

Courting Epistemology: Legal Scholarship, the Courts, and the Rationality of Religious Belief

SHANNON HOLZER* AND JONATHAN FUQUA**

What we here show is two-fold. First, there is in certain sectors of the legal community a trend to pronounce negatively on the epistemic credentials of religious belief: many hold that religious belief as such is simply irrational. Our second claim is simply that religious belief need not be irrational: it is perfectly possible for religious believers to have epistemically justified religious beliefs. We discuss here several implications of our two-fold claim. The most important of these is simply that religious citizens' religious beliefs cannot be barred from the public square for any epistemological reason.

Many in the current political climate subscribe to the notion that those who form and support coercive legislation¹ should give sufficient (public) justification for doing so. There is a growing consensus that religious beliefs should play no part in the creation or justification of public policy.² Although there is more than one reason for this, scholars often claim that religious beliefs or believers are somehow irrational. However, if it turns out that religious beliefs are not necessarily irrational, then it also turns out that these beliefs should not *a priori* be alienated from discussions concerning the justificatory support for public policies. Perhaps there is some *other* reason that religious belief should be excluded from the formation of and justificatory support for state action, but the exclusion should not take place (we argue) on pain of religious belief's irrationality.

We have a two-fold thesis, although our overall objective here is three-fold. First, we will shed light on the fact that there is a growing consensus within the legal community that religious belief is somehow irrational. This trend, driven

* Professor, Houston Baptist University, 7502 Fondren Rd, Houston, TX 77074; Email: Ishannonholzer@gmail.com.

** PhD student, Purdue University, 610 Purdue Mall, West Lafayette, IN 47907; Email: fuqua0@purdue.edu.

¹ We think Gerald Gaus is probably correct to argue that all state action is coercive. See his 'The Moral Foundations of Liberal Neutrality' in Thomas Christiano and John Christman (eds), *Contemporary Debates in Political Philosophy* (Blackwell 2009) 91–92.

² In *McGowan v Maryland* (1961) 366 US 420, 465–66, Justice Frankfurter, concurring, writes:

The Establishment Clause withdrew from the sphere of legitimate legislative concern and competence a specific, but comprehensive, area of human conduct: man's belief or disbelief in the verity of some transcendental idea and man's expression in action of that belief or disbelief. Congress may not make these matters, as such, the subject of legislation...

by legal scholars, philosophers, attorneys, and judges, serves to limit the influence religious citizens have on their community. Because of the perception of religious belief as irrational, many scholars and judges have ghettoized religious beliefs and segregated their influence to the private sphere. Second, we will show decisively that neither religious beliefs nor religious believers are irrational merely because of any religious commitment, though of course a particular religious believer may hold a particular religious belief irrationally if that belief is held in a way that flouts reasonable epistemic norms. We do not dispute the possibility and actuality of this latter phenomenon. We do deny that irrationality befalls a belief merely because the belief has a religious content. And if it is true that religious beliefs are not necessarily irrational, then another argument for religious restraint must be used to keep religious beliefs from influencing public policy. Having stated our first two objectives, we may put our two-fold thesis this way: the trend in the legal community, to pronounce negatively on the epistemic status of religious belief, is misguided owing to the fact that work in religious epistemology shows that religious belief can be rational. We then turn to our third objective, a discussion of some important implications and applications of our two-fold thesis.

Before proceeding, we should like to note that nothing we say here is offered as a critique of the view that state action must be publicly justified to be morally justified. Our argument here does not require a rejection or an endorsement of this claim. Our two-fold thesis is, in other words, compatible with the view that state action is not justified unless backed up by reasons that all rational citizens could accept from within their own philosophical and theological perspective. What we are criticizing is the view that religious belief should be excluded from the public square on pain of its irrationality. Someone could endorse our claim as well as the claim that coercive legislation is not morally justified unless those subject to it are presented with reasons on its behalf that they could be expected to endorse from their own perspective.³

1. *Growing Consensus in the Legal Community*

Many in the legal community often assume and assert that religious belief is irrational. As Rex Ahdar and Ian Leigh say, ‘religion is commonly seen by liberals as the province of subjectivism, emotion, even superstition.’⁴ But what exactly does the charge of irrationality amount to? Are we talking about religious believers or their believings? And *why* is religious belief irrational? What, exactly, is wrong with it? We will delve into these issues in some detail in the next section, but for now we note that those who see religious belief as irrational need to—and often do—make at least one of three claims. First, they could claim that there is a lack of reasons to believe religious propositions (the

³ See footnote 4 for references and further discussion of this point.

⁴ Rex Ahdar and Ian Leigh, *Religious Freedom in the Liberal State* (OUP 2005) 41. The qualifier ‘commonly’ is important as it is possible to pronounce positively on the epistemic status of religious belief and also be a justificatory liberal, or an advocate of the view that coercive legislation which lacks a secular justification is thereby unjustified. Robert Audi is a prominent example of this. For his defence of the rationality of religious belief, see his *Rationality and Religious Commitment* (OUP 2011). Audi’s most recent defence of justificatory liberalism can be found in his *Democratic Authority and the Separation of Church and State* (OUP 2011).

proposition that God exists, for example) to be true, that there is a dearth of evidence on behalf of religious propositions. Moreover, any belief that is grounded on the belief in God would thereby be rationally groundless.⁵ Second, those in the legal community who pronounce negatively on the epistemic credentials of religious beliefs could insist that religious beliefs are irrational because there is overwhelming evidence against them.⁶ Finally, it could be argued that religious beliefs violate the laws of logic. A belief that violates the laws of logic has a propositional content that cannot be true in any possible world. For example, the proposition that the numeric value of one is equivalent to the numeric value of three is not true in any possible world; thus, the belief that $1=3$ is an irrational belief. Some scholars suggest that religious beliefs are irrational in this sense. This claim can be used to imply that those who believe there to be true religious propositions are somehow cognitively malfunctioning. Thus, believing the truth of religious propositions might be akin to believing in square circles.

Now, if it turns out that religious beliefs or believers are irrational in one of these ways, then liberal democracies have good grounds for rejecting the use of religious propositions for the formation of public policy. However, if it turns out that certain beliefs are not irrational merely because they are religious, then perhaps they should share the same *prima facie* justification as beliefs originating from other doxastic practices,⁷ such as perception, introspection, rational intuition, testimony, and so on. Fortunately—it makes things simpler for us—those in the legal community tend to focus on the first two kinds of problems and generally ignore the potential problem of logical incoherence. Thus, when we turn to an evaluation of the claim that religious belief is irrational, we will focus on the charge that religious belief is evidentially deficient.⁸

We have said that critics of the epistemic respectability of religious belief need to claim (and substantiate, we might add) that religious belief is evidentially deficient, subject to defeating evidence, or logically incoherent, and here they do not disappoint. As we survey the legal landscape it appears to us that claims like these can frequently be found on the lips of those who pronounce negatively on the epistemic status of religious belief. To verify that this is not an isolated and idiosyncratic perception of the territory, note the way this perception is echoed by certain legal scholars. Stephen Gey, for example, seems to imply that religious reasoning is irrational in at least one of the above

⁵ Many argue that religious justification is present only to the believer. In this case, that which justifies the religious belief is not accessible to the public. If the lack of public justification constitutes irrationality, then there are many accepted doxastic practices that should be deemed irrational.

⁶ Obviously, there is a difference between there being a lack of evidence *for* a proposition and there being evidence *against* a proposition. One or both of these claims could be invoked in an argument against the rationality of religious belief.

⁷ A doxastic practice is, roughly, a method or way or habit or mechanism of belief formation. At various points we alternate between talking of beliefs, the outputs of doxastic practices, and the doxastic practices themselves. The doxastic practice approach to epistemology was pioneered by the late (and great) William Alston. See his 'A "Doxastic Practice" Approach to Epistemology' in Marjorie Clay and Keith Lehrer (eds), *Knowledge and Skepticism* (Westview Press 1989) 1–29. Alston put the approach to use in defence of the rationality of the doxastic practice of forming religious beliefs on the basis of religious experience in his *Perceiving God* (Cornell University Press 1991).

⁸ The best response to the charge of logical incoherence is probably Richard Swinburne's *The Coherence of Theism* (rev edn, Clarendon Press 1993).

ways when he writes, ‘Religious principles are not based on logic or reason, and, therefore, may not be proved or disproved.’⁹ Gey lets us know what he really thinks when he writes:

Religion is particularly ill-suited to the sorts of pressures and influences that define the political process. Combining the typical political phenomena of personal greed, self-aggrandizement, duplicity, logrolling, dealmaking, and unprincipled compromise, with the typical religious phenomena of theological certainty, absolute moral dictates, and the threat of eternal damnation creates an especially dangerous cocktail.¹⁰

Less flamboyantly, Suzanna Sherry writes that, ‘while it may be possible to envision a religion-based wholly or partly on reason, most of the major religions in America are based on faith as the underlying epistemology.’¹¹ Sherry also writes: ‘Indeed, one test of faith is its capacity to resist the blandishments of rationality; the stronger the rational arguments against a belief, the more faith is needed to adhere to it.’¹² In a similar vein, the philosopher of law Brian Leiter writes: ‘Religious beliefs, in virtue of being based on “faith”, are insulated from ordinary standards of evidence and rational justification, the ones we employ in both common sense and science.’¹³

Timothy Macklem offers the paradigmatic example of the problem we are discussing. Macklem engages in a search for reasons why religious beliefs should even be afforded legal protection, given their irrational nature.¹⁴ According to Macklem, ‘the task of justifying freedom of religion as a political guarantee must be a rational, not a theological exercise.’¹⁵ In his explication of this statement, Macklem goes on to say that, ‘I am suggesting that theology necessarily draws upon non-rational considerations.’¹⁶ It goes without saying that Macklem has a dim view of religious belief. He fails to see any justification for the belief that certain religious propositions are true. On Macklem’s view, ‘faith treats itself as a reason to believe, and to act in accordance with belief, without submitting to the conditions of reason.’¹⁷ He refers to religious beliefs as ‘leaps into the dark’.¹⁸ With the alleged irrationality of religion calling into question its protected status, it is no wonder that a much wider chasm must be crossed to convince naysayers that religious reasoning can play any legitimate role at all in the public square.

Unfortunately, our short list of scholars is merely a sample of those in the broader legal community who have a low view of religious beliefs.¹⁹ According to legal scholar James Hitchcock, the position of religion as somehow irrational

⁹ Steven G Gey, ‘Why is Religion Special? Reconsidering the Accommodation of Religion under the Religion Clauses of the First Amendment’ (1990) 52 *U Pitt L Rev* 167.

¹⁰ *ibid* 11.

¹¹ Suzanna Sherry, ‘Enlightening the Religion Clauses’ (1996) 7 *J Contemp Legal Issues* 473–95.

¹² *ibid* 482.

¹³ Brian Leiter, ‘Foundation of Religious Liberty: Toleration or Respect?’ (2010) 47 *San Diego Law Review* 945–46.

¹⁴ Timothy Macklem, ‘Faith as a Secular Value’ (2000) 45 *McGill L J* 1–63.

¹⁵ *ibid* 30.

¹⁶ *ibid* 30, fn 33

¹⁷ *ibid* 34.

¹⁸ *ibid* 40.

¹⁹ For arguments from some other legal scholars who perceive religion’s proper role in the legal landscape in much the same way, see Stephen Macedo, ‘The Politics of Justification’ (1990) 18 *Political Theory* 280–304; Ronald Dworkin, *Life’s Dominion: An Argument about Abortion, Euthanasia, and Individual Freedom* (Vintage

has become the opinion of the majority of Supreme Court Justices.²⁰ This attitude concerning religion can be seen as far back as the 1952 case *Kedroff v Saint Nicholas Cathedral*. In this case Justice Jackson expressed his understanding of religious reasoning by writing, '[I] would not wallow throughout the complex, obscure, and fragmentary details of secular and ecclesiastical history, theology, and canon law in which this case is smothered.'²¹ Hitchcock interprets Jackson as saying that this discussion is 'a morass beneath the notice of rational man'.²² In the 1977 case *Serbian Orthodox Diocese v Milivojevich*, Justice Brennan echoes this sentiment when he writes: 'Indeed, it is the essence of religious faith that ecclesiastical decisions are to be reached and are to be accepted as matters of faith whether or not rational or measurable by objective criteria.'²³ According to Hitchcock, the courts here perceived religion as resting 'on foundations that were not even comprehensible to people outside the faith and could not be governed by ordinary rationality'.²⁴ Support for the claim that the perception of religion as somehow rationally deficient has become firmly engrained in the mind of the courts can further be seen in Justice Stevens' 1977 opinion in *Wolman v Walter*, where he writes, 'the realm of religion... is where knowledge leaves off, and where faith begins.'²⁵ The courts have also expressed the opinion that religious belief is of such an irrational nature that it cannot even be touched by the normal means of inquiry. In *United States v Ballard*, Justice Douglas writes:

Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations. The miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found those teaching false, little indeed would be left of religious freedom.²⁶

Because the courts have assumed that religious reasoning is irrational, they have argued that its influence should be limited to the private sphere.

These Supreme Court cases are not the only legal manifestations of the trend to which we draw attention. Francis Beckwith suggests that the perception of religion as irrational has been 'subtly smuggled' into cases that might shape

Books 1994); and Isaak Kramnick and R Laurence Moore, *The Godless Constitution: The Case against Religious Correctness* (W.W. Norton & Company 1997).

²⁰ James Hitchcock, *The Supreme Court and Religion in American Life, Volume II: From 'Higher Law' to 'Sectarian Scruples'* (Princeton University Press 2004) 70–72.

²¹ *Kedroff v Saint Nicholas Cathedral* (1952) 344 US 94.

²² Hitchcock (n 20) 70.

²³ *Serbian Orthodox Diocese v Milivojevich* (1976) 426 US 696, 714–15.

²⁴ Hitchcock, *The Supreme Court and Religion in American Life*, 70.

²⁵ See also, *Wolman v Walter* (1977) 433 US 229.

²⁶ *United States v Ballard* (1944) 322 US 78.

public policy.²⁷ In the case *Kitzmiller v Dover*, for example, Judge Jones opined that since ‘reasonable observers’ could interpret the Intelligent Design (ID) theory as religious, it violates the Establishment Clause.²⁸ Judge Jones writes the following:

...on the ultimate veracity of ID as a supernatural explanation. However, we commend to the attention of those who are inclined to superficially consider ID to be a true “scientific” alternative to evolution without a true understanding of the concept the foregoing detailed analysis. It is our view that a reasonable, objective observer would, after reviewing both the voluminous record in this case, and our narrative, reach the inescapable conclusion that ID is an interesting theological argument, but that it is not science.²⁹

Beckwith makes an insightful observation when he writes:

If one replaces in the above quote the term “theological” with “chemical” or “physical,” then one can easily see that Judge Jones embraces an understanding of faith and reason that treats theology as if it can never in principle offer us knowledge that may count against the deliverances of other disciplines.³⁰

One can quite plausibly draw the conclusion that those responsible for the trend in the legal community believe that religion should not inform other doxastic practices. This is not true, however, with beliefs formed in other sorts of ways, such as beliefs in physics, psychology, political science, perception, and so on. These latter sorts of beliefs, not being necessarily irrational, are acceptably used in public justifications of state action.

Due to the foregoing trend, religious citizens have felt pressured to bracket their religious beliefs from their public lives. The trend we are drawing attention to is not inconsequential, at least for many religious citizens. Frederick Gedicks writes that ‘studies suggest that some of the principal actors in American life systematically marginalize religious viewpoints relative to secular ones. Regardless of the evidence, many religious people clearly feel excluded and alienated from public life.’³¹ Stanley Fish agrees with this: ‘[T]he liberal feels obliged to quarantine religious pronouncements, to confine them to contexts (the home, the Church) that present the least risk of general infection.’³² Justice Scalia rebukes the Court’s treatment of religious belief when he writes:

They are not inconsequential. Church and state would not be such a difficult subject if religion were, as the Court apparently thinks it to be, some purely personal avocation that can be indulged entirely in secret, like pornography, in the privacy of one’s room. For most believers, it is not that, and has never been.³³

Justice Scalia’s rebuke, unfortunately, is a rare one indeed.

²⁷ Francis Beckwith, ‘Must Theology Always Sit in the Back of the Secular Bus? The Federal Courts’ View of Religion and Its Status as Knowledge’ (2008–2009) 24 *J L & Relig* 554.

²⁸ See *Kitzmiller v Dover Area School District*, Case No 04cv2688 (2005) 89.

²⁹ *ibid.*

³⁰ Beckwith, ‘Must Theology Always Sit in the Back of the Secular Bus’ (n 27) 444, fn 52.

³¹ Frederick Gedicks, ‘Public Life and Hostility to Religion’ (1992) 78 *Virginia L Rev* 672.

³² Stanley Fish, ‘Liberalism Doesn’t Exist’ (1987) 36 *Duke L J* 997–99.

³³ *ibid* 645.

Justice Scalia is correct in his assessment of the Court's treatment of religious belief. Those who take religion seriously govern their lives according to their religious beliefs. That is, religious people actually believe that there is such thing as religious truth and that one can know it. If this is the case, it seems unreasonable to ask someone to act as though her beliefs do not matter.³⁴ Yet, this is what a great many of those in the legal community have done. However, what if it turns out that it can be shown that religious belief is not necessarily irrational? Then it seems that the exclusion of religious belief from influencing public policy must be justified in some other way.

2. *Assessing the Epistemology*

What we have seen so far is an epistemological trend in certain sectors of the broader legal community. The trend is, to put it in general terms, to pronounce negatively on the epistemological credentials of religious beliefs. More specifically, there is a tendency to see religious belief as irrational. We turn in this section from an exegesis of these trends in the legal community to a philosophical assessment of them.

Are religious beliefs irrational? That is an important but vague question, at least as it currently stands. What, exactly, is rationality? Here numerous theories abound. And are we talking about religious believers, their believings, or the theological propositions themselves? Unfortunately, those responsible for the trend we identified in the previous section provide no specific answers to such questions. To offer an adequate assessment, then, we will look at several things that might be meant by the claim that religious beliefs are irrational. We will sometimes speak of rationality and sometimes of justification. For our purposes here, we take 'rational' and 'justification' (and their cognates) to be synonyms.

First, perhaps the idea is that religious believers are themselves irrational. Now how might they be irrational?³⁵ Well, they might suffer from clinically diagnosable psychoses. Clearly, however, this claim is false: it is not the case that all religious believers suffer from such psychoses. They might, alternatively, display a deplorable lack of instrumental rationality: they might be consistently unable to connect their means to their ends. This is also a non-starter, for clearly religious believers can and do display such instrumental rationality. In any case, it certainly seems possible for a cognizer to suffer from these kinds of irrationality and yet still possess rational beliefs in a particular domain, such as memory or mathematics. Thus, even if religious believers were, contrary to fact, more likely to suffer from certain psychoses or instrumental irrationality, this would show nothing about the *epistemic* status of their religious beliefs.

³⁴ See Michael Sandel, 'Freedom of Conscience or Freedom of Choice' in James Davison Hunter and Os Guinness (eds), *Articles of Faith, Articles of Peace: The Religious Liberty Clauses and the American Public Philosophy* (The Brookings Institution 1990). In this piece Sandel argues that the courts assume that people can merely choose to ignore matters of conscience while operating in the public square. If Sandel is correct, religious beliefs as matters of conscience can no more be un-believed at will than can the answer to 2+2.

³⁵ In this paragraph we borrow and adapt material and strategy from Alvin Plantinga. See his *Warranted Christian Belief* (OUP 2000) 108–16.

Perhaps religious beliefs are irrational in the sense that their religious *believings* are irrational: perhaps their religious *beliefs* lack epistemic justification. In other words, instead of suffering from some sort of broad cognitive malfunction, perhaps they simply have unjustified religious beliefs. We should immediately note that epistemic justification, whatever it turns out to be, is person-relative. In principle, then, some religious believers could hold rational religious beliefs while others do not. This possibility extends even to circumstances in which two cognizers form the same belief in the same epistemic situation but do not possess the same level of justification for that belief (more on this momentarily). If justification is indeed person-relative, the claim that religious beliefs are irrational is an overreach. Certainly, some religious believings are irrational or unjustified, just as some non-religious believings are irrational or unjustified. But on the other hand, just as some non-religious beliefs are justified, so most likely are some religious beliefs. It is therefore a mistake to say, as some in the legal community are wont to do, that religious beliefs are tout court irrational.

To substantiate the person-relativity of justification we need to make a distinction, one standardly made in epistemology, between doxastic and propositional justification. Beliefs or believings are doxastically justified; propositions are the objects of propositional justification. A belief (believing) is doxastically justified just in case it is actually formed in the right way or based on the right ground. A proposition possesses propositional justification relative to a believer just in case the believer possesses a ground which adequately supports the proposition.³⁶ The two can come apart when a cognizer fails to base his belief on the ground which propositionally justifies the proposition which is the content of his belief. When this happens a cognizer's belief may be said to lack doxastic justification while nonetheless possessing propositional justification. Suppose that proposition P is propositionally justified relative to two cognizers, S₁ and S₂, who both believe it, and that this propositional justification is due to the presence of evidence E. It is possible for S₁ to have doxastically justified belief in P by basing his belief on E, but also for S₂ to lack such doxastic justification by basing his belief on something else, say wishful thinking or spite. The relevant application is this: if we interpret the claim that religious beliefs are irrational as a claim about doxastic justification, then it is clearly an overreach. For it is entirely possible for some religious believers to form their religious beliefs in the right way and thus to possess (doxastically) justified religious beliefs while others do not.

There is, unfortunately, no consensus in epistemology about what doxastic justification amounts to.³⁷ One thing is clear, however: a belief cannot possibly be doxastically justified unless the proposition which is its content is propositionally justified. A belief which has no adequate ground in the first place cannot be based on that (non-existent) adequate ground and so cannot be doxastically justified. This means that, in order to sustain the claim that

³⁶ For a dissent from this standard view, see John Turri, 'On the Relationship between Propositional and Doxastic Justification' (2010) 80 *Philosophy Phenomenological Res* 312–26.

³⁷ See William Alston, *Beyond 'Justification: Dimensions of Epistemic Evaluation* (Cornell University Press 2005) 11–28.

religious belief *cannot* be doxastically justified, its juridical despisers must also claim that it cannot be propositionally justified. For if religious belief can be propositionally justified, then all a religious believer needs to do to have doxastic justification for a given religious belief is to base that belief on its adequate ground, that is, to form it in the right way. In reality, then, the question of whether religious belief can be rational boils down to the question of whether the theological propositions which make up the content of religious beliefs can be propositionally justified.

To try and answer this question let us work with a specific theological proposition, say that God exists (theism). How we should think about propositional justification and theism depends on whether we construe theism as an explanatory hypothesis or not.³⁸ If we do not construe theism as an explanatory hypothesis, then belief in God will be like other non-inferentially formed beliefs, such as belief in other persons or perhaps perceptual or introspective beliefs. In this case, theism could potentially be rationally held even if not inferred on the basis of other beliefs one holds. If we do treat theism as an explanatory hypothesis, then it seems that theism will not be propositionally justified for anyone unless there are good arguments for it. Following Michael Bergmann, let us call this view—that theistic belief needs arguments to be rational—theistic evidentialism.³⁹ Theistic evidentialism is not necessarily antagonistic to religious belief and is endorsed by believers and unbelievers alike.⁴⁰ If theism ought to be treated as an explanatory hypothesis, then whether theism can be propositionally justified depends on such things as whether there are any good arguments for theism, how simple theism is, its explanatory power (how well it explains the data), explanatory scope (how much of the data it explains), and so on. In light of the foregoing, here is the crucial question: are there any good arguments for theism (our token religious belief)? Alternatively, is there any good inferential evidence on behalf of theistic belief?

Before answering this question directly it is important to take note of the fact that a proposition need not be true to be justified for a believer. If this were the case it would be impossible to have a justified false belief, a possibility taken for granted by nearly all working epistemologists.⁴¹ One can have justification for a false proposition in (at least) one of two ways. First, the evidence might make probable a proposition which turns out to be false (such is the case whenever we engage in non-deductive reasoning). A cognizer who possesses such evidence and who also bases her belief on the evidence would have propositional and doxastic justification for a belief with a false propositional content. Second, one

³⁸ Two recent critical discussions of the thesis that we should treat theism as an explanatory hypothesis are David Holley, 'Treating God's Existence as an Explanatory Hypothesis' (2010) 47 *Am Phil Q* 377–88 and Michael Bergmann, 'Rational Religious Belief Without Arguments' in Louis Pojman and Michael Rea (eds), *Philosophy of Religion: An Anthology* (Wadsworth 2012) 534–49.

³⁹ See Michael Bergmann, 'Religious Belief, Epistemology of – Recent Developments' in Matthias Steup (ed), *A Companion to Epistemology* (2nd edn, Blackwell 2010) 697–99.

⁴⁰ For a pro-religion treatment of the question of God's existence which treats theism as an explanatory hypothesis, see Richard Swinburne, *The Existence of God* (2nd edn, OUP 2004). An example, from the other side of the aisle, of treating theism as needing arguments may be found here: Nicholas Everitt, *The Non-Existence of God* (Routledge 2004).

⁴¹ For dissent from this orthodox view, see Jonathan Sutton, *Without Justification* (MIT Press 2007).

might blamelessly believe that the evidence makes a false proposition probable when in fact it does not. Suppose that a rookie detective who is still learning the ropes tells me that a body of evidence indicates that Smith committed the crime. Knowing nothing about criminal investigation, and not knowing that Smith is a relative novice about such matters, I come to blamelessly but falsely believe that this body of evidence does indicate that Smith is guilty of the crime in question. This body of evidence, in conjunction with the novice detective's testimony, justifies (for me) the proposition that Smith is guilty even though the evidence does not actually indicate that he is.⁴² To provide propositional justification, then, a piece or body of (inferential) evidence need only indicate or seem (maybe falsely, as a matter of fact) to indicate the probable truth of a proposition.

We now have a suitably nuanced understanding of the underlying epistemological issues to begin to answer the question of whether there is any good inferential evidence for theism. It seems, whether or not theism is true, that there is inferential evidence in support of it, evidence which provides it with propositional justification. To move all the way to doxastically justified theistic belief, at least according to theistic evidentialism, a religious believer need only base her theistic belief on this evidence. The sort of evidence we have in mind is the following: the beginning, contingency, and fine-tuning (for life permissibility) of the universe, moral facts, consciousness, and religious experience. Theistic philosophers have formulated quite sophisticated natural theological arguments for theism on the basis of such evidence.⁴³ It is possible even for atheists to recognize the possibility of religious believers using such evidence to achieve justification or rationality for their theistic beliefs—an *actualized* possibility, to cite just one example, in the case of the atheist philosopher William Rowe and his 'friendly atheism'.⁴⁴ How would such friendly atheism work? One option is that religious believers blamelessly but falsely believe that the evidence just alluded to makes theism highly probable. Another option is that the evidence does make theism highly probable, but that it is outweighed by other evidence (such as the facts of evil) such that theism is, on the total evidence, probably false. Theists rationally but mistakenly conclude that the counterevidence does not counteract the positive evidence for theism. The bottom line is that, whether true or not, religious belief need not be irrational. Furthermore, the arguments offered on behalf of theism appeal to data and employ premises that are accessible to third parties, thus answering the privacy charge, the complaint that religious belief is necessarily based on grounds inaccessible to third parties: no, religious belief need not be private.

⁴² If, as many think, a proposition can only be made probable by another proposition or set of propositions, then the body of evidence in my example needs to be understood as a set of statements such as the following: Smith's fingerprints were on the murder weapon, Smith has no alibi, Smith had motive, etc.

⁴³ The most important monograph on this question is Swinburne's *The Existence of God*. Two edited volumes expounding quite sophisticated natural theological arguments for theism are Paul Moser and Paul Copan (eds), *The Rationality of Theism* (Routledge 2004) and William Lane Craig and JP Moreland (eds), *The Blackwell Companion to Natural Theology* (Blackwell 2009).

⁴⁴ William Rowe, 'The Problem of Evil and Some Varieties of Atheism' (1979) 16 *Am Phil Q* 335–41. Theists, or some of them anyway, have returned the favour. See John Greco, 'Friendly Theism' in James Kraft and David Basinger (eds), *Religious Tolerance Through Epistemic Humility* (Ashgate 2008) 51–60.

Thus far we have been treating theism as an explanatory hypothesis and asking whether it has any propositional justification when treated this way. We have seen that, whether theism is false or true, it does have such propositional justification. According to theistic evidentialism, theistic believers can get doxastic justification for their belief in God (our token religious belief) by basing this belief on the inferential evidence previously alluded to. Others, however, take issue with this approach, rejecting the necessity of treating theism an explanatory hypothesis.⁴⁵ We do not, after all, believe things only on the basis of other beliefs. It is standard in epistemology to make a distinction between basic beliefs, or non-inferentially formed beliefs, and non-basic beliefs, or inferentially formed beliefs—that is, beliefs based on or inferred from other beliefs. A basic belief is *properly* basic just in case it is epistemically appropriate to hold it non-inferentially. Textbook examples of properly basic beliefs include perceptual beliefs, mnemonic beliefs, introspective beliefs, belief that $1+2=3$, belief that pleasure is good, and so on. Properly basic beliefs are not groundless by virtue of being non-inferential; rather, they are grounded in something other than beliefs, such as experiences and/or seemings. In religious epistemology, the view that religious beliefs can be non-inferentially justified is known as Reformed epistemology.⁴⁶ Belief in God, according to Reformed epistemologists, ‘is more like belief in other people than it is like belief in electrons’.⁴⁷ And while it is certainly possible to try and formulate arguments for one’s belief in other people, such arguments would be unnecessary for justified belief in other people. *Mutatis mutandis* for belief in trees, the past, and, say Reformed epistemologists, God.

There is more than way to make the case for the possibility of non-inferentially justified theistic belief (for example). The first way is Alvin Plantinga’s proper functionalism. Plantinga has developed a proper functionalist epistemology, according to which a belief is warranted just in case it is formed by properly functioning cognitive faculties.⁴⁸ Plantinga then extends this general proper functionalism to the case of religious belief, arguing that religious belief can indeed be properly basic.⁴⁹ Plantinga has argued quite compellingly that one cannot defeat the possibility of properly basic belief in God without assuming the non-existence of God. This is because the

⁴⁵ See, for example, Plantinga, *Warranted Christian Belief*, Holley, ‘Treating God’s Existence as an Explanatory Hypothesis’, and Bergmann, ‘Rational Religious Belief without Arguments’ (n 38).

⁴⁶ I am following Bergmann’s layout of the land. See Bergmann, ‘Rational Religious Belief Without Arguments’ and ‘Religious Belief, Epistemology of – Recent Developments’. The premier statement of Reformed epistemology is Plantinga’s *Warranted Christian Belief*. An early statement of the view from a variety of its expositors may be found in Alvin Plantinga and Nicholas Wolterstorff (eds), *Faith and Rationality: Reason and Belief in God* (University of Notre Dame Press 1984).

⁴⁷ Bergmann, ‘Rational Religious Belief Without Arguments’ (n 38) 539.

⁴⁸ See his *Warrant and Proper Function* (OUP 1993). Plantinga enumerates a variety of conditions that must be satisfied for a belief to be warranted. Important as this is, the details need not detain us here. Plantinga’s favoured epistemic desideratum is warrant, that property (enough of which) turns true belief into knowledge. Bergmann, on the other hand, has developed a proper functionalist account of (doxastic) justification. See his *Justification without Awareness: A Defense of Epistemic Externalism* (OUP 2006).

⁴⁹ See his *Warranted Christian Belief* for this extension of the proper functionalist project.

possibility of widespread non-inferentially justified belief in God would be quite likely given the existence of God. The idea, in other words, is that if God exists, then proper cognitive function would most likely yield non-inferentially justified theistic belief. If Plantinga is right, then one cannot simply oppose the rationality of theistic belief without first opposing the existence of God; there is no purely epistemological objection to belief in God. The epistemological question depends on the prior metaphysical question of whether God exists.

A second way to make the case for the possibility of non-inferentially justified religious belief comes from phenomenal conservatism.⁵⁰ Phenomenal conservatism is a view about propositional justification, a view according to which seemings (roughly, phenomenal experiences with propositional content) serve as justifiers for propositions: if it seems to S that P, then S has evidence or (defeasible) justification for P.⁵¹ Phenomenal conservatism can easily be extended to religious epistemology, a move which allows theistic believers (for example) to possess propositional justification for theism if they have theistic seemings.⁵² Arguments for the rationality of theistic belief that appeal to religious experience⁵³ could in principle be of a proper functionalist or a phenomenal conservative variety depending on the role given to proper cognitive function or seemings. Finally, we should keep in mind here that in endorsing the possibility of properly basic theistic belief one is not committing oneself to the truth of theism. Again, propositional justification is not truth-entailing.

Now we do not mean to endorse either theistic evidentialism or Reformed epistemology. Our point, rather, is that whether you treat theism (our token religious belief) as an explanatory hypothesis or not, it certainly seems possible for theism to possess propositional justification relative to a religious believer in possession of the right grounds (inferential or non-inferential). Theism *qua* explanatory hypothesis can receive evidential support in the same way that other explanatory hypotheses do. Theism *qua* properly basic belief seems capable of being justified by experiences and seemings in the way that other properly basic beliefs are. And so long as religious believers base their theistic belief on the proper grounds rather than on something else, this propositional justification can easily be translated into doxastic justification. Those in the legal community who subscribe to the irrationality of religious belief are, we

⁵⁰ For representative statements of phenomenal conservatism, see Michael Huemer, 'Compassionate Phenomenal Conservatism' (2007) 74 *Philosophy Phenom Res* 30–55 and Chris Tucker, 'Why Open-Minded People Should Endorse Dogmatism', (2010) 24 *Phil Perspect* 529–45.

⁵¹ It may seem that phenomenal conservatism makes justification too easy. Although we are not here jumping on the bandwagon, a couple of apologetic remarks are in order. First, it is important to keep in mind that the sort of justification provided by seemings is defeasible. One's initial seemings have the first word, but certainly not the final word. Second, one can modify the view by making seemings *part* of the justification picture (rather than the whole story), arguing that justification can be had on the basis of seemings plus whatever else one thinks is needed for or sufficient to secure justification. For a stab at this latter, modification type of move, see Michael Bergmann, 'Externalist Justification and the Role of Seemings' (2013) 166 *Philosophical Stud* 163–84.

⁵² See Chris Tucker, 'Phenomenal Conservatism and Evidentialism in Religious Epistemology' in Kelly James Clark and Raymond VanArragon (eds), *Evidence and Religious Belief* (OUP 2011) 52–74.

⁵³ Here the most prominent work is Alston, *Perceiving God*. But see also Jerome Gellman, *Experience of God and the Rationality of Theistic Belief* (Cornell University Press 1997).

conclude, mistaken in this assessment. Religious beliefs, whether true or not, can at the least be rationally accepted.⁵⁴

In truth, we do not regard this as a terribly controversial thesis, although, given the trend in the legal community discussed in the previous section, it is important to make the case for the possibility of rational religious belief. One way of thinking about what we're up to is that we are making the case for the view that the scope of Rawls's 'fact of reasonable pluralism' should include religious belief. Rawls himself made a point of saying that some 'religious comprehensive doctrines' can be reasonable.⁵⁵ Our point in this section, then, is an eminently Rawlsian one. In essence, we have been trying (in this section) to substantiate Rawls's point by engaging in a bit of epistemological work. If more people agreed with Rawls and with us about this, then perhaps the trend previously discussed would begin to abate.

3. Implications

In this final section of the article we discuss four implications that follow from our two-fold thesis. One implication is that there appears to be an asymmetry between the way religious and non-religious beliefs are often treated in terms of their suitability for work in the public square. As long as citizens and state officials do not tether their political practices and decisions to religious beliefs, there is virtually no restraint on how they come to their political positions. For the most part, citizens' and lawmakers' beliefs are *prima facie* justified in the eyes of the courts. In theory, lawmakers can form public policy on the basis of their non-religious beliefs without giving much thought to the epistemological credentials of those beliefs or to the epistemological credentials of the belief-types to which their token beliefs belong: these beliefs are innocent until proven guilty. It may be the case that the public would not vote for the legislation, but that does nothing to say that somehow the courts should, as a constitutional matter, strike down such legislation due to the doxastic practice (or lack thereof) upon which it is based. What we mean to say here is that there is no constitutional watchdog making sure that legislation follows an 'approved' doxastic practice. There are, however, a number of doxastic litmus tests that single out religious beliefs.⁵⁶ As we have pointed out, the justification for these

⁵⁴ We have said nothing about the role of defeaters, that is, arguments purporting to undermine the rationality of or show the falsity of religious beliefs. It is standard to hold that justification is subject to some sort of no-defeater requirement. It seems to us that this requirement can be satisfied by religious believers. If they carefully consider any alleged defeaters of which they are aware and find that these defeaters are unpersuasive, then it is plausible to think that they have satisfied the no-defeater requirement on justification. This is all any of us can really do with respect to any of our beliefs that come under the fire of putative defeaters. If this reflective approach works for others in various domains, then there seems to be no reason why it will not work for reflective religious people either.

⁵⁵ See John Rawls, *Political Liberalism* (rev edn, Columbia University Press 2005) xviii.

⁵⁶ There are several tests that the courts use to detect the presence of religion. Some of these tests are used to determine if a person or entity is religious for entitlements under the Free Exercise Clause. See *United States v Seeger* (1965) 380 US 163. Seeger met the criteria of having a 'sincerely held belief', which constituted religion. This gave him the exemption from military service on the grounds of conscientious objector status. Other tests are used to determine whether or not the Establishment Clause has been violated. See *Lemon v Kurtzman*, 403 US 602. This case established the 'Lemon test', which states:

- (1) The government's action must have a secular legislative purpose;
- (2) The government's action must not have the primary effect of either advancing or inhibiting religion;

tests is partially based on the assumption that religious beliefs are somehow irrational. This is an assumption that, we have shown, religion's juridical despisers are not entitled to.

A second implication of what we have said is as follows: if other doxastic practices came under the same scrutiny as religious practices, or were held to the same standards, many would fall short of being acceptable for the formation of public policy. It is notoriously difficult, for example, to provide arguments for some of our most basic moral beliefs that employ premises that any rational person could be expected to endorse. A purely secular moral theory could easily fall by the epistemological wayside if it were held to the sort of standard by which religious belief is often judged. A secular moral theorist asked to give a strong argument for every proposition in her moral theory, an argument which contains premises that she can expect all rational people to endorse, is going to find herself in a very difficult situation. The fact of reasonable pluralism, a phenomenon to which Rawls has drawn our attention, seems to militate against the very possibility of such an endeavour. The fact of the matter is that every moral theory relies on moral intuitions at some point, that is, on non-inferentially held moral beliefs that are not empirically verifiable.⁵⁷ Very often these beliefs are subject to reasonable disagreement among moral philosophers. Those wishing to hold religious belief to a certain epistemic standard need to be careful that the standard in question does not also rule out their own favoured secular moral theory. A political theory which eschewed both religious and moral belief and attempted to base policy solely on methods that employ empirical verification and scientific methodology⁵⁸ would be bereft of the ability to sufficiently solve the most important moral and social issues that face modern societies.

Of course, we are not arguing that all doxastic practices should be held to the strictest epistemic standards imaginable. We are also not making the claim that religious beliefs are more rational than those formed by other doxastic practices. We are merely making the claim that religious beliefs are, minimally,

(3) The government's action must not result in an excessive government entanglement with religion.

In *Kitzmiller v Dover* the courts used the 'reasonable observer test', which asks whether or not an objective reasonable citizen would perceive the legislation or beliefs behind it as religious. See *Kitzmiller v Dover Area School District*, Case No 04cv2688 (2005). The 'motive' test acts in according with the 'Lemon' test. Rather than asking if a policy is secular in purpose, it asks if it was religiously motivated. See *Varnum v Brien* 763 NW 2d 862 (Iowa 2009) 63. The Iowa Supreme Court wrote:

Now that we have addressed and rejected each specific interest advanced by the County to justify the classification drawn under the statute, we consider the reason for the exclusion of gay and lesbian couples from civil marriage left unspoken by the County: religious opposition to same-sex marriage. The County's silence reflects, we believe, its understanding this reason cannot, under our Iowa Constitution, be used to justify a ban on same-sex marriage.

⁵⁷ For a lucid exposition and defence of this point, see Michael DePaul, 'Intuitions in Moral Inquiry' in David Copp (ed), *The Oxford Handbook of Ethical Theory* (OUP 2006) 595–623.

⁵⁸ See *Serbian Orthodox Diocese v Milivojevich*, 714–15. Justice Brennan suggested that religion is 'not rational or measurable by objective criteria'. See also, *Edwards v Aguillard*, 482 US 578. In this case, Judge Jones rejected the teaching of creation science because it included a supernatural being that cannot be verified through the senses. It should be noted that the truth of moral claims (ie 'slavery is wrong' or 'genocide is evil') is not verifiable through the senses. Yet, it is over the very important subject of morality that much legislation is created. An empiricist criterion, if applied evenly, would disallow all sorts of beliefs from influencing public policy, religious as well as non-religious.

not irrational *merely because* they are religious. In fact, in many cases they seem to be well within the confines of rationality. (One thinks, for example, of the seemingly epistemically respectable religious beliefs of such historical luminaries as Augustine and Aquinas, and of contemporary believing philosophers like Alvin Plantinga and Richard Swinburne.) As such, they should be offered the same status—*prima facie* justified—as other types of beliefs. One consequence of this is that religious citizens are not forbidden, at least by the dictates of political morality, from voting their conscience on account of the alleged irrationality of their religious beliefs. This means, in turn, that citizens should not be kept from influencing, creating, or justifying an item of public policy merely because the policy is consistent with or flows from a certain religious belief on account of the global irrationality of all religious beliefs.⁵⁹

A third implication of the foregoing concerns the impracticability of Rawlsian restrictions on acceptable public discourse. As is well known, Rawls's ethic of public discourse forbids us from using comprehensive doctrines to justify our political positions. Comprehensive doctrines are controversial philosophical (or religious) views that are the subject of reasonable disagreement. Rather than relying on comprehensive doctrines, we are to rely only on those beliefs that belong to the overlapping consensus, or those beliefs that would be accepted in the original position behind the veil of ignorance.⁶⁰ One of the objections to this Rawlsian scheme is that some issues—abortion and same-sex marriage for example—cannot be decided one way or the other except by appeal to some comprehensive doctrine or another. Appeal to comprehensive doctrines is, in other words, sometimes unavoidable: Rawlsian neutrality is sometimes an unattainable ideal.⁶¹ Unfortunately for Rawlsians, we believe we have here uncovered another counterexample to the possibility of abiding by Rawlsian restrictions in the public square. The reason is simple: how those in the legal community think about court cases and policy matters that concern religion turns in part on how they think about the epistemic status of the religious beliefs in question. But no matter which position citizens or government officials take on the epistemic status of religious belief, that position and the arguments invoked on behalf of it will both count as controversial, contestable comprehensive doctrines. Thus, as appears to be the case with abortion and same-sex marriage, we once again have a counterexample to the practicability of Rawlsian public reason.

Noting one final implication of our argument is in order here. Some argue that state action which cannot be justified by a 'plausible secular rationale'⁶² is thereby morally unjustified. This 'doctrine of religious restraint'⁶³ is part and

⁵⁹ It must be noted to say that this in no way justifies an all-out theocracy. It only suggests that if all citizens in a liberal democracy are to be considered free and equal, then this also applies to religious citizens. To deny religious citizens the right to vote their consciences while letting others vote as they chose, would be to treat the religious as neither free nor equal.

⁶⁰ For the classic and influential (and long and tedious) exposition, see Rawls, *Political Liberalism* (n 55).

⁶¹ Francis Beckwith makes this point with regard to abortion in his *Defending Life: A Moral and Legal Case Against Abortion Choice* (Cambridge University Press 2007) 42–62.

⁶² This is a turn of phrase we borrow from Terence Cuneo and Christopher Eberle, 'Religion and Political Theory' in Edward Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Winter 2012 edition) <<http://plato.stanford.edu/archives/win2012/entries/religion-politics/>> accessed 8 April 2014.

⁶³ We also borrow this phrase from Cuneo and Eberle. The doctrine of religious restraint seems to be a special case of what Eberle earlier referred to as the doctrine of restraint, the view that 'a citizen should not

parcel of a larger picture of public reason known as justificatory liberalism (JL), a view that was developed and popularized by Rawls, its most prominent exponent. JL states that governments must justify the enactment of coercive legislation to the citizens it serves, and that it must use reasons that rational citizens can accept from their own perspective.⁶⁴ JL suggests that if a religious position is the only basis for a law, then the law is unjust (or at least unjustified) since it is based on a disputed view of the good life that dissenters are not unreasonable in rejecting. We do not here take a stand on JL as opponents and proponents of the view can both embrace our two-fold thesis concerning the trend in the legal community and the possibility that religious belief can have positive epistemic status.⁶⁵

And now for our point, our fourth implication. David McIlroy has recently argued that Rawls's own starting points are ones whose original formulation, in the work of John Locke, and whose ultimate justification, may well depend on commitments to a theistic comprehensive doctrine.⁶⁶ We cannot possibly hope to pass judgment on McIlroy's claim here, although we confess our sympathies for his project. Our fourth implication is more conditional than declarative: if McIlroy is right, then our contention that religious belief can be rational is needed to secure the very foundations of JL itself! This would be an important result as many of those who would like to see religious arguments disappear from the public square are also advocates of JL. If McIlroy is right, their adherence to JL is ultimately founded on the very sorts of claims they repudiate. If we are right, advocates of JL can, ultimately, justify JL only by accepting our claim about the rationality of religious belief.

Are there still other implications of our thesis, more practical implications that might obtain if citizens and officials made political decisions according to their religious beliefs? It does seem that the legal landscape would be different, at least potentially. Our view on the rationality of religious belief, in tandem with a political theory that did not disbar religious reasoning from political matters for some other reason, could (if widely embraced) affect several pieces of legislation that have recently come before the courts. Proponents of same-sex marriage have used religious tests before the courts to challenge the constitutionality of disallowing same-sex couples to marry.⁶⁷ If the ban on using religious belief to create or support laws was discarded, same-sex marriage proponents would face more of a challenge in opposing legislation that supports traditional marriage. This is also true of legislation concerning

support any coercive law for which he lacks a public justification'. *Religious Convictions in Liberal Politics* (Cambridge University Press 2002) 68. For a comprehensive discussion of Rawls and those who embrace JL, see Shannon Holzer, PhD diss, *Competing Schemas within the American Liberal Democracy: An Interdisciplinary Analysis of Differing Perceptions of Church and State* [2013] Baylor Institute for Church State Studies <<https://beardocs.baylor.edu:8443/xmlui/handle/2104/8760>> accessed 8 April 2014.

⁶⁴ See Rawls, *Political Liberalism* (n 55). Rawls's term for JL was 'political liberalism'. While Rawls's *A Theory of Justice* (Harvard University Press 1971) and *Political Liberalism* endeavour to accomplish two different things, the latter uses the same original position scenario to offer up a 'thin theory of the good' to deal with the diversity of comprehensive doctrines in a free society.

⁶⁵ For a nice exchange on JL, see Nicolas Wolterstorff and Robert Audi, *Religion in the Public Square: The Place of Religious Convictions in Political Debate* (Rowman and Littlefield 1997).

⁶⁶ David McIlroy, 'Locke and Rawls on Religious Toleration and Public Reason' (2013) 2 OJLR 1–24.

⁶⁷ See n 46 above. *Varnum v Brien* 763 NW 2d 862 (Iowa 2009) 63.

the legal right to have abortions.⁶⁸ Pro-choice proponents often invoke religious separationist language to oppose pro-life legislation. Challengers to pro-life legislation have often argued that such laws are unconstitutional because the belief that a foetus is a person is a religious belief. If religious citizens could vote their conscience, the courts would lose a major constitutional weapon to uphold the pro-choice status quo.⁶⁹ Whether these implications are good or bad is neither here nor there for our purposes. We note them merely to point out the practical relevance that could potentially follow from widespread acceptance of our view concerning the illegitimacy of disbarring religion from the public square on account of its (alleged) irrationality.

4. *Conclusion*

What we have shown here is two-fold. First, there is in certain sectors of the legal community a trend to pronounce negatively on the epistemic credentials of religious belief: many hold that religious belief as such is simply irrational. This trend has, as our engagement with the secondary literature shows, not heretofore gone unnoticed. The trend has been previously criticized as well,⁷⁰ but unfortunately its advocates continue to march to the beat of the same drum: this our engagement with the literature also shows. This perpetual marching necessitates continued responses on behalf of the possibility of rational religious belief. Perhaps eventually the point will be taken (one hopes). Our second claim is simply that religious belief need not be irrational: it is perfectly possible for religious believers to have epistemically justified religious beliefs. We have discussed several implications of our two-fold claim, but the most important of these is simply that religious citizens' religious beliefs cannot be barred from the public square for any epistemological reason.

⁶⁸ See Steven L Skahn, 'Abortion Laws, Religious Beliefs and the First Amendment' (1980) 14 Val U L Rev 493-94. See also *McRae v Califano*, No 76 Civ 1804; (1980), *Harris v McRae*, 48 448 US 297; *Right to Choose v Byrne*, 165 NJ Super 443, 398 A2d 587, 596 (Super Ct Ch Div 1979).

⁶⁹ Obviously, our examples assume that most (but certainly not all) religious folks embrace traditional marriage and are pro-life.

⁷⁰ See, for example, Francis Beckwith, 'The Courts, Natural Rights, and Religious Claims as Knowledge' (2009) 49 Santa Clara L Rev 429-58. Our case for the rationality of religious belief is consistent with but different from Beckwith's.