Murphy-O’Connor maintained that to insist that Catholic Adoption Agencies process adoptions by gay and lesbian couples would be to force Catholics to ‘act against the teachings of the Church and their own conscience’, to grant an exemption would not only impact upon the rights of gay and lesbian couples in general, but would also affect the standing of dissenters within the
Church who have challenged established doctrine in this regard. Thus regardless of the stance the state adopts, it cannot help but shape the scope and character of the religious realm. What is more, the way the religious realm is conceived is liable to affect the range of actors who are consulted in the discussions that inform such decisions and the weight that their views carry. If religion is conceived as an institutionally sovereign realm, the views of religious leaders may be regarded as decisive. If, on the other hand, the state is attuned to the complex relationship between law and religion and is sensitive to the internally contested nature of religious doctrines and practices, it is liable to seek the views of a broad section of the community, including dissenters. As these examples illustrate, law inevitably shapes the scope of and the dynamics within the religious realm and the notion of a clearly demarcated religious sphere that is both epistemically and institutionally sovereign significantly misconstrues this complex relationship between law and religion. Habermas’ marked reluctance to intervene in the ‘internal affairs’ of religious communities may not only compromise the freedom of religion of members who have been traditionally marginalised within these communities, but may stifle precisely the kind of contestation and debate that may foster the reflexive attitude that Habermas regards as central to his new ethics of citizenship.

Towards an alternative proposal

Although the themes of dialogue, critical engagement, and mutual learning that emerge from Habermas’ discussion of a new ethics of citizenship offer a welcome re-evaluation of the role religious traditions, communities and organisations can legitimately play in the public realm, Habermas fails to resolve the tensions in his account between his commitment to strict political secularism and his picture of a postsecular society. The notion of a postsecular society in which both secular and religious citizens have good cognitive reasons to take each
others contributions to public debate seriously points towards the need for a genuine critical engagement that can foster mutual understanding and promote the critical reflexive attitude that Habermas rightly identifies as a vital pre-requisite for his new ethics of citizenship. However the picture that emerges from Habermas’ account of the role of religion in the public realm is not one of lively and challenging debate. On the contrary, reason and religion ultimately remain two separate countries, with clearly demarcated borders, which can only be negotiated at the price of discursive translation. His commitment to strict political secularism not only leads him to insist that religiously grounded arguments in the informal public realm can only impact upon deliberations in the formal political realm in as far as they can and indeed have been translated into secular reasons, but also gives rise to a portrayal of religion as both epistemically and institutionally sovereign and the notion that state neutrality implies that the liberal state should not intervene in the internal affairs of religious organisations and institutions. This picture, however, is both misleading and, arguably, unhelpful given Habermas’ own project. The postsecular society Habermas depicts is a post-dogmatic society. Yet this has arguably more radical implications for both secular and religious discourses than Habermas concedes.

As Habermas’ own emphasis on dialogue and mutual learning suggests, within the context of a postsecular society a reassessment of the separation between state and church is best conceived of as a two way process. This, however, implies that we must not only re-evaluate the exclusion of religiously grounded arguments from the public realm, but must also re-examine the notion of religion as an institutionally sovereign sphere in which the principles of reason, freedom, and equality that govern the public realm do not apply. After all if, as Habermas claims, we are not to exclude religion from the genealogy of reason, these principles ought to have purchase within the religious realm. Although Habermas
acknowledges that the encounter with modernity has given rise to critical reflection within Western religious traditions, he insists that these are processes that the liberal state can ‘scarcely influence through the legal and administrative means at its disposal’. Yet the notion that a commitment to state neutrality implies that the liberal state must refrain from all intervention in the religious realm is, at least in one sense, simply misleading. As the preceding discussion has shown, even in a liberal polity the state cannot help but pronounce on the claims that religious organisations and communities make vis-à-vis the wider society and members of their own community and the subsequent legal framework inevitably shapes the scope and character of religious jurisdictions. Moreover, given the fundamental liberal commitment to secure equal rights for all citizens — including an equal right to freedom of religion —, state intervention may at times not only be vital, but, contrary to Habermas, also can and indeed should aim to promote the mentalities that are a pre-requisite for his new ethics of citizenship. While a right to freedom of religion implies that the liberal state should respect the epistemic sovereignty of religion, within a liberal polity any institutional expression of a right to freedom of religion must not only be balanced against other fundamental rights, such as the right to equal treatment, but must also be exercised in ways that are respectful of the religious liberty of all citizens. In as far as religion does constitute an institutionally sovereign realm, this sovereignty is not absolute, but conditional upon respect for the fundamental rights that characterise a liberal polity. Such considerations can give rise to legitimate grounds for state intervention in the religious realm. For example, despite the contested nature of religious doctrines, beliefs and practices, the internal organisation of many of the major established religions remains markedly hierarchical and intra-community debates regarding the nature of ‘true faith’ often reflect conflicting interests and power relations within religious communities. In such a context a liberal commitment to an equal right to religious liberty, may, for example, entail a willingness on the part of the liberal state
to employ the political and legal means at its disposal to support marginalised community members in their attempts to promote intra-community debate and reflection on religious doctrines that disproportionately restrict the liberties of, or place disproportionate burdens on, some members of religious communities. The subsequent intracommunity debates regarding the nature of ‘true faith’ can perform an important role in encouraging religious communities to reflect upon the role that the principles of freedom, equality and non-authoritarian reasoning can play within religious worldviews and are liable to promote precisely the kind of critical reflexive attitude within religious believers that Habermas regards as a vital pre-requisite for his ethics of citizenship.

These considerations also have arguably far reaching implications for the role of religion in the liberal public realm. Indeed it is far from self-evident that religious discourses that have successfully incorporated the principles of freedom, equality and non-authoritarian thinking and whose perspective is grounded in a reflexive attitude should be excluded from formal deliberation in the public realm As Cooke (2007) notes, while the liberal commitment to freedom and equality entails certain constraints on contributions to political deliberation and legislation, what is at stake in this context is not the secular or religious character of specific arguments, but the underlying commitment to non-authoritarian reasoning and acting. Such reasoning not only acknowledges the ‘essential contestability of claims to truth and rightness and the ways in which these claims are subject to the influences of history and context’, but also accepts that law, principles and policies are only valid if citizens can endorse these for reasons which they are ‘able to see or come to see, as their own reasons’. Although a commitment to non-authoritarian reasoning places considerable demands on citizens, it does not necessarily privilege secular reasoning per se. While such a stance is clearly not compatible with authoritarian worldviews - be they religious or secular - that are willing to
employ the power of the state to impose their conception of truth and knowledge, religious faith in and of itself does not necessarily entail an authoritarian perspective.

This interplay suggests that within the context of a postsecular society a re-evaluation of the relationship between state and religious institutions and reason and religion is best conceived of as a two-way process. While a critical re-evaluation of the notion of religion as an institutionally sovereign realm brings to bear the principles of freedom, equality, and non-authoritarian reasoning within religious discourses, the inclusion of non-authoritarian religious discourses within the formal public realm not only helps to enhance the discursive equality of religious citizens, but can also play a role in revitalising public deliberation and debate. While the liberal state cannot directly bring about the requisite change in mentality on the part of religious and secular citizens, it can, contra Habermas, play an important role in developing the institutional and structural framework that can facilitate critical engagement, debate, and reflection.

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1 Habermas’ (2008: 111)
3 (Habermas 2008: 131)
4 Habermas takes the notion of the normative frame of the liberal state as a ‘module’ from Rawls. Indeed Habermas’ notion of a civic sense of the nation in many ways mirrors Rawls’ notion of political liberalism and the difficulties that Habermas encounters are akin to those facing Rawls. While Rawls maintains that his conception of political liberalism will gain the endorsement of, or at least will be compatible with, all reasonable doctrines, numerous critics have been quick to point out that far from providing a basis for an overlapping consensus that can encompass citizens with highly diverse conceptions of the good, political liberalism privileges liberal principles at the expense of worldviews and ways of life that challenge Rawls’ sharp public/private distinction. Ultimately, Rawls’ distinction between political and comprehensive liberalism rests upon a sharp differentiation between the political and the non-political, which ignores the complex interrelationship between the two spheres. For an overview of a range of critical perspectives on Rawls’ conception of political liberalism see Baumeister (2000).
5 Habermas cites Kant and Hegel as prime examples here.
6 e.g. Shachar 2001, Deveaux 2005, Phillips 2007) See, for example, Shachar’s discussion of the difficulties devout Jewish women face with regard to Jewish divorce law, which allows a husband to ‘anchor’ a wife in a religious marriage – even if the relationship has formally been terminated by the state – by refusing to consent to a religious divorce (the get) thereby denying her the opportunity to remarry within the Jewish faith. In the absence of a Jewish divorce any children an ‘anchored’ woman has with another man are regarded under Jewish family law as illegitimate and thus are not admissible as members of the Jewish community
Loenen (2002) cites an interesting example of potential state intervention in the Netherlands, where several Moroccan women, who had already obtained a divorce under Dutch law against their husbands will, asked for a legal order from a Dutch court to force their husbands to repudiate them in accordance with the Islamic code that governs Moroccan family law. Not only do many Moroccan women strongly identify with the rules and practices of their community, a failure to obtain a divorce under Islamic law would leave these women at risk of prosecution for adultery should they return to Morocco and would lead to children of any subsequent marriage under Dutch law being regarded as illegitimate.

Both Deveaux and Shachar aim to develop institutional mechanisms that grant minorities, including religious communities, a degree of self-governance on the condition that traditionally marginalised and potentially vulnerable group members are able to challenge the existing power relations and dominant interpretations of norms and values within the group. To facilitate such challenges Deveaux and Shachar propose two distinct and innovative models. Whereas Deveaux’s approach evokes the principles of democratic deliberation, Shachar employs the idea of joint governance.

While Habermas (2009) insists that the normative expectations of an inclusive civil society forbid the religious rejection of the equal standing of men and women, his marked reluctance to intervene in the internal affairs of religious communities suggests that the these normative expectations only apply to the public realm. A religious community could quite conceivably readily recognise the equality of men and women in the public sphere and still uphold deeply discriminatory rules within the religious realm (indeed a number of the major religious communities within contemporary liberal democracies arguably do precisely that).


