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## Reflections on Trigg and Nussbaum's views on Religion in Public Life

Contemporary political liberalism, especially in the English speaking world, is usually regarded as being hostile to religious belief and religious believers. This is because its proponents develop a sophisticated view, inspired by John Rawls, that aims to come up with procedural or principled reasons that would just so happen to exclude most religious views from public discourse, and move such discourse (and so society and culture) along a channel that accords well with the beliefs and values of contemporary secularism. Many thinkers have reservations about such an approach, regarding it as honestly misguided, perhaps disingenuously conceived, or even as a rigged procedure to exclude (or at least contain) religious beliefs from having any political influence. Some resist it completely and reject the whole approach to political theory that comes from Rawls.<sup>1</sup>

In these brief reflections, I wish to provide a short overview of the ideas of Roger Trigg and Martha Nussbaum, both of whom offer thoughtful, nuanced and fair discussions of this

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<sup>1</sup> See Robert Kraynak, *Christian Faith and Modern Democracy* (South Bend, IN.: University of Notre Dame Press 2001).

complex topic, views that are sensitive to the beliefs of all parties.<sup>2</sup> These thinkers are neither hostile to religion nor to contemporary political theory, and they try to propose a workable solution to some of the problems that arise from the pluralism of worldviews that we experience in modern democracies, without pre-judging the question of the worthiness of certain worldviews over others. Trigg raises the question of whether it is really possible to afford equal respect to all beliefs in a democracy, which is of course one of the crucial matters in the contemporary debate, since typical liberal approaches, as Trigg suggests, appear to stack the deck against religious views, in particular. He focuses on both liberal theoretical questions and practical examples from recent British and European law, and illustrates insightfully with recent cases that came before the courts. Nussbaum, while addressing liberal theoretical questions in often shrewd ways, focuses mostly on the U.S. context, and in particular on the first amendment to the U.S. Constitution, which both prohibits the establishment of religion, and protects the free exercise of religion. She analyzes historical and recent court cases at some length as a way of fleshing out her general philosophical position.

In contemporary political thinking, it is often suggested that the state should be neutral between competing worldviews that exist within its borders. Trigg rejects this aspiration, and argues that there can be no such thing as state neutrality between worldviews and values. He illustrates with the example of the European Convention on Human Rights, which in its various statements makes no bones about portraying recent problems and issues of contention as arising from a conflict between liberal secular(ist) views and religious views. The topic of the rights of

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<sup>2</sup> See Roger Trigg, Equality, Freedom, and Religion (New York: Oxford U.P., 2012), also Trigg, Religion in Public Life (New York: Oxford U.P., 2007). See Martha Nussbaum, Liberty of Conscience (New York: Basic, 2008); also Nussbaum, The New Religious Intolerance (Cambridge, MA: Harvard U.P., 2012).

women, Trigg notes, is frequently presented as a battle between secularist approaches to human rights on the one hand and the clash with various religious views on the other (for example, concerning Muslim female dress practices).<sup>3</sup> These types of examples are instructive because they illustrate clearly that someone's values prevail in the discussion, are privileged over others, and decide the topic in an exclusive way. The question, according to Trigg, is how would one justify that it should be my values that prevail in a way that does not trample over the rights and freedoms of others who disagree with me? He notes the inconsistency in a position like that of A.C. Grayling, who on the one hand professes to be a skeptic and a relativist about key issues of life, such as the notion of human nature, who holds that rights are simply "invented" by human beings, and accepted and justified by consensus, but who then on the other hand develops a position suggesting that his beliefs should be the ones that decide important issues that are in dispute.<sup>4</sup>

It is sometimes proposed today that religious worldviews should not be singled out for special protection in the laws of democratic countries, in the way they are in the U.S., for example. This seems to be correct so far as it goes because if religion and secularism are both recognized as types of worldview then they are on a level playing field, as it were, and all worldviews need to be considered in their relationship to the state, not just religious ones. This reality changes our thinking completely about the role of religious views in politics (as I have argued elsewhere).<sup>5</sup> Trigg, however, makes the argument that religion is truly different from other systems of belief, from forms of conscientious objection, for example, and so does deserve special consideration. Nussbaum

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<sup>3</sup> See Trigg, *Equality, Freedom, and Religion*, p.5.

<sup>4</sup> *Ibid*, p.12.

<sup>5</sup> See my *Why Politics needs Religion: The Place of Religious Arguments in the Public Square* (Downers Grove, IL.: Intervarsity, 2006).

also considers the question and raises some interesting reasons for why religious views might be regarded as special, which we will get to in a moment. But Trigg argues that religion is a defining feature of human nature. He appeals not only to traditional philosophical arguments to support this claim, but also to recent evidence from social and cognitive science.<sup>6</sup> Religious beliefs are not simply equivalent to other forms of conscientiously held belief; they appear to be natural to man, an important, some would say essential, part of what it means to be human. He is also persuaded by the view that many moral values are ultimately justified in God's nature. Illustrating with appeal to Locke and the example of equality (which greatly influenced the thinking of Thomas Jefferson), Trigg argues that this notion comes from religion, and agrees with Jeremy Waldron that "Lockean equality is not fit to be taught as a secular doctrine; it is a conception of equality that makes no sense except in the light of a particular account of the relation between man and God."<sup>7</sup> Jonathan Wolff has also noted that contemporary attempts to present Locke as a secular thinker on these matters are disingenuous.<sup>8</sup> Those who wish to appropriate Locke for their own purposes, and to distort or misidentify his argument for equality, run, like Rawls, into a kind of cultural relativism, because they end up appealing to what "everyone nowadays believes" (a locution used widely in Rawls' work)—that is, to a consensus to justify the values they wish to promote. Trigg does not make a further point that would apply to

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<sup>6</sup> Although the literature is often controversial, and sometimes influenced by a secularist or positivist approaches, Trigg surveys some scholarship in cognitive science that appears to show that religion is part of the nature of human beings, and that "concepts such as that of an all-knowing God, of disembodied minds, and of supernatural agency arise naturally from the way our minds work." (p.23). In this way, he argues that religion is "a basic component of humanity" (p.24).

<sup>7</sup> See Trigg, *Equality, Freedom, and Religion*, p.28. Also Jeremy Waldron, *God, Locke, and Equality: Christian Foundations in Locke's Political Thought* (Cambridge, UK: Cambridge U.P., 2002), p.2.

<sup>8</sup> See Jonathan Wolff, *An Introduction to Political Philosophy* (Oxford, UK.: Oxford U.P., 2016 ed.), pp.17-24, 96-100.

Rawls and his supporters: if there is disagreement about how equality is to be justified (and over how moral values in general are to be justified—by appeal to God, or by some other means), all views in the dispute are surely entitled to a place at the negotiating table. There is the further issue of what we mean by equality (does it include a right to abortion, for instance?); to answer this question it would be necessary to appeal to one's worldview and values and so one's position on the matter could not be described as "neutral."

Trigg correctly notes that a statement put out by the Council of Europe (a human rights organization, distinct from the European Community, made up of 47 member nations) on religion is "relentlessly secularist." Affirming the "generally accepted principle" of the separation of church and state, it says explicitly that "the legislation of several Council of Europe member states still contains anachronisms dating to times when religion played a more important role in our societies."<sup>9</sup> Trigg believes it is obvious that this kind of talk is unacceptable because it cannot deal fairly with the crucial matter of how it is to be decided (and who decides) what is to be regarded as an anachronism, nor does it explain how the separation of church and state is to be understood. The Council of Europe, Trigg argues, is engaged in a quite overt attempt to impose secularist views on many European countries, such as Ireland, Malta and Poland, for examples. This is a way in which a tendentious definition of equality, and understanding of the separation of church and state, can come into conflict with the notion of religious freedom. As he astutely puts it, "In the pursuit of equality, it seems, some beliefs are more equal than others."<sup>10</sup> He argues that religious freedom is worthless if it is allowed only when it fits in with the prevailing assumptions of society (in this case, of a secularist ruling class, which represents most likely

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<sup>9</sup> Trigg, *Equality, Freedom, and Religion*, p.37.

<sup>10</sup> *Ibid.*, p.38.

a minority in many countries). Alarming, Trigg believes that persecution of religious believers cannot be far behind on several of these issues. On this point, he is surely correct.

He observes that many notions such as equality, human rights, and various moral values (concern for the vulnerable, the value of life, critique of exploitation, and other issues of social justice) all come from religion, which goes against the caricature of religion that seems to be a vital part of the identity of liberal political theory. In many of the court cases he considers, a liberal understanding of equality trumps the rights of conscience on the basis of religion. He notes that Lord Justice Laws, in a ruling (that was later overturned) in a much publicized case in the U.K. on whether a counselor who wished to be exempted from any obligation to work with same-sex couples in issues of psychosexual therapy, based a significant part of his court judgment on his own view that religious belief is basically irrational, sweeping aside (in his ignorance), as Trigg observes, the whole of natural theology, the philosophical defense of religious belief, and “centuries of Christian theology.”<sup>11</sup> Trigg points out that at issue is not how such issues are to be decided morally, it is rather that the judge believes that he has the right to decide which worldviews are correct and worthy, and which are not, and so in no way could his ruling be described as neutral, nor could the state be regarded as not taking sides in a contentious debate. Although Trigg fails to consider the significance of secularism understood as a worldview in its own right, which wishes to influence democratic culture, he does note that secularist views are being openly used to suppress religious views. No doubt Lord Justice Laws and people of like mind believe their view is the most rational one in any dispute between their values and religious values, but this is beside the point. The point is that both worldviews, and sets of values, are entitled to a place in the debate

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<sup>11</sup> See *ibid.*, pp.142-145.

in a democratic context. There are no democratic principles, values or procedures that would grant to the views of Lord Justice Laws a privileged position in (contentious) arguments over the issues of the day.

Trigg argues that not only is religious liberty not contrary to human rights, but that it is an essential part of our understanding of human rights, and an essential feature of what freedom means. Religion points to a higher source of authority than the state, and every worldview must face the question of how those values it wishes to have an influence over politics are grounded. He is especially worried about a danger present in the modern state, that it can crush individual conscience. This can occur because the state, especially through its courts (egged on by the media, liberal politicians and liberal public intellectuals) consistently discriminates against religious believers, and covertly and even sometimes overtly (as we have seen) passes judgment on the rationality of religion, and its place in life and culture.<sup>12</sup> This puts us in danger of establishing what he calls a “modern secularist inquisition,” where only those views approved of by secular liberalism are acceptable, where it becomes standard to discriminate against religious believers, and where religious believers passively acquiesce in their second class citizenship in formative debates about education, morality, and culture.<sup>13</sup>

Although more influenced by a Rawlsian approach than Trigg, Nussbaum does share many of his concerns, and evinces in general a more sympathetic approach to religious belief in a democratic setting. Writing particularly from the lens of the U.S., her general moral position is that all people have human rights equally. One of her motivations in considering the topic is that she

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<sup>12</sup> See *ibid.*, p.154.

<sup>13</sup> See *ibid.*, page 156. He raises the point about the secularist inquisition particularly in the context of the British couple who were banned by the courts from fostering small children because of their Christian views on homosexuality. See “Foster parents defeated by the new Inquisition,” *Daily Telegraph*, Feb 28<sup>th</sup>, 2011.

is worried by the fact that religious liberty is under threat in various places around the world. Unlike Trigg, whose view is developed from the perspective of a worry about the secularist threat to religious beliefs in modern pluralism, Nussbaum is not especially concerned by secularist threats to religious liberty, although she does reject the “smug atheism” evident in the supercilious approach of thinkers such as Richard Dawkins and Daniel Dennett.<sup>14</sup> She is more worried though about the threat to liberty that comes from religious groups, especially the evangelical right in the U.S. who, she believes, wish for “the values of a particular brand of conservative Christianity to define the U.S.”; the members of this group “seek public recognition that the Christian God is our nation’s guardian.”<sup>15</sup> While this is a bit vague, and perhaps exaggerates the danger, she is concerned to make sure that everyone has religious liberty in the U.S. including Catholics, Muslims and atheists, all groups that have suffered noticeable discrimination in the past.

We know that some people who want religion kept out of politics are motivated by their own moral and political convictions—they wish to contain and isolate views with which they disagree. In their case, separation of church and state is more of a tactic they use than a principle to which they are committed. On the other hand, some of those who wish religion to have a place in politics wish for their own religion to have control over many facets of life, even to become the official religion, though it must be said that this latter view is no longer common in modern democracies. While recognizing that the motivations of certain people and groups is not irrelevant, and while not wishing to dwell on the motivations of anyone, we need to get beyond these mixtures of political motivations and tactical maneuvers to consider the issue purely from a philosophical, rational point of

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<sup>14</sup> See Nussbaum, *Liberty of Conscience*, p.10.

<sup>15</sup> *Ibid.*, p.4.

view, to consider what the best approach would be on the question of religion in politics from the point of view of liberal democratic theory. Unlike Trigg, who is worried about religion being excluded from public decision-making, Nussbaum's study may be categorized as one of those works concerning religious freedom that focuses, not on worries about secularism or on the pretense of a neutral state, but on certain types of, usually traditional, religious views and the danger they pose to religious liberty in their pursuit of an established church. Unfortunately, her otherwise excellent study does not explain sufficiently what she means by an establishment of religion. It is certainly true that in the U.S. there are many who regard the U.S. as a Christian nation with a Christian heritage, and who think there is nothing wrong with making reference to this fact occasionally in public places, in referencing it, even honoring it. But this would not be the same as wanting everyone to worship the Christian God. Nussbaum, however, believes that there is a danger in the U.S. from certain evangelical groups of deliberately crossing over the line of separation between church and state and moving toward establishment of the Christian religion.

Liberal thinkers often scaremonger about the threat of a coming theocracy, but don't carefully define or explain what they mean by "theocracy," and what restrictions they would put in place to prevent this. One key question is whether contributing to a moral dispute in the public square on the basis of one's religion is acceptable or not (i.e., whether appeal to any religious belief or value would be tantamount to the establishment of a theocracy—surely too broad a criterion?). Or perhaps she means that no religion can be the official religion of the state, a position few would disagree with today. She also does not give much attention to how religious views might be defended, or to whether (and if) the establishment of secularist views would be allowed (though her general position seems to be against this), or whether the

modern state amounts to secularist establishment in every way but name. It seems she is mostly concerned with the threat of religious establishment, since she often refers to the worry about making the Christian God in some way the official guardian of the nation. Nevertheless, her discussion is very helpful in the general debate about religion in politics, and refreshingly different from the approach of Rawls, and from the supercilious attitudes one sees in many studies, which often have a barely concealed contempt for those (religious) views rejected by the author.<sup>16</sup>

American Presidents often include religious language in public speeches and at public occasions such as Presidential Inaugurations or at times of national tragedy. Here is President Barack Obama, for example, at a memorial service to honor five Texas police officers killed in an ambush in Dallas in July 2016: "...I am reminded of what the Lord tells Ezekiel. 'I will give you a new heart,' the Lord says, 'and put a new spirit in you. I will remove from you your heart of stone, and give you a heart of flesh.'" He also added that we "are all children of God."<sup>17</sup> Nussbaum believes that this kind of public expression of faith or use of religious language is not appropriate in the U.S. context because it seems to favor one religion, excludes other religions, and also those with no religion. She spends a good deal of her book analyzing Supreme Court cases concerned with first amendment questions and freedom of religion, but struggles to find any kind of consistency in them, or a pure application of her own principles of liberty, equality, and equal respect for the rights of conscience. Overall, she does not sufficiently distinguish between the moral question of what should be the role of religion (or as I argue, of any worldview) in a democratic state, and what is the role of religion (or what has it been historically) in

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<sup>16</sup> For a perceptive overview of liberal critiques of religion, see Cecilé Laborde, *Liberalism's Religion* (Cambridge, MA.: Harvard U.P. 2017).

<sup>17</sup> President Obama's speech is available at [www.americanrhetoric.com](http://www.americanrhetoric.com).

a particular country, as expressed in its societal practices and legal tradition (what I call the legal question concerning the role of religion in public life). It would help her discussion if she made such a distinction because what is legal in one country may not always be the morally correct position, and in any case, from a philosophical point or view one must first answer the moral question before one implements it in a set of laws.

Religion is, in some way, regarded as special by the U.S. Constitution, as it is (or was) in the constitutions of other democratic nations, at least up until quite recently. Trigg noted in one of his examples that many special protections and treatments of religion are subject to continuous challenges, which are often justified by appeal to secular(ist) values. One example he cites is the proposal in the UK to remove state funding from Christian schools, on the grounds that Muslim and other religious schools receive no funding. As a Muslim scholar pointed out, this is a clear case of discrimination against religion in general because the proposal would mean that funding would be taken away from Christian schools but other religious schools would still receive nothing, and so the overall effect would be to defund all religious schools! Meanwhile, secular programs of education would continue to be funded, a nice example of the hypocrisy of the idea of “neutrality”! (Yet it is interesting that in the UK, religious schools continue to be funded by the “secular state,” as they are also in Ireland, Germany, even India, and several other countries, but not in the US., an indication of how thinking differs on similar issues across democratic states.)

Nussbaum agrees that religion should get special attention by the state, but her reasons are more concerned with containing it than protecting it. She considers various reasons. The first is a practical reason: because religion is usually a matter of group affiliation and identification, it is more likely to be a source of persecution than individualistic moral and political commitments,

and so special treatment at the level of the state would also serve the task of protecting people from its excesses.<sup>18</sup> She suggests that this motivation may have influenced the framers of the US Constitution. I believe this kind of argument might perhaps be extended to modern secularism as well; we may have to consider persecution coming from secularists; for example, in forcing Catholic adoption agencies to close, or in preventing religious couples from fostering children, as Trigg noted above. Nussbaum also suggests that another reason for singling out religion is that religious beliefs are often held as being “obligatory and non-optional,”<sup>19</sup> and so again are more likely to be the types of beliefs one would wish to force on everyone in society. Again, perhaps today we should also consider whether this might be true of secularist beliefs, or indeed of beliefs coming from any worldview, particularly in our increasingly partisan times where there are evident tendencies to brook no argument against one’s view and to flout democratic values (such as freedom of expression) whenever they get in our way. In any case, we must be careful not to caricature a person’s beliefs too quickly, since this comes close to treating them with a lack of respect—acting as if their beliefs are somehow inferior to ours (surely just another way of asserting the superior rationality of our view without a discussion).

Nussbaum argues that religions seek ultimate meaning, and this is another way of marking them off from secular views. She notes that some people in the state believe there is no ultimate meaning, and they must be free to do so.<sup>20</sup> Each person searches for their own ultimate meaning, and this search is of intrinsic worth and value, and so is worthy of respect. It would follow that it would not be appropriate to allow expressions of Christian

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<sup>18</sup> See Nussbaum, *Liberty of Conscience*, p.165.

<sup>19</sup> *Ibid*, p.167.

<sup>20</sup> *Ibid*, p.168.

views, for instance, or appeals to a specifically Christian view of meaning in public. Yet, her discussion would benefit from a more direct discussion of what kinds of religious argument can count in the public square. More fundamentally, she needs to be much more careful about distinguishing between (i) appealing to a religious belief or value in a public argument, (ii) trying to establish one's religion, and (iii) making a religious argument based on an appeal to a revealed text or on the authority of a religious leader (rather than on an appeal to reason, or philosophical-type arguments). She may believe that there are none of the latter, but this is irrelevant in a democratic setting, because there are many who do hold that one can give rational arguments to support many religious beliefs, including on moral issues (as Trigg also noted). Let us not forget the Catholic tradition, in particular on this question, and indeed the whole tradition of rational argument in religion in history. It is irrelevant whether a particular thinker respects this tradition or thinks such arguments are unsuccessful, for this is not enough to exclude them from the debate in a democratic setting. The public setting is where the debate begins; obviously it would be democratically unacceptable for a thinker, or group of thinkers, to have the power to end it based on our their own private assessments before it begins! Such distinctions are critical to working out a consistent position on this complex topic.

Nussbaum does refer from time to time to the tradition of arguing philosophically for the rationality of religious belief, but she does not give the topic enough attention. When analyzing issues such as Intelligent Design Theory, abortion and gay marriage in her last chapter, she does so almost completely as if supporters and critics respectively are (a) offering arguments based exclusively on appeal to revealed religious texts, or (b) trying to establish their religion as the main one in society. She also thinks that her own assessment of the evidence and

arguments on these issues should carry the day in the debate, rather than recognizing that the central and vexing question is deeper: how do we proceed in a modern democratic state if there is disagreement about these very issues, while still respecting the democratic values of freedom and equality.<sup>21</sup> One cannot answer this question by saying that we should proceed by following my views (and so restrict the expression of other views I regard as false)—because this violates the democratic principles of freedom and equality.

Although Nussbaum cites approvingly Jacques Maritain’s view that different religious views, including Catholicism, could live alongside each other successfully in the modern state on the basis of “moral propositions that all major doctrines could endorse,”<sup>22</sup> her position, like Trigg’s, would benefit from a further discussion of three critical issues: (1) what these propositions are and how they are to be interpreted, supposing we have general agreement about them in the abstract; (2) the fact that secularism is now a major contemporary doctrine that changes the debate in a significant way; and (3) the fact that the religious worldview is a reasonable worldview. These are the complex questions we must address if we are to make progress on the general issue of the legitimate role one’s worldview may play in the shaping of morality and culture in the contemporary democratic state.<sup>23</sup>

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<sup>21</sup> Her discussion of Intelligent Design Theory is weak, and focuses too much on the legal position in US law, rather than on the theoretical issues that the topic raises for modern democratic pluralism concerning what it means to describe a view as “religious,” what is meant by public reason and what constitutes a reasonable argument, and how do we deduce which arguments can be legitimately expressed in public debates. Nussbaum often writes as if court cases and judge’s opinions can decide, or take precedence over, the philosophical issues. But this mistakenly places the legal question—the legal position regarding the role of religion in (a particular) modern democratic state—before the moral or philosophical question of what the role of religion should be in the modern democratic state. For her discussion of ID theory, see pp.322-327.

<sup>22</sup> Nussbaum, *Liberty of Conscience*, p.276.

<sup>23</sup> For a fuller discussion of these three topics, and other issues discussed in this paper, see my recent book, *The Crisis of Democratic Pluralism: The Loss of Confidence in Reason and the Clash of Worldviews* (New York: Palgrave MacMillan, 2021).

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President Obama's speech is available at [www.americanrhetoric.com](http://www.americanrhetoric.com).

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