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A TWO-LEVEL JUSTIFICATION FOR RELIGIOUS TOLERATION

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Many contemporary theories of freedom of religion presume that the freedom must be based on the society's special valuing of religious belief. But that is not so. Religious freedom is most important, indeed is most required, when the beliefs that are protected are considered false and perhaps even harmful. This paper presents an alternative two-level understanding of freedom of religion. The first and most rudimentary level emphasizes the mere toleration of religious beliefs, based on the benefits of living in peaceable community with people of different beliefs. The second and more demanding level emphasizes the affirmative value of inter-religious dialogue. This second level, while it is indeed worth cultivating, is nevertheless more difficult to sustain precisely because it requires that non-believers attach affirmative value to religious belief. Both levels are therefore essential to a complete theory of religious freedom: the first to provide a robust baseline of religious toleration sufficient to protect the virtue of living together in peace against the consequences of religious antipathy; and the second to encourage the substantial benefits of inter-religious learning, fragile though they may be.

INTRODUCTION

It is often said that freedom of religion is based on the special value that societies accord to religious beliefs. But that is a mistake. Freedom of religion is most important – indeed is only really needed – when governments encounter beliefs and practices that they think

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are false, obscurantist, perhaps even pernicious, at the very least inconvenient. It is only then that governments are forced to decide whether to make room for the practices in question. It is then that governments must decide whether to change their policies or proceed regardless. Hence the fundamental conundrum of freedom of religion: Freedom of religion is not about the protection of truth. It is about the protection of what, to those in government, is often error.

For example, governments may want to institute a mass vaccination program to prevent the spread of a contagious disease, but they encounter groups that object, on religious grounds, to forced medical treatment. Or they seek to amend burial regulations, perhaps to institute mandatory cremation for health reasons, but they encounter religious believers who claim that cremation poses serious spiritual dangers for them. Or they attempt to establish regulations for the humane slaughter of animals, but they find that these contradict mandatory Muslim or Jewish rules for the slaughter of animals. Or they seek to prohibit the production and consumption of alcoholic beverages, but they find that this ban would prohibit the celebration of the Christian sacraments. Such conflicts are the normal case in freedom of religion, not the exception.

Why should a government stay its hand? Why should it accord special protection to interests that a majority of electors do not share? This paper seeks to answer those questions. We are likely to do a much better job designing a regime of religious toleration if we are clear on the reasons for doing so. Moreover, it is especially important that we understand the reasons for religious toleration in cases where religious beliefs appear to the majority to be false or wrong-headed. It is in those cases that religious toleration comes under the greatest pressure. It is then that we most need to know how to respond.

My argument will proceed in five steps. First, I will briefly summarize the components of freedom of religion. Second, I will set out the foundational justification for the protection of the freedom, one that does not require that government attribute any substantive value to the beliefs but instead is based on the simple willingness to live in peaceable community with believers. Despite its rudimentary

nature this justification is crucial precisely because it does not demand that governments concede the value of religious beliefs. It provides strong reasons for tolerating a wide range of religious beliefs, for governments of dramatically different ideological commitments.

By its very nature, however, this foundational argument attributes little value to religious belief. It therefore provides little encouragement for citizens to engage positively with minority beliefs or to provide more than the most grudging toleration of them. There are, however, good reasons to treat religious beliefs as positive sources of insight, reasons that provide an additional ground to embrace freedom of religion and that suggest, moreover, why governments should encourage productive interaction with religious believers. In the third section of this paper I set out that argument, exploring various ways in which non-believers can enter into productive dialogue with believers. This is a more difficult argument to accept. It is also a fragile and partial foundation for freedom of religion, for there will be some religious beliefs that non-believers consider to be of no conceivable value (throughout this paper, by “non-believers” I mean people who do not hold those particular beliefs; they may have their own, very different, religious commitments). It is unwise, then, to build one’s conception of religious freedom solely upon it. My case for religious freedom is therefore a composite one: 1) I suggest that the argument set out in section two should form the foundational justification for freedom of religion – the relatively undemanding but broadly applicable reason for respecting religious belief that can permit coexistence in diverse societies; but 2) I suggest that governments should remain open to the possibilities for richer interaction set out in section three, because of the capacity for special insight available from such interaction and because, to the extent such value is perceived, citizens can develop a mutual respect that is based on more than just a cold calculation of self-interest.

Even if one takes the approach set out in the third section of this paper, there will be crucial dimensions of religious belief that are not shared by outsiders. Freedom of religion can never require non-believers to embrace religious belief in the same way and for the same reasons that believers hold their beliefs. It is wise to remind ourselves

of that fact. Otherwise we might lose sight of the very different perspectives that believers and non-believers have on religious convictions. The fourth section notes those differences.

Finally, in the fifth section, I discuss the special obligations and challenges that the state faces in grappling with religious freedom. I will not provide anything like a complete account of the limits to religious toleration. My focus is on the reasons to respect religious freedom in the first place. But governments have to balance their policy goals against the practices of religious believers. That section discusses the spirit in which they should do so.

I. THE NATURE AND EXTENT OF FREEDOM OF RELIGION¹

The content of freedom of religion is surprisingly diverse and indeed the subject of perennial debate. It is important to realize the complexity when discussing the freedom. Too often, religious toleration is treated in too simplistic a fashion, impairing the value of the analyst's conclusions.

The core of freedom of religion – but only the core – is the freedom to hold whatever religious belief one considers justified. At this level, religious freedom is about freedom of the mind – the ability to think what one wishes, free from coercion. Historically, this dimension of the freedom has been of considerable importance. It prohibits, for example, attempts to suppress religious belief by punishing believers.

However, freedom of religion cannot be simply about a purely internal, mental freedom. Indeed, the beliefs only come to public notice – they are only likely to trigger governmental action – when

¹ For an expanded version of the argument of this section, see Jeremy Webber, *The Irreducibly Religious Content of Freedom of Religion* in DIVERSITY AND EQUALITY: THE CHANGING FRAMEWORK OF FREEDOM IN CANADA 178 (Avigail Eisenberg ed., 2006) (which also discusses the definition of “religion,” especially in relation to an expanded freedom of “conscience and religion”). Compare also the similar argument in RAJEEV BHARGAVA, THE PROMISE OF INDIA'S SECULAR DEMOCRACY 77-80 (2010).

they are externalized in words, conduct, or appearance. Moreover, those external manifestations of religion are remarkably diverse. Religions are not simply about the holding of certain intellectual tenets. They can include worship, prayer, the study of scripture, the retention and teaching of a sacred language, the production of images, injunctions on conduct (principles of morality, dietary rules; the avoidance of interaction with people of another gender or caste), dress codes, the modification of the body (circumcision; tattooing; the cutting or the refusal to cut the hair), the custody and management of sacred places, pilgrimage, the observance of holy days, rules for the slaughter of animals, rules for the treatment of the dead, and principles of self-sacrifice. As soon as they are externalized, the potential for conflict between governmental objectives and religious practices becomes significant. Governmental measures, even those that are perceived to have nothing to do with religious beliefs, can interfere with fundamental religious commitments, as the examples given in the introduction to this paper make clear (vaccination policy, burial regulations, regulations for the slaughter of animals, the prohibition of alcoholic beverages; and of course the examples could be multiplied).

This raises one of the characteristic debates within freedom of religion: In what circumstances should the state be forced to stay its hand, limiting its policies in order not to impinge upon religious practice? Some answers to this question try to stay very close to the core of freedom of religion – freedom from coercion of internal beliefs – by saying that the state only has an obligation to refrain from deliberately attempting to suppress or interfere with religious belief. Thus, as long as a government's action is motivated by a non-religious objective, its action will be acceptable. But that restriction is much easier to enunciate than to follow. Religious beliefs speak to a wide assortment of issues. How, then, can one distinguish a targeting of religious beliefs from other governmental aims? For example, consider the situation in which a central tenet of a religion requires that women and men fulfil different roles. If, in the interest of gender equality, the government rigorously forbids gender role differentiation, isn't it directly challenging the religious community's belief in fundamental

gender differences? For that community, gender identity is a quintessentially religious issue, one that is expressly contradicted by the state action.

The fundamental problem is that religious beliefs involve comprehensive conceptions of the world, and the premises that underlie governmental action can conflict in complex ways with religious commitments. There is no easy way for any actor, governmental or non-governmental, to distinguish religious reasons for acting from other, non-religious reasons. Governments are always, therefore, confronted with the problems of deciding how important their policy objectives are and of balancing those objectives against the significance of the impairment of religious practices. If freedom of religion is to be protected, governments need to recognize the special importance of religions to their believers, make a special effort to accommodate those beliefs, and err in favour of governmental restraint. This paper explores the reasons for pursuing such a path of accommodation. It also sketches, very briefly, the approach states should follow when restricting religious practices, as on occasion they must do.

The discussion above summarizes the dimension of freedom of religion that deals with government action that coercively interferes with religious beliefs and practices. In the United States, this dimension has come to be named after the “free exercise” clause of the constitution: “Congress shall make no law ... prohibiting the free exercise [of religion].” But there is a second and quite different dimension to freedom of religion in many countries, one that prohibits government from identifying itself with any particular religion to the detriment of others and is the foundation for an expanded conception of secular government. In the United States, this is known as the “establishment” clause, after the clause of the US Constitution that declares: “Congress shall make no law respecting an establishment of religion.”²

² The quoted phrases are from U.S. Const. Amend. I.

The rationale underlying this second dimension has become quite different from the first. Initially it had a similar foundation, namely to prevent the coercion of religious belief and practice (e.g. when “establishment” forced citizens to subscribe to a single religion). But in most societies, the non-establishment branch of the freedom now prohibits much more than the imposition of a single religion. It requires that governments treat all religions present within society in a roughly equivalent fashion. This extended doctrine is no longer concerned with prohibiting religious coercion *simpliciter* but with prohibiting state favouritism. It is most obvious in arguments over the display of Christian symbols or the celebration of Christmas by public agencies – schools, municipalities, state governments – in the United States. It seeks to ensure that members of all religions are in an equal position with respect to the state. It is no longer concerned simply with protecting religious belief and practice from coercive interference but with ensuring that all citizens, of whatever religion, are treated as full members of the political community. This doctrine goes well beyond a prohibition on state interference with religious belief to embrace a conception of the equal citizenship of all religious believers.

It need not, however, require the complete separation of state and religion, so that all things religious are banished to an emphatically private sphere (as has sometimes been contended, especially in the United States). As many Indian scholars have argued and as I argue below, the complete abstention of the state from matters of religion is an impossible aim. Religious reasons for acting are so pervasive that they cannot be banished from political life.³

³ See, e.g., T.N. Madan, *Secularism in Its Place* in *SECULARISM AND ITS CRITICS* 297 (Rajeev Bhargava, ed, 1998). Because the term secularism is often presumed to require this aspiration to non-religious neutrality – or, worse, an opposition to religion altogether – I will not rely upon it here, even though it has been dominant in the Indian debate. Unlike TN Madan but like Rajeev Bhargava, however, I do believe that the term can be recovered if carefully defined, although one consequence of doing so is that one must recognize a wide variety of secularisms, not one universal definition. See also Jeremy Webber, *The Separation of Church from State* in *CLASHING FUNDAMENTALISMS: WHEN RIVAL TRUTH CLAIMS MEET HEAD-ON* 58 (Leslie A Kenny, ed, 2008).

In summary, then, the primary content of freedom of religion seeks to prevent the state from interfering with religious belief and practice. It certainly includes deliberate attempts by the state to suppress religion, but it also requires state restraint when policies that are not deliberately designed to frustrate religion nevertheless interfere with religious beliefs and practices. This requirement inevitably involves government in difficult judgements as to the extent of deference to be exercised with respect to minority religious practices. Indeed it is this aspect of the freedom that raises the conundrum with which I began this paper: the need for the government to exercise special tolerance for beliefs that it emphatically does not accept. There is a second dimension of the freedom that requires that the state not simply refrain from imposition but also extend roughly equal treatment to all religious beliefs, in recognition of the equal citizenship of all believers. This second dimension will not be the focus of this paper, although, as will become clear, it shares, in its emphasis on shared citizenship, a common point of origin with the freedom's non-coercion dimension.

II. THE FOUNDATIONAL JUSTIFICATION FOR FREEDOM OF RELIGION

In order to understand the foundational justification for freedom of religion, it is useful to return to the circumstances in which religious toleration emerged in the turmoil of the Protestant Reformation in Europe. This European tradition is by no means the only possible basis for religious toleration. As Rajeev Bhargava has emphasized, secularism in India has taken its own distinctive forms, building on both Indian and European foundations.⁴ I start with the European experience not because it is the only basis for religious toleration but because it is especially helpful in showing how religious freedom can come to be recognized even in the face of severe conflict over the merit of the beliefs in issue. I suspect that similar elements

⁴ BHARGAVA, *supra* note 1, at 100-04. Islamic societies too have a substantial history of religious toleration. See, e.g. ABDULLAH SAEED & HASSAN SAEED, FREEDOM OF RELIGION, APOSTASY AND ISLAM 20-23 (2004) (although the authors go on to explore the emergence of conflict – and a consequent lack of internal toleration – within Islam).

could be identified in the emergence of religious toleration in the East as well.⁵

Religious freedom in the West was not based on a general acceptance of the legitimacy of a wide range of religious beliefs – something often claimed (with some justification) on behalf of Hinduism, although, like many religions, Hinduism has also harboured variants that have been much less than tolerant.⁶ Toleration in the West did not depend on participants acknowledging that beliefs other than their own were valid or valuable. On the contrary, the Protestant Reformation was a time of contending assertions of absolute truth, in which the beliefs of others were vehemently condemned and the believers themselves often subjected to severe persecution. The result was very serious strife. Wars raged across Europe. It was in response to that strife that religious toleration emerged.

Indeed, a policy of toleration was first adopted in those jurisdictions in which the divisions were so deep that it was impossible, or at least very costly, to impose a single outcome. Brandenburg-Prussia in the 17th century serves as a good example. There, successive Hohenzollern electors were committed to the Reformed version of Protestant Christianity, but the majority of

⁵ BHARGAVA, *supra* note 1, at 97 (Indeed, Bhargava refers to the role of a “religious strife model” in present-day toleration in India).

⁶ See Bhikhu Parekh, *Hindu Theory of Tolerance* in INDIAN ETHICS: CLASSICAL TRADITIONS AND CONTEMPORARY CHALLENGES 337 (Purushottama Bilimoria, Joseph Prabhu & Renuka Sharma eds., 2007), for an exploration of the nature and limitations of Hindu tolerance. As T.N. Madan says (*supra* note 3, at 302): “In the given pluralist situation, both tolerance and intolerance are expressions of exclusivism.” Moreover, Parekh’s account focuses on the philosophical justifications for tolerance in Hinduism, providing what is necessarily an idealized and aspirational account. In practice, individuals claiming the mantle of Hinduism can act in ways that depart substantially from that ideal. See, e.g., Jyotirmaya Sharma’s *explorations of intolerance* in HINDUTVA: EXPLORING THE IDEA OF HINDU NATIONALISM (2003); see generally TERRIFYING VISION: MS GOLWALKAR, THE RSS AND INDIA (2007). Indeed, such are the complexities of religious conflict that even a commitment to tolerance can be used as a bludgeon against religious minorities castigated for being less tolerant.

their subjects were Lutherans. It was clear that neither side could impose its will and, with time, a version of toleration was developed, especially by Christian Thomasius, that permitted not only Reformed and Lutheran professions of faith, but also Jewish and atheist beliefs.⁷ Often, such solutions were simply a matter of making virtue out of necessity: a policy of sheer oppression would be costly and ineffective. On occasion, this prudential reason for toleration was complemented by a philosophical or theological commitment to the freedom of the individual conscience. But the baseline for toleration was the fact that elements within the society were deeply committed to their beliefs (heretical as they might seem to the rulers) and those beliefs could not be suppressed without very severe conflict. Over time, the rulers therefore adapted to the continued existence of the religious dissenters, allowing room for them to pursue their own version of the truth.⁸

Religious freedom emerged primarily, in other words, as a *modus vivendi* – a solution that allowed people to live together, not on the basis of agreement to a common set of principles, but simply on a basis of live and let live. It preferred the fact of living together in a peaceable community to the desire to impose a particular version of the truth. And when societies adopted this kind of approach, they soon found a range of advantages. Not only were their societies no longer riven by warfare, but they derived benefit from the dissenting communities' contributions: a broader sphere of productive economic interaction; dissenters' positive assistance in the projects of the state rather than their sullen resistance; and the stimulus of the dissenters' distinctive perspectives on the life of the community (their literatures, their musical traditions, their traditions of learning, their commercial, agricultural and industrial skills).

⁷ See IAN HUNTER, *THE SECULARISATION OF THE CONFESSIONAL STATE: THE POLITICAL THOUGHT OF CHRISTIAN THOMASIVS* (2007), especially chapter 5; Ian Hunter, *Thomasius and Locke on Toleration*, unpublished conference paper at the Natural Law and Toleration Conference, British Academy, London, April 13, 2007.

⁸ For other examples in Reformation Europe, see DIARMAID MACCULLOCH, *REFORMATION: EUROPE'S HOUSE DIVIDED* 1490-1700 164, 340-44, and 370-73. (2004).

It is common in today's theoretical literature to criticize the idea of a *modus vivendi* on the grounds that it supports only a pinched and inadequate conception of community, founded on the suspension of hostilities rather than a rich set of shared values.⁹ That criticism is, it seems to me, misconceived. The idea of a *modus vivendi* has significant benefits. It allows for the persistence of human communities that are internally diverse. It does not insist upon a narrow and demanding set of common values. It certainly rejects the idea of imposing such values by force. Instead, it places more importance on the benefits of living together in peace, on the bare fact of peaceable community, allowing richer forms of commonality to emerge out of that community's interaction in time. It does not insist that agreement precede community. It does not fix the principles of the society as the precondition of all interaction. And in so doing, it not only dampens strife; it also establishes the conditions for more substantial forms of social cooperation in the future.

The long coexistence of Hindu and Muslim in India would seem to have aspects of a *modus vivendi* supporting it. Indians have sometimes sought to achieve more than a mere *modus vivendi*. They have sought to establish a deeper respect, a sense that both religious communities have been instrumental in making India the country it is today. Gandhi certainly argued for such a conception of India. This expansive and generous aspiration has sometimes eluded Indians' grasp, however. It is at those difficult times that the value of a *modus vivendi* has sometimes come to India's rescue.¹⁰

⁹ See, e.g., JOHN RAWLS, POLITICAL LIBERALISM 147-149 (1993). Some works have, however, sought to affirm the value of *modus vivendi* against more demanding philosophical theories. See, e.g., JOHN GRAY, TWO FACES OF LIBERALISM (2000) and especially DUNCAN IVISON, POSTCOLONIAL LIBERALISM 76-88 (2002), whose "discursive and dynamic *modus vivendi*?" appears very close to that advocated here.

¹⁰ Indeed, I suspect that the most distinctive aspect of Indian secularism, the differential engagement of the Indian state in the reform of Hindu and Muslim traditions, a difference that Bhargava rightly emphasizes (BHARGAVA, *supra*, note 1, at, 84-85 and 90), is also best explainable on the basis of a *modus vivendi*. It was simply untenable, in terms of perceived legitimacy, for a Hindu-majority legislature to reform matters of Muslim religious law.

Now, for a *modus vivendi* to be established, participants do have to reconcile themselves to the fact of living together in a peaceable community. They have to renounce the temptation to suppress a subject population by sheer force. A wide range of reasons can support this willingness. The most rudimentary can be the simple cost of the alternative: the perennial resentment and resistance of the subject population, if not its outright rebellion. But there are also more positive reasons: the enlistment of the capacities and talents of the dissenters in the national economy, including talents that are unique to the group (such as fluency in another language, intimate knowledge of a neighbouring country's customs, or the commercial or agricultural acumen that the group has developed over time); the capacity to enter into dialogue with the distinctive beliefs of that population, using that encounter as a stimulus to further growth in the majority's beliefs; perhaps also the ability to secure greater freedom within the population at large (for it is often difficult to contain oppression to a subject group; the insistence that a minority comply with an imposed set of beliefs may also constrain the freedom of thought of the majority).¹¹

The greater the understanding of these benefits, the more resilient the support for freedom of religion will be. One sees evidence of all of these reasons in the history of the Reformation in Europe. I tend to accept them all. The value of dialogue with dissenting beliefs will be the subject of the next section of this paper. But note that governments need not acknowledge the substantive value of the beliefs to have a strong basis for toleration. Indeed, it is misleading to

¹¹ Movements that are religiously intolerant often affirm narrow and inflexible versions **of their own religious traditions**. See, e.g., HINDUTVA, *supra* note 6. It is instructive that in the late 17th century, a significant number of English Catholics opposed the attempt by James II to create an emphatically Catholic and absolutist government not only because the attempt might upset the existing *modus vivendi* (with dangerous consequences in the long term), but also because they preferred a different orientation within the Catholic Church (that associated with Pope Innocent XI rather than the aggressive and intolerant Gallicanism of Louis XIV of France) and they were committed to what had come to be seen as traditional English rights and liberties: STEVE PINCUS, 1688: THE FIRST MODERN REVOLUTION 140-42, 210-11 (2009).

see religious toleration as being primarily about the acceptance of beliefs. Rather, religious toleration is about the acceptance of the people. The beliefs are tolerated essentially by ricochet because one accepts the believers as members of one's community. One realizes that if one is going to live together, one is going to have to tolerate their beliefs.

Note, then, the undemanding nature of this rationale. It only requires acceptance of the need for peace, based on reasons that need not be either noble or generous (although of course, reasons based on nobility and generosity should not be despised). The form of community it envisages is a minimal one; it does not require concordance of belief, nor even agreement to a substantial set of principles. Often, once a rudimentary community is established, richer forms of commonality, as well as richer justifications for toleration, can develop. That certainly occurred in many societies in the Reformation, as leaders of societies committed to religious toleration sought to defend their practices against their neighbours. But the foundational *modus vivendi* itself is undemanding.

III. THE BENEFITS OF INTER-RELIGIOUS DIALOGUE

I have insisted upon the undemanding nature of religious freedom's foundational justification because it provides reasons for respecting religious freedom that can be very broadly shared. It makes clear that one need not attach any value to the beliefs in issue to realize that the freedom itself is worth respecting. In religious freedom, the primary object of one's toleration is the people; one makes room for the beliefs only because they are so profoundly important to those people.

However, one great additional benefit of accepting religious freedom is that one opens oneself up, potentially, to insights held by those who profess minority beliefs. This is a source of intellectual growth for individuals and the society as a whole, one that provides an added reason to recognize the freedom.

But how can beliefs that are founded on what are, to a non-believer, highly contentious, idiosyncratic, and fanciful views of the

world, hold valuable insights for those who reject the beliefs' assumptions? The question is a good one. The influential liberal political theory of John Rawls presumes that such partial and contested doctrines cannot form elements of public deliberation. Rawls therefore develops a concept of public reason from which religious beliefs are excluded.¹² Indeed, I suspect that many political and legal theorists share the view that religious beliefs, being, as many people think, inherently irrational and matters of faith, cannot be useful and effective contributions to public dialogue. That view is, however, mistaken. In this section, I want to suggest why.

To begin, it is a mistake to think of religious belief as an autonomous set of highly integrated propositions, all founded on faith. Even though crucial nuggets of religious thought may be matters of faith, a religious tradition as a whole is a compendious amalgam of thought, practice, rival interpretations, attempted applications, and debate. The very complexity and internal diversity of any tradition provides points of connection and potential dialogue with outsiders.

For one thing, the amalgam of thought and action is not impervious to experience. Any set of religious doctrines is intended to shape one's life and, as those doctrines are lived, they in turn are shaped and adapted. There is, in other words, an element of feedback from experience to religious doctrine. One thinks one has grasped a religious principle; one attempts to put it into action, but one finds that the results are not at all what one expected; one therefore revises one's understanding of the principle so that now it incorporates an awareness of how the principles play out in the world. That experience of the world provides a point of connection between believers and non-believers, allowing one potential ground for conversation.

Indeed, a particular religious tradition may incorporate insights drawn from a body of experience that is beyond the range of non-believers. That is often true, for example, of the spiritual beliefs of indigenous peoples in settler societies such as Canada or Australia.

¹² RAWLS, *supra*, note 9, at 9-11.

Those beliefs reflect intense interaction over centuries with particular natural environments. They incorporate acute perceptions of the qualities of plant-life and animals, as pharmaceutical companies have found to their benefit.¹³ But that, it seems to me, is only an especially striking example of a more common phenomenon: human societies develop their beliefs by continual experience of their particular social orders and natural environments. Their beliefs hold important insights into those orders and environments. Studying them can reveal unexpected possibilities for human social organization. And even if one chooses not to adopt lessons from those societies, the comparison can reveal otherwise invisible aspects of one's own society.¹⁴

Moreover, as all these examples make clear, religious beliefs are not impervious to reasoning. They are not simply the product of unilateral decree, from god to man, even if they are sometimes conceived that way. Religious doctrines, stories, creeds, and texts always have to be interpreted and applied to new situations. Those interpretations may well be inspired by the sources. They may put a special premium on fidelity. But it is nevertheless the case that the sources only speak in general or oblique terms and believers must then explore the meaning of those terms in their own lives. That process of exploration is a reasoned one, allowing for the engagement of genuinely reasoned deliberation.

The evolution of religious belief through time bears witness to this dimension of inquiry and adaptation. I do not mean to suggest that evolution is a matter of progress, so that later forms of belief are necessarily better than earlier forms. The conceptual framework of beliefs is often so particular, so multifaceted, and so charged with significance to a believer that judgements of better and worse are profoundly difficult. I wish to note simply that debate, adaptation, absorption of elements and defensive elaboration have manifestly been part of humanity's religious experience and account for much

¹³ See e.g., Nancy J. Turner & Fikret Berkes, *Coming to Understanding: Developing Conservation through Incremental Learning in the Pacific Northwest*, 34 HUMAN ECOLOGY 495 (2006).

¹⁴ See Jeremy Webber, *The Grammar of Customary Law*, 54 MCGILL L. J. 579 (2009).

religious change over time. The experience of religious pluralism in China is an example. China has been shaped by Taoism, Confucianism, and Buddhism, among many other belief systems. As each new system developed, partisans of the new defined their position by distinguishing themselves from what came before, sometimes vehemently. And yet, over time, believers in these different systems found ways to co-exist. A conversation has developed among the faiths, each illuminating and enriching the others. Today, individuals often draw inspiration from two or more of the traditions. There has been less syncretism of religious belief across the Muslim/Hindu divide in India, perhaps because of a greater ethic of singleness of commitment in Islam. But there has been mutual influence, collaboration and the development of common cultural creations that cross religious lines to such an extent that the current character of India is inconceivable without the interaction of Muslim and Hindu.¹⁵

Rather than conceiving of religious traditions as consisting only of invariable and irrational commands, fixed by religious authority, it is better to think of them as specialized languages, with their own terms, conceptual structure, modes of expression, imagery, and history of inquiry.¹⁶ These elements do carry normative prescriptions and dispositions. But the implications of those expressions are never utterly transparent. The expressions need to be worked with, interpreted, applied, and debated. It is therefore possible to engage in a reasoned manner with another's religious tradition, seeking to understand its wisdom in its own terms and in relation to its practices, then translating as best one can into more familiar terms. It is possible to gain thereby a great deal from a religious tradition's vast agglomeration of experience and reflection, even if one does not accept the tradition's embedded articles of faith. And it is possible, by listening carefully and responding with sympathy and prudence, to engage in genuine deliberation across traditions, perhaps even in argument and criticism.

¹⁵ See generally MUSHIRUL HASAN, ISLAM IN THE SUBCONTINENT: MUSLIMS IN A PLURAL SOCIETY (2002) (The literature is, of course, enormous, but for an influential discussion of the recent era).

¹⁶ Webber, *supra* note 14, at 618-21; see also JEFFREY STOUT, ETHICS AFTER BABEL: THE LANGUAGES OF MORALS AND THEIR DISCONTENTS 60-71 (1988).

Religions, in short, are complex traditions of reflection and experience that often contain diverse elements organized in diverse ways. That very diversity and reflective quality allows a large number of points of entry for outsiders seeking to understand and learn from another's religion. These points of access enable real communication, exchange of insight, and debate.

Thus far, I have tended to leave aside the most distinctively religious elements of the traditions – the nugget of assertion, stories, and images based on faith – to concentrate instead on the interpretations and attempted applications that flow from those distinctive elements. But is there any way that non-believers can gain understanding from the distinctive elements as well?

I think there is, even at that essentially religious level. Iris Murdoch, in her illuminating and wide-ranging book, *Metaphysics as a Guide to Morals*, suggests that compelling images or predicaments can serve as condensed, intensified ways of communicating, depicting in concrete form the salient relationships among concepts, the core character of objects of aspiration, or exemplifications of good (or bad) conduct. Because they work through imagery or story, rather than through rational explication, they can hint at insights for which adequate terms have not yet been found or enclose complex ambiguities that would be difficult to express in other ways. They can serve, then, as objects of contemplation, holding one's attention as one seeks to find terms and concepts that are adequate to them. Moreover, the force of the images can increase the salience of aspects of existence and help to motivate continued reflection upon them.¹⁷

Religious imagery, religious stories, and even such dimensions of religious observance as creeds, poems, hymns, and ceremonies, can serve a similar role, even for non-believers. They can capture aspects of existence that one's own tradition may have neglected (for example, relations to the natural world in indigenous traditions, or an emphasis upon service to others, or on human equality, in more familiar

¹⁷ IRIS MURDOCH, *METAPHYSICS AS A GUIDE TO MORALS* 504-05 (1992).

traditions).¹⁸ They can shed light on unfamiliar dimensions of the human condition, human nature, and human potentiality. They at least portray existence in terms that are unfamiliar, and in so doing they can stimulate perceptions that might otherwise remain opaque. We know of similar experiences that occur as a result of engagement with other non-argumentative sources – for example, the contemplation of works of art, drama, literature, music, or dance.¹⁹ It seems to me that manifestations of faith also serve that role. And here I do not mean only to include expressions of faith in discursive form. The same is also true of structured practices (ritual, liturgy, ceremony) or disciplines of self-denial or physical mortification.

There is, then, very great potential for communication and even deliberation across traditions – both rational debate and the kind of concentrated portrayal, enactment, and contemplation just described. And because different religions are framed in relation to different bodies of experience, using different languages and concepts, with their own historical traditions of expression, different religions can be assumed to carry different insights. One great benefit of religious freedom is to allow those insights to continue as elements of living and dynamic traditions, developing and extending, and to open opportunities for encounter, stimulation, sharing, and exchange. Some beliefs may still

¹⁸ See e.g., Bhikhu Parekh, *Gandhi and Interreligious Dialogue* in *THE PHILOSOPHY OF MAHATMA GANDHI FOR THE TWENTY-FIRST CENTURY* 1, 5-6 (Douglas Allen ed., 2008). The last two examples are qualities that Gandhi attributed respectively to Christianity and Islam.

¹⁹ See eg, ALICE CRARY, *BEYOND MORAL JUDGMENT* 127 (2007); Gilbert Ryle, *Jane Austen and the Moralists* in *CRITICAL ESSAYS ON JANE AUSTEN* 106 (B.C. Southam ed, 1968) (on whom Crary draws); see also MURDOCH, *supra*, note 17, at 85-88 and 304-07. Compare Northrop Frye's examination of the role of metaphor in religious expression: NORTHROP FRYE, *THE GREAT CODE: THE BIBLE AND LITERATURE* 54ff (1982). In this part of his essay, Frye is not concerned with communication across traditions. But his emphasis upon metaphors that are not susceptible to full explication, that function by compelling contemplation, and that prompt a continually expanding set of interpretations suggests an immediacy of response that is not dependent upon prior acceptance of a religion's tenets, opening up one line of communication across traditions (although Frye rightly suggests at 216ff that one's familiarity with the tradition extends the depth and complexity of meaning).

appear, to us as outsiders, to be confused and misguided. Some may point in directions that we, in the end, strongly reject. There may be some practices, based on those beliefs, that we find we cannot countenance. I am not, then, defending everything that is said and done within the framework of religions. But taken as a whole, the diversity of human expression, including religious expression, has things to teach us, and religious liberty allows the transmission of those lessons.²⁰

IV. THE LIMITS TO INTER-RELIGIOUS DIALOGUE

In this process of communication and reflection across religions, one should never lose sight of the fact that, whatever the insight and sympathy with which one approaches another tradition, one's relationship to it will always be different from that of a believer.

There is often a tendency, when addressing religious diversity, to seek to domesticate religious belief by translating it into more pliable categories. Thus, religious commitments are sometimes portrayed as simply a form of moral commitment. But that understates the uniqueness and indeed the strangeness of religion. Religions may contain moral injunctions, but they also contain much that does not fall within that category, such as dietary rules, burial practices, sacred sites, accoutrements of worship, and ways of understanding and imagining the divine. If policies are to be at all adequate to the phenomena of religion, they have to consider religions as they are found in the world, in all their intractability.

²⁰ Note that my argument goes beyond that made by Akeel Bilgrami in, for example, *Secularism: Its Content and Context*, Social Science Research Council (SSRC) Working Paper (October 2011), http://blogs.ssrc.org/tif/wp-content/uploads/2011/10/Secularism_Its_Content_and_Context.pdf. Bilgrami argues that one should use a religion's own conceptual structure when justifying limitations to its members, but he appears to do so for reasons of strategic efficacy alone. There is little acknowledgement that the religion's resources may have lessons to teach outsiders (although Bilgrami should be open to that possibility). See our exchange on the SSRC's website, *The Immanent Frame*, <http://blogs.ssrc.org/tif/2012/02/07/secularism-lexical-ordering-and-resistance-to-dialogue/>. My position is very close to that of Ashis Nandy, *Theories of Oppression and Another Dialogue of Cultures*, 47(30) *ECON. & POL. WKLY* 39,41 (2012).

I don't want to be understood as adopting a similar domesticating strategy in this argument. While there are real possibilities of communication across religions, a believer's attachment to and therefore understanding of his or her tradition will always be different from that of a non-believer. Their stances with respect to beliefs will be asymmetrical. For a believer, the beliefs are more than just a vivid and compelling image – one of Iris Murdoch's metaphysical pictures, useful in orienting one's thinking. They are deepest truth. Any communication across religious traditions – even though real – will always leave this sense of the ultimate untouched.

The Jewish religious philosopher Martin Buber says that the relationship to one's god is an intimate second-person relation. One addresses one's god as "you," not something *about* which one speaks, but something *to* which one speaks (and which, in theistic traditions, is able to answer back). Buber employs the form of the second-person used in German among intimates, one that is often translated into English as "thou." In English that archaic form has the opposite effect from the one intended by Buber, emphasizing distance rather than proximity. For Buber, the relationship to one's religion is direct and immediate, so that truth speaks directly to one, burdens doubt and hesitation, asserts its own reality by the very act of speaking, and demands one's attention.²¹ It is the same sense of direct and immediate revelation emphasized by the Protestant theologian Reinhold Niebuhr, where the truth is more than a theory that one can weigh and consider. It is an imperative that breaks through the limitation of one's own mortal vision.²²

It is precisely this imperative that a non-believer cannot share. The intensity of the engagement of the non-believer with religious

²¹ Buber's classic statement of this position is Martin Buber, *I and Thou*, trans. by Walter Kaufmann (1970). For a condensed version of this argument, see Martin Buber, *Eclipse of God: Studies in the Relation Between Religion and Philosophy* (New York: Harper & Brothers, 1952), especially at 27-33.

²² REINHOLD NIEBUHR, *THE NATURE AND DESTINY OF MAN: A CHRISTIAN INTERPRETATION VOL. 1: HUMAN NATURE* 162-66 (1964).

belief will always be less. Indeed, the sense of imperative – of being called – accounts for the compelling quality of religious belief, where belief seems to hold the believer, rather than vice versa. For a non-believer, religious belief is a hypothesis or a suggestion, not an independent force that makes its own demands. There will always, then, be potential tension between believers and non-believers. Each will differ in the significance that is attached to beliefs and practices and this difference renders especially challenging the government's obligation to respect religious freedom. Yet it is precisely the intensity of religious belief that underlies the special demand that one respect religion. The intensity both motivates toleration and makes it difficult. It is one reason why I believe that the second form of toleration – the form that involves openness to the potential contributions of others' beliefs – can never be sufficient to support a robust freedom of religion. One inevitably confronts aspects of belief that seem excessive, on which there appears to be no reasonable prospect of productive exchange. And when that happens, one may well have to fall back upon a *modus vivendi*.²³

Indeed, the intensity of beliefs may be so great that it seems to deny the mutual tolerance advocated in this paper. Believers may be so committed to the truth of their beliefs that they feel that they can make no room for contrary beliefs. They may reject, then, the peaceable coexistence that underlies the first and most fundamental rationale for freedom of religion. This, I think, is less common than is sometimes suggested. The benefits of coexistence are so great that they are often reflected in believers' practice even if, in the belief systems themselves, there appears to be little justification for tolerance. The long interaction between Muslims and Hindus in India, for

²³ For this reason, I do not accept the tendency of some of the literature to denigrate toleration in the interest of a more thorough-going equality of respect. See BHARGAVA, *supra* note 1, at 80 (although note his apparent rehabilitation of toleration at 98); WENDY BROWN, *REGULATING AVERSION: TOLERANCE IN THE AGE OF IDENTITY AND EMPIRE* (2006). Equal respect is indeed valuable if it is attainable, but to think that it is always sufficient is to underestimate the potential for religious antipathy – and to leave oneself without effective tools for addressing that antipathy.

example, provides many examples of mutual accommodation even in the face of severe doctrinal conflicts.²⁴ Nevertheless, the facts that mutual toleration among members of society does not always succeed and that believers sometimes feel driven to reject their compatriots despite the cost, point to our final topic: the distinctive responsibility of the state.

V. THE ROLE OF THE STATE IN PROTECTING FREEDOM OF RELIGION

To this point, I have discussed religious toleration as though it were simply a matter of relations between believing and non-believing individuals, or among communities having various shades of belief and non-belief. But is there a particular responsibility of the state in all of this, a responsibility that lifts the state's role beyond that of the individuals and groups?

Often, in liberal theories of rights, the state is considered to have a special obligation of neutrality with respect to religious belief so that its responsibilities end up being very different from those of believers or non-believers. The state is expected to abstract entirely from the deep commitments of its members and chart a course that is rigorously independent from the variety of beliefs represented in society. But, as should be clear by now, that approach is both unrealistic in its understanding of the challenges posed by religious belief and, because of that lack of realism, misleading in its prescriptions. Religious belief colours so many aspects of human action and human judgement – it so conditions believers' understandings of the world, causation, human nature, and human purposes – that it cannot be segregated neatly from the judgements on which governmental action must be based. Think again of the examples given in the introduction to this paper. At the very least, state action flows from commitments that can contradict those held by religious believers, and there is no neutral standpoint, in either religion or non-religion, from which those

²⁴ See, e.g., BIMAL PRASAD, *PATHWAY TO INDIA'S PARTITION VOL. 1: THE FOUNDATIONS OF MUSLIM NATIONALISM* 49-61 (1999).

differences can be adjudicated – no standpoint that is, not itself a matter of controversy on similar grounds. Moreover, any state is in some measure a creature of its society. The attitudes of state actors are a function of attitudes within the society at large. Indeed, the more responsive a state is to its population, the greater the consonance between social attitudes and those of the state. It is a mistake, then, to think of government as standing entirely outside the fray. The awareness of precisely these entanglements underlies Bhargava's advocacy of "principled distance" rather than neutrality as the standard of state action.²⁵ The state cannot help but embody attitudes prevalent in society, and the considerations that should motivate individuals to exercise toleration are therefore acutely relevant to state actors. As much as anybody, state actors need to understand why they should tolerate beliefs and practices that contradict their personal commitments. The reasons for toleration by the state are a heightened projection of the reasons applicable to citizens generally.

Why heightened? Even though there is no difference in kind in the considerations that should prompt state actors to tolerate religious diversity, there is a difference of social role, oversight, and responsibility, and this difference accentuates the reasons applicable to individuals. Theories of the state almost universally emphasize its role in keeping the peace.²⁶ The state is uniquely able to maintain social order, given its relative control over the means of coercion;

²⁵ BHARGAVA, *supra* note 1, at 87-91. I am not suggesting that Bhargava accepts the value of *modus vivendi* in the same way that I do. Indeed, his argument cited *supra* note 23, is ambiguous in this respect. But he certainly realizes the impossibility of governments standing in perfect neutrality, outside society.

²⁶ Interestingly, despite his commitment to non-violence, Gandhi too appealed to such a role for the state (in confiscating weapons and guarding against Indian Muslims serving as a fifth column for an independent Pakistan) when faced with the communal strife surrounding partition, and this, even though Gandhi always placed primary emphasis on the development of a fundamental change of heart among members of contending communities. See, e.g., *Speech at Prayer Meeting*, New Delhi (Sept 14, 1947) in THE COLLECTED WORKS OF MAHATMA GANDHI 98 (Electronic Book) (New Delhi, Publications Division Government of India, 1999), <http://www.gandhiserve.org/cwmg/cwmg.html>.

and that control is often defended on the basis that it limits contention by adjudicating conflicting claims of right, obviates the need for self-help, and subjects the use of force to justifications that transcend individual interest or prejudice and are articulated in terms of society as a whole. If the state is the privileged guarantor of peace and order, the arguments for religious freedom that are founded on the maintenance of a *modus vivendi* have special bite. It was precisely on this basis that Christian Thomasius defended a broad sphere of toleration in 17th-century Brandenburg-Prussia. He argued that the state did not have sufficient reason to prefer any particular religious doctrine, but that it did have a strong interest in preserving peace. It should therefore allow the free play of religious belief and should focus its own role simply on preventing the use of force in the name of religion.²⁷

Also note that the reasons for toleration are especially compelling if the state seeks to justify its authority on some form of consent, rather than sheer domination. If so, then it has to aspire to be, in some sense, the government of all. It cannot simply adopt the majority's position and run roughshod over the most fundamental concerns of minorities. It has to secure at least the deeply cherished commitments of its various minorities. Otherwise, it falls into an essentially colonial relation to them: the rule of one people over another, with no concern with securing the latter's willing adherence, so that the society is typified by the indefinite persistence of actual or potential strife.²⁸ Now, in saying this, I do not mean to exaggerate the extent to which a society can be founded on full, substantive, agreement. Any diverse society will be marked by disagreement, even

²⁷ HUNTER, *Secularization, supra*, note 7, at 125ff.

²⁸ It is no accident, then, that Golwalkar, writing in 1939, falls into frankly colonial language with respect to Muslim minorities (quoted in PRASAD, *supra* note 24 at 233):

“There are only two courses open to the foreign elements, either to merge themselves in the national race and adopt its culture, or to live at its mercy so long as the national race may allow them to do so and to quit the country at the sweet will of the national race”.

over fundamental matters. The simplified notion of consent familiar from social contract theories is unrealistically demanding. But there are less demanding notions that are more plausible, from a minimal search for citizens' passive acquiescence, to approaches that conceive consent to be a process of questioning and justification between citizens and leaders, to conceptions that treat consent as a project rather than an event, so that one seeks to build citizens' attachment over time.²⁹ If any of these notions of consent are accepted – even the most minimal – then state actors will be pulled to adopt a policy of religious toleration.

It is quite common for arguments that emphasize the two elements mentioned here – the state's role in maintaining order in the face of diversity, and consent as the touchstone of political legitimacy – to assert that the state should therefore serve only a very limited role in society. The strategy is to restrict the actions of the state in order to limit the occasions on which citizens may disagree with what the state has done. At the limit the state becomes a night-watchman, preserving the peace but doing little else. I do not adopt that position. My argument is consistent with the state pursuing an activist and constructive program. It is a mistake to think that a peaceable, orderly, and legitimate state is best achieved by limiting the state to a rigidly individualistic defence of property rights. A society marked by a limited state is itself a quintessentially social project, with consequences for the whole populace. Such a society allocates resources to individuals, acts forcefully to defend those interests, and, by doing both these things, ensures that those without resources have a much lower level of well-being than those with plenty. In doing so it generates its own conflicts and alienation. There is no easy equation, then, between a minimal state, social peace, and a high degree of attachment. On the contrary, peaceable interaction and an appropriate form of political consent may be

²⁹ Jeremy Webber, *The Meanings of Consent* in BETWEEN CONSENTING PEOPLES: POLITICAL COMMUNITY AND THE MEANING OF CONSENT 3,24-28 (Jeremy Webber & Colin M. Macleod eds., 2010). See Duncan Ivison's and James Tully's contributions to the same volume.

best fulfilled in a society in which the state plays a significant role – and any such society is also compatible with religious freedom.

I suspect that lurking behind the commitment of some theorists to a minimal state is a sense that impartiality can only be achieved by aiming for a neutral point at which all that is confined to some individuals is stripped away and all that is left is universal, shared by all members of society. That notion of impartiality is a chimera. We never entirely escape our particular natures. For one thing, normative principles themselves are always expressed in particular languages and those languages have their own histories, conceptual structures, sets of connotations, and so on.³⁰ But there is another way to conceive of impartiality. Instead of trying to strip away diversity and attain the view from nowhere, those seeking to be impartial can adopt an opposite strategy: they can seek to extend their consideration to embrace as wide a sphere of human experience as possible; they can strive for Hannah Arendt's "enlarged mentality," in which impartiality is attained by taking into account every member's experience, not exclusion.³¹ That is the kind of impartiality towards which we should aim. It will perennially exceed our grasp, for human experience is inexhaustible. Impartiality is an ethic, not a state that one can achieve once and for all. But, conceived in this fashion, it is a realistic and worthy objective, one that can serve as a point of orientation in our collective action.

CONCLUSION

This paper has focused on the foundational justifications for religious freedom. It has especially sought to rebut the suggestion that religions are tolerated simply because of the special value of their insights – with the tacit though often unrecognized implication

³⁰ WEBBER, *supra*, note 14.

³¹ The phrase, "view from nowhere," is from THOMAS NAGEL, *THE VIEW FROM NOWHERE* (1986). For the notion of the "enlarged mentality" in both Arendt and Nedelsky, see Jennifer Nedelsky, *Communities of Judgment and Human Rights*, 1 *THEORETICAL INQUIRIES IN LAW* 245,257 (2000).

that, if one does not accept that they produce insight, one no longer has reason to engage in religious toleration. That view misunderstands freedom of religion, which is, above all, about the toleration of beliefs one takes to be misconceived, not beliefs one takes to be true.

I have argued in this paper that, in contrast, freedom of religion should be understood in relation to two levels of justification, both of which are necessary for a robust freedom. First, at the most elementary level, it is based on the overriding importance of religious beliefs to believers, together with the realization that if we want to live together in peace with those believers, then we have to make some room for their beliefs. And second, at a more ambitious level, religious freedom is advanced by the realization that religious traditions can convey distinctive insights about human experience both because, as rich and complex assemblages of practices and reflection, they carry insights that are not themselves matters of faith (even though they may be expressed in a religious idiom) and because, even with respect to matters of faith, they can serve as perspicuous images, striking objects of contemplation, metaphors and possibilities, that can stimulate valuable consideration even among those who do not share the tradition. Both of these levels are necessary. The second opens society to insights that might otherwise be foreclosed; and the first provides a bulwark at times of estrangement, when people have trouble seeing any value in their fellow citizens' beliefs and practices. We should never forget that believers' and non-believers' relations to their religions are asymmetrical. Believers' commitments to their beliefs will always far outstrip that of non-believers.

State actors are faced with a substantial challenge in this arena. They too have good reasons to respect religious beliefs and practices. Indeed, as I have shown, the considerations that militate in favour of religious freedom have special force in the case of the state. Nevertheless, state actors can never approach religious beliefs with the same commitment and sense of compelling obligation that a believer does. They will often find it difficult to see the value in the particular beliefs they encounter, even if they acknowledge the possibility of dialogue across religious frontiers. How, then, can they fulfil their obligations, balancing their own policy objectives against

beliefs and practices that they do not share? By way of conclusion, I will briefly sketch the ethic that flows from this argument.

To begin, the deference to religious practices cannot be absolute. A wide variety of phenomena are contained within religions, some held very strongly, others a matter more of custom than of obligation, even among believers. Moreover, many governmental aims are themselves of great importance. They cannot be lightly suspended whenever they encounter religious objection. Deferring to religious beliefs requires, then, a continual process of weighing, a process of inquiry and judgement. And there will be cases in which elements of religious belief strike nonbelievers as repugnant, beyond the limits of toleration.

The argument in this paper suggests the spirit in which that process of inquiry and judgement should be undertaken. Remember that the elementary justification for freedom of religion is the need to live together in community. Religious beliefs are respected primarily because of their great value to believers, not because of their inherent value. Thus, in deciding whether to accommodate religious beliefs and practices, one must focus on the depth of their value to believers, not on one's own evaluation of them. Even then, there may be times when the government believes that a deeply held belief must be overridden, but it should be slow to come to that conclusion. Otherwise, it runs the risk of forfeiting the only foundation on which a peaceable, productive community of diverse citizens can be constructed. Governments should weigh the benefits of continuing to live together in community against the cost of putting up with the conduct in question.

Given the seriousness of that decision, it should only be taken after one has sought to understand the believer's position. It should not be taken lightly, simply on the basis of the strangeness of the beliefs in question. A consistent theme in this paper has been the capacity for growth through exposure to beliefs that were previously unknown. If a government is to preserve the capacity for that growth, it has to allow space for others to explain their position. They may not succeed, but insistence on one's own position should be based on an ethic of consideration.

Finally, when one does insist, it is important to realize that one is imposing one's own position on the dissenters. One is not enforcing a shared foundation for morality or appealing to an underlying, national consensus. One is imposing one's will. There are situations in which one may feel that one has no alternative but to impose. After all, if we are to affirm justice at all in the lives of our communities, we have to pursue particular conceptions of justice, not justice in the abstract, and those particular conceptions are always subject to the vagaries of human disagreement. But we should never lose sight of that disagreement. We should ask ourselves whether imposition truly is justified. We should continually remain open to being persuaded otherwise. And we should realize that, if we do impose our position, we may be losing two great opportunities: for a peaceable community and for the enrichment of our own understanding.

