Liberalism & Deferential Treatment

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Legally preferential treatment of a religious organization is the legal conferral of a status that is more favorable than that accorded to other religious organizations. This essay introduces and analyzes the contrasting concept of deferential treatment. "Deferential treatment" refers to forms of favorable treatment that are cultural rather than legal. While the problems posed by legally preferential treatment of religion are well known, the problems posed by deferential treatment have received little attention. One problem is that when a religious organization receives deferential treatment, its authorities are not compelled to exercise their power in ways that track the interests of those over whom they exercise it. This leaves those subject to their power liable to abuse. Another is that deferential treatment encourages "benchmark traditionalism." Benchmark traditionalism is problematic because it is politically unreasonable. These problems with deferential treatment give all citizens, including religiously committed citizens, reason to favor a culture of non-deference.

Let us say that societies are liberal to the extent that they give special priority to the equal protection of basic rights and liberties, including freedom of the press, conscience, and association, together with political liberties. This might seem a relatively undemanding condition of liberalism, but the satisfaction of other important conditions follows from the satisfaction of this one. For example, a society can protect citizens' rights only if it honors the rule of law. A society that protects the freedom of association has a government that is limited, and therefore allows for a robust and diverse civil society. The condition of liberalism is therefore not as minimal as it might initially seem.

Societies that protect the basic liberties of all citizens create space for pluralism. That space is created and maintained, in part, by citizens' sustaining a public culture. For keeping government within the limits needed for a vibrant civil society requires citizens' willingness to repudiate public officials who would overstep them. Civil society flourishes only if citizens observe informal norms of toleration and respect. That liberal societies create space in these ways raises the question of how citizens of liberal societies are to regard their own participation in the ways their societies create such a space.

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Though I cannot show it here, I believe John Rawls, who authored *A Theory of Justice*, thought the question I have identified arose with respect to all citizens of liberal societies, and that answering it uncovered an important source of civic friendship and crucial buttress of justice.[1] For the purposes of this essay, though, I focus on that subset of the citizenry whom I call "citizens of ecclesial faith." These are adherents of religions which claim that the human good, or the highest human good, consists of a relationship with God that is mediated by a particular ecclesial structure.

The question arises with respect to them because, by definition, societies that make space for pluralism make a plurality of ways of life available. One of the longer-term effects of liberal, pluralistic societies seems to be the loosening of ties with ecclesial structures, so that citizens come to regard those ties as bonds that can be renegotiated or broken at will. Moreover, once spaces are opened for a plurality of ways of life, it becomes possible for those who adhere to an ecclesial faith to conceive and explore different ways of adhering to it. This leads to what philosopher Charles Taylor has called the "unbundling" of individual lives: practices sanctioned by a church and regulations promulgated by it are selectively observed, followed in some areas of life but not others.[2] A pluralistic society is also bound to make space for – indeed, it may seem to encourage – ways of life that some citizens of ecclesial faith will consider profoundly misguided. Since all of these effects of pluralism might be thought at least prima facie troubling to citizens of ecclesial faith, these citizens may regret the ways they help sustain a culture that has these consequences. Their regret and alienation may loosen their allegiance to their societies and their fellow citizens, with unwelcome consequences for the quality of civic life. If this is right, then the question I have identified as pressing is one that liberal political philosophy must confront.

One piece of evidence that the question is experienced as a pressing one is that some citizens of ecclesial faith have responded to the pressure. Much to my surprise, so-called Catholic integralism is enjoying something of a revival. Catholic integralists decry some of the characteristic features of modern life: the differentiations between the sacred and the secular, the natural and the supernatural, the church and the state.[3] I think of integralism as implying a response to the question I have identified because I think the differentiation of modern life and the creation of space for pluralism go hand-in-hand. One of the ways in which liberal societies create space for pluralism is precisely by creating and maintaining the differentiations to which integralists object. So I take it integralists disapprove of the way those societies make room for pluralism. And I take it they regard our – perhaps unavoidable – implication in the practices and culture by which liberal societies do so as at best a lamentable inevitability.

I have little sympathy for the integralist movement as I understand it. Indeed, I think it is psychologically healthy for people to be able to escape the reach and

scrutiny of a church, to find spaces in which they can treat its normative authority as self-imposed, and even to find spaces for transgression and experimentation. And so I think the differentiation to which integralists object is probably a healthy thing for religious believers. But I shall not engage integralism here. I bring it up only because its presence on the intellectual landscape testifies to the pressing character of the question I have identified.

That question might, however, seem quite easy to answer. There are some familiar arguments that citizens of ecclesial faith should value the creation of space for the organizations of civil society. Moreover, though I said above that the condition of liberalism is not as minimalist in its implications as it might initially seem to be, it is still weak enough to count as liberal a society that accords religion and religious organizations preferential legal standing. It is also weak enough to count as liberal a society that accords them what I shall call "deferential treatment." It might be thought that these two forms of treatment have the potential greatly to alleviate religious citizens' misgivings about liberal culture. I shall concentrate on deferential rather than preferential treatment here. After distinguishing preferential from deferential treatment, I shall explore two reasons citizens of ecclesial faith should value their own participation in a society that accords religion and religious organizations *non-deferential* treatment.

Legally preferential treatment of a religious organization or a religion refers to the legal conferral of a status that is more favorable than that accorded to other organizations or systems of belief. One familiar form of legally preferential treatment is ecclesial establishment. Another form is found where the law accords favorable status to religion, just as such. This occurs when, for example, the law treats ultimate commitments that are religious differently than it treats those that are nonreligious, and takes the former to ground claims to exemptions that the latter does not. It also occurs when state power is used to foster religion and membership in religious organizations, even if no particular religion or religious organization is favored or established.

By the *deferential treatment* of a religious organization or a religion, I mean forms of favorable treatment that are cultural rather than legal, since they do not depend on that organization or religion enjoying a different legal status than any other. Deferential treatment has a number of ingredients. The ingredients are natural concomitants, and so it is natural for them to be found together, but they are logically independent.

One ingredient of the deferential treatment of a *religion* is that its teachings are accorded the status of social norms. The teachings may concern the existence and nature of a supreme being, appropriate forms of worship and devotional practice, and appropriate forms of personal – including sexual – conduct. The teachings enjoy the status of social norms when they are generally taken to express stan-

dards of belief and conduct that are culturally rather than legally enforced. The phrase "generally taken" is unfortunately misleading and vague: it suggests that deferential treatment of a religion requires that its teachings be internalized or genuinely accepted by a majority. But norms can still function as a society's standards of judgment if they are employed by a minority with the power to shape opinion or to give wide effect to their disapprobation.

An ingredient of the deferential treatment of a *religious organization* is that those charged with elucidating and promulgating its teachings are accorded the status of moral authorities, by members of the organization and by some of those outside it. Another ingredient of the deferential treatment of a religious organization is the social trust accorded to its hierarchy and clergy: to those, that is, who are among the people accorded the status of moral authorities. I take the *trust* in the phrase "social trust" to refer to a working presumption that those who are the objects of the attitude follow their own authoritative moral pronouncements, act for the good of those in their spiritual care, and honor demanding norms of pastoral conduct. That the trust is *social* means that according such trust is normative or expected of church members, including those in official positions, but also by others in society, including members of cultural and political elites. Describing the trust as *a working presumption* signals the fact that not everyone who accords what I have called "social trust" believes that members of the hierarchy and clergy honor the norms to which they are supposed to adhere. Rather, it is generally understood that those who accord social trust will act *as if* they believed that.

Still another ingredient of deferential treatment is that officials and clergy are accorded considerable latitude to act without official or unofficial scrutiny, so that the propriety or legality of their actions is rarely called into question. Still another ingredient comes into play when their actions *are* called into question. When they are, church officials and clergy are accorded a strong presumption of innocence by civil authorities, the gravity of their offenses is minimized, and they are punished with lenience.

Deferential treatment comes in degrees. The presence of any one of the foregoing ingredients would suffice for us to say that a religion or religious organization is the beneficiary of some deferential treatment. Deferential treatment increases as more of the ingredients are present or as any one of the ingredients becomes more intensely or widely present. To the extent that a church receives deferential treatment, the church, its hierarchy, and its clergy enjoy positions of privilege. The privilege is, in the first instance, a cultural rather than a legal phenomenon, for its maintenance depends on the general recognition and observance of informal and often tacit norms. Where it prevails, the explanation of its prevalence – like that of other forms of privilege – can be complicated. Those who sustain it may act out of a variety of motives, from the reverent and the high-minded, to cold calculations

about how best to maintain the good will of ecclesiastical officials in positions of social and political power.

I noted at the outset that societies that are liberal in my sense, and hence pluralistic, allow for a robust civil society. According to one familiar argument, a robust civil society is to be valued because it consists of organizations that can check the power of the state and hold public officials accountable.[4] That is something all citizens have good reason to value, including citizens of ecclesial faith. Citizens of faith therefore have reason to value and contribute to the pluralistic public culture that sustains civil society. Moreover, in some societies, churches are prominent among the organizations of civil society that serve as counterweights to government. Citizens of ecclesial faith who belong to such churches would seem to have reason to value and to take pride in their doing so.

Citizens of ecclesial faith may also seem to have prima facie reason to value their own participation in checking government power. But they may not have all-things-considered reason to value it, or even to participate in that activity. Pointing out the excesses of government and holding public officials accountable can be dangerous business. And so it may be that when all the reasons are toted up, citizens of ecclesial faith have the most reason to free-ride on the efforts of others to hold government accountable, and to suppress rather than to affirm any desire they find within themselves to take part. But I think the argument above points us in the right direction by highlighting the fact that liberal societies are societies with multiple centers of power that are capable of checking one another's excesses. According to the argument I want to explore next, citizens of ecclesial faith have reason to value a certain kind of liberal society, and their own participation in the culture that sustains it, because a liberal society of that kind checks the power of religious organizations over their members.

When I introduced the idea of deferential treatment, I indicated that if a church is accorded such treatment, then those who hold positions in its hierarchy or its clergy more easily avoid being held legally or socially accountable for their conduct than other citizens. And so they will not often be subject to legal penalties for offenses they commit and such offenses will not often be spoken of in ways that open them to shaming or ostracism.

Those holding official or clerical positions within a church are in positions to exercise power over those entrusted to their care: adult and minor clergy-in-training, minors who may be entrusted to their tutelage or supervision, and believers who approach them for pastoral care at vulnerable moments in their lives. If they can escape legal and social accountability for their conduct, then they are not compelled by the threat of legal and social penalties to exercise their power in ways that track the interests of those over whom they exercise it. They may in fact

exercise it in a way that tracks those interests, but there are not sufficiently strong legal and social incentives to do so.

That those in power are not forced to track the interests of those subject to them leaves the subjects vulnerable to the abuse. This vulnerability is therefore traceable to the deferential treatment accorded churches. If one thinks, as I do, that they should not be left vulnerable to the abuse of power even if that power is not in fact abused, then it follows that churches should not be accorded high degrees of deferential treatment. To see whether citizens of ecclesial faith should value their participation in a society that does not accord their church deferential treatment, we need to see what the opposite of deferential treatment would be.

Generalized suspicion of a church, its clergy, and its hierarchy would be a mistake, as would generalized readiness to believe the worst of anyone who professes a commitment to the forms of sexual discipline and abstinence that a church might ask of its clergy. What *is* necessary is that public officials and ordinary citizens sustain legal and cultural practices that provide ecclesiastical officials and clergy with the appropriate disincentives to act against the interests of those in their power.

The necessary legal practices are obvious enough. Statutes of limitations need to be sufficiently lengthy. Officials need to exercise their subpoena power to investigate first-order crimes and subsequent attempts to conceal them. They cannot be afraid to jail even highly visible ecclesiastical officials who are convicted of criminal behavior. But the necessary practices are not just legal, and it is not just public officials who are responsible for maintaining them. Investigative journalists, their editors, and their publishers must follow stories where they lead. Citizens have to be supportive of them. Everyone must learn to avoid euphemisms and to call the crimes what they are.

A culture of non-deference makes cognitive and emotional demands of citizens of ecclesial faith that they may find difficult to satisfy, though how difficult no doubt depends on the internal organization of the ecclesial organization to which they belong. Suppose that an organization invests its clergy and hierarchy with authority on theological and moral matters. And suppose we follow philosopher Joseph Raz in thinking that the exercise of authority consists, at least in part, in the provision of preemptive reasons.[5] Then the recognition of clerical or hierarchical authority requires the reception of clerical and hierarchical pronouncements as reasons of that kind for belief and conduct. That is, it requires members of the church to treat those pronouncements as blocking the force of other reasons they have that bear on these matters. Getting them to treat pronouncements as preemptive – rather than as, say, advisory – is greatly facilitated by formation in a church culture, with its account of where ecclesial authority comes from. That formation can easily encourage habits of deference to authority that are too general in scope, so that reason, scrutiny, and judgment are short-circuited where they are warranted. And so citizens of ecclesial faith need to live with a challenging

dualism, treating ecclesial authority as genuine and preemptive while confining deference to its proper sphere.

A culture of non-deference makes demands of other citizens as well. Investigators and prosecutors can be overly zealous in the pursuit of a righteous cause. They need to do their work with judiciousness and restraint. A religiously pluralistic society may well be home to faiths and churches whose practices are strange or off-putting, and whose members seem alien. A culture of non-deference also has to be a culture of tolerance, so that minority faiths are not met with hostility or unwarranted suspicion. All of this is part of what it is to sustain a liberal society in which there are multiple centers of power that can be mutually checking. Citizens of ecclesial faith should value such a society, and their own participation in its creation and maintenance. For by doing their part to sustain such a society and its public culture, they participate in creating disincentives for those who would otherwise be in a position to harm vulnerable persons in their care.

One may object that the argument appeals to a false dichotomy, for it assumes that the only way to protect the vulnerable is by a culture of non-deferential treatment. Another possibility, which I did not consider even to rebut, is to leave deferential treatment in place while letting the organizations of civil society police themselves. Why might that not be an acceptable way to provide security and protection?

The claim that a culture of deferential treatment leads to unacceptable vulnerability is an empirical one. The question of whether organizations should police themselves is also empirical. The short answer is that the results of the empirical investigation are in, and we know all too well how self-policing has worked out. According to a more expansive version of that answer, things have worked out that way because societies in which deferential treatment is accorded are precisely the ones in which organizations of civil society are likely to be especially bad at policing themselves and should not be left free to do so. There are, I think, many reasons why, but I shall cite just one: the privilege it is accorded when a church is deferred to comes, over time, to be thought of, not just as the way things *should* be, but as the way they *must* be, as essential to the church's identity. Once a privileged status is seen as an essential component of institutional identity, it has to be protected at all costs. That means that much of what threatens to jeopardize the privilege is going to be suppressed, covered up, or silenced. If this empirical conjecture is right, it is one more reason to object to the deferential treatment of religion.

Deferential treatment of religion encourages a form of unreasonability that I call "benchmark traditionalism." To see what benchmark traditionalism is, recall the commonplace that society ought to be a scheme of mutual benefit. I refer to this requirement as a "commonplace" because it is commonly acknowledged. I suspect it is commonly acknowledged because it is undertheorized in many quarters of political philosophy. So long as it is not clear what

mutual benefit demands, agreeing to the requirement of mutuality is costless. But if the commonplace is undertheorized in many quarters, it is not in the school of moral and political philosophy called *contractualism*.[6] One of the great insights of contractualist liberalism is that the demands of the mutual benefit requirement can be ascertained procedurally: a society is a scheme of mutual benefit if it complies with principles that can be justified to everyone via an appropriate procedure or, what is often taken to be the same thing, if it complies with principles about which no one has a valid complaint that is not outweighed by competing moral considerations.

My characterization of benchmark traditionalism takes the contractualist insight as its point of departure. But before getting to benchmark traditionalism, I need to elaborate the insight. Compliance is not stasis: the governance of societies is an ongoing undertaking, a matter of constant adjustment to continually altering circumstances. This raises the question of how to judge whether adjustments or changes are for mutual benefit. The contractualist insight supplies an answer: if the move from one state of affairs to another results in a state of affairs that complies with principles that can be justified to everyone by means that are justifiable, then the change is mutually beneficial.

This contractualist insight has the advantage of subsuming Pareto improvements as a special case. Those improvements are changes that are justifiable to all because they make no one worse off and at least one person better off. But not all changes, even all justifiable changes, are Pareto improvements, since some changes worsen the lot of some people in ways that give rise to valid complaints. What contractualism says about these cases is that the change is justified if – or perhaps if and only if – the burdens imposed on those who have valid complaints about the change are less weighty than the burdens that would have to be borne by the beneficiaries of the change were the change not made. Thus, in contractualists' hands, the requirement of mutual benefit ceases to be a costless commonplace. Contractualists recognize that changes sometimes impose costs that have to be balanced.

Of course, how the comparative weight of burdens is to be judged is itself a complicated question that can be answered in different ways. To answer it, contractualists need to identify fundamental interests and may have recourse to priority rules that need to be justified. I will not go into the identification of those interests or the content of the priority rules here. What matters for present purposes is this: In order to determine accurately whether demands of mutuality are satisfied, the right weights have to be attached to the burdens borne by those affected. Only if the weights are right can we determine how to balance a set of valid complaints. In order to determine whether someone has a valid complaint at all, we also have to choose the right state or states of affairs as the benchmark of comparison. If a legitimate move to a just distribution results in someone losing benefits to which he had no right in the first place, then he does not have a valid

complaint despite his loss. His sense that he does arises from his comparison of his holdings under a just distribution with his greater holdings under an unjust one. But the difference does not ground a valid complaint on his part, to be weighed against the valid complaints of others, because the comparison with an unjust state of affairs is the wrong one to draw.

It is possible, then, for citizens to go wrong in the weighting of valid complaints and for them to choose the wrong benchmark. But it is also possible to choose a benchmark or assign a weight for the wrong reasons. What makes someone a benchmark traditionalist is that he goes wrong in at least this way. What are the reasons on the basis of which the benchmark traditionalist goes wrong in this way?

Above, I discussed some of the privileges of which deferential treatment is composed. Privilege and deference can shape an institution's self-conception. Once an organization has become accustomed to them, it becomes very hard for it – read, "those who direct it" – to think of itself as lacking privilege. The privilege that it is accorded when it is deferred to comes, over time, to be thought of as the way things should or must be. Something similar is true for citizens of a faith that enjoy a dominant place in culture. Its adherents can come to think of its dominance as the way things should or must be. The customary gradually becomes normative, whether or not its status as normative is intellectually defensible. And so those who lead a church that has enjoyed deference, and those who adhere to its doctrine, can be led to take as a benchmark the state of affairs in which such deference is accorded and to seize on that feature as what makes the benchmark appropriate. They can then believe that they have well-founded complaints about moves away from that benchmark even if they do not. This is the first manifestation of benchmark traditionalism, and the one that gives it its name. And since those who are accustomed to privilege may think it should continue, its loss or modification may weigh heavily upon them just in virtue of the fact that they enjoyed it. They can then attach undue weights to their burdens even when their complaints are prima facie well-founded.[7] This is the second manifestation of benchmark traditionalism.

It is characteristic of benchmark traditionalists to take uncritically as their benchmark a world in which traditional norms have the status of social norms. A culture of deference is part of a social or psychological explanation for why someone might assume the wrong benchmark, but it is not a philosophical explanation of what makes a benchmark wrong. For that, we need to look at the merits of the benchmark. The ideas of benchmark traditionalism and deference are of interest because such uncritical assumptions are common, and deference helps to explain why they happen. In putting them forward, I am taking up one important task of social philosophy: to bring an important but unnoticed and unnamed social phenomenon to the surface, and to use the analytic and conceptual tools of philosophy to illuminate it.

To see how benchmark traditionalism might work in practice, consider a somewhat speculative treatment of a Supreme Court case that has been penetratingly explored elsewhere in this issue of *Dædalus*: *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*.[8]

The story of *Masterpiece* begins with *Obergefell v. Hodges*, the case in which the U.S. Supreme Court found that same-sex couples have a constitutional right to marry.[9] Some of those who find gay marriage morally objectionable have requested exemptions from generally applicable public accommodation laws that would require them to provide photographic, culinary, or confectionary services for same-sex weddings. One such request came before the Court in the 2017–2018 term. Jack Phillips, owner of the Masterpiece Cakeshop in Lakewood, Colorado, argued that he should not be legally compelled to create a cake with a message celebrating same-sex marriage. To compel him to do so would, he argued, "violate his right to free speech by compelling him to exercise his artistic talents to express a message with which he disagreed and would violate his right to the free exercise of religion."[10]

Let us consider why this might be an unreasonable objection. It may be thought – in the spirit of John Rawls's treatment of what he called "public reason"[11] – that if the baker in *Masterpiece* is unreasonable, his unreasonability lies in his advocacy of a political position that can be defended only by appeal to religious teachings about the proper expression of human sexuality. But this thought is mistaken. Perhaps Phillips's objection to same-sex marriage can be defended only by appeal to religious claims about the nature of marriage. But the Court was not asked to rule on the merits of that objection. The question before the Court was whether Phillips could be compelled to customize a cake celebrating same-sex marriage, given – as was granted all around – that he had a religious objection to doing so. His lawyers' argument that he should not be compelled to do so turned on the values of religious freedom and the freedom of artistic expression.[12] They therefore turned on public political values.

Nor is Phillips unreasonable in virtue of asking government to use its coercive power to impose his view of marriage on others. Phillips was not asking the Court to do that: he was not asking the Court to reverse *Obergefell*, though he may have wished that it would. Rather, as Cathleen Kaveny emphasizes in her contribution to this issue, what Phillips wanted was for his own life to be unaffected or minimally affected by that decision, despite the fact that a decision in his favor would have imposed a burden on others. But that in itself does not make the plaintiff unreasonable. For something similar is true of others who have gone to the courts to seek religious accommodations. The defendants in *United States v. Seeger*, for example, sought exemptions from military service on grounds of conscience despite the fact that they did not claim to be conforming to the directives of a supreme being.[13] They therefore wanted to live their lives as if the government had not decided to engage in military action, despite the fact that doing so would require others

to bear greater shares of the burden of combat duty. If Phillips is unreasonable for wanting to live as if *Obergefell* had not been decided, then Seeger was unreasonable for wanting to live as if the decision to pursue military action had not been made. This seems to be the wrong result. But then where, if anywhere, could the plaintiff's unreasonability lie?

We have seen that in determining whether court decisions and laws adjust a scheme of liberty in a way that benefits all, it is necessary to gauge the ongoing conferral of benefits and imposition of losses by the appropriate benchmark. Suppose that the plaintiff in *Masterpiece* took as his benchmark American society as it was before *Obergefell* was handed down. Only under that condition would he feel secure in the possession of his religious and expressive liberty.[14] And suppose that what made American society at that time seem to him to be the appropriate benchmark is simply that it was a society in which his traditional view of marriage enjoyed a certain privileged status: it was legally normative. It was widely recognized by the law as the way marriage in the United States should be. If this were the plaintiff's reason for choosing his benchmark and for seeking a conscientious objection, then his conduct would exemplify benchmark traditionalism.

Masterpiece Cakeshop is not an uncomplicated case. Crucial to it was the fact that the plaintiff was being asked to create a cake specifically for a gay wedding celebration. To compel the baker to create the cake would, the baker argued, be to compel artistic expression. It may be thought that the prospect of compelled artistic expression can ground a valid complaint. But even if there is some validity to the complaint, it does not follow that that complaint is weighty enough to be accommodated since there are other, conflicting claims at stake as well. The baker's petition would exemplify benchmark traditionalism if he overestimated the weight of his complaint because of the privileged status his traditional view enjoyed.

Nothing in the record of which I am aware reveals the true motives of the plaintiff in *Masterpiece Cakeshop*. I have fictionalized them to illustrate what I mean by "benchmark traditionalism." Though I lack the social scientific evidence to prove it, I believe that benchmark traditionalism is a common phenomenon. Some defenders of traditional values are culture warriors, moved by intense dislike of those whose views they take to be abhorrent. But there are, I think, many traditionalists who do not conform, and do not believe they conform, to this stereotype. They believe themselves to be broad-minded because they are willing to accommodate themselves, perhaps grudgingly, to changes in religious and sexual behavior. Their willingness to accommodate is such that they genuinely feel no animus toward those whose ways of life they believe to be wrong. But their willingness to accommodate is conditional on the assumption that traditionalist views of religious belief or sexual behavior – and the organizations that are the primary bearers and teachers of those views – will be accorded a privileged status in their society's culture. In the case of the views themselves, that status is a

benchmark that other practices are to approximate. In the case of the organizations that bear and promulgate them, the status is that of moral authority.

And so the people I now have in view are willing to accommodate themselves to the increasingly prevalent signs of secularism in their society, or to the increasingly visible presence of gay couples and transgender persons, so long as they believe traditional religiosity and traditional marriage are generally recognized – even by those whose behavior departs from the traditional – as the way people should behave.[15] They are willing to accommodate to cultural diversity, so long as they believe that traditional religious organizations and figures are generally recognized – even by those outside them – as moral authorities. That is, they are willing to accommodate so long as theirs is a society that accords deferential treatment to traditional ways of life.

Such benchmark traditionalists suffer from one or both of two shortcomings. Either they continue to inhabit a mental world of a bygone era, in which traditional mores and organizations enjoyed benchmark status. In that case, they fail to recognize the true extent of reasonable pluralism. Or they fail to see that traditionalist views need to be publicly justified if they are to be taken as benchmarks for assessing legal and cultural changes. In that case, they fail to acknowledge that it is unreasonable to take them as benchmarks, and to assess losses of liberty against them, unless a public justification for that status is forthcoming. Both of these shortcomings are species of unreasonability. Since they are forms of unreasonability encouraged by deferential treatment, citizens of ecclesial faith have reason to value a culture in which such deference is not practiced.

AUTHOR'S NOTE

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Faith (2016), *Why Political Liberalism? On John Rawls's Political Turn* (2010), and *Religion and the Obligations of Citizenship* (2002).

ENDNOTES

[1] John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, Mass.: Harvard University Press, 1999), sec. 79.

[2] Charles Taylor, "Afterword," in *Working with a Secular Age: Interdisciplinary Perspectives on Charles Taylor's Master Narrative*, ed. Florian Zemmin, Colin Jager, and Guido Vanheeswijck (Berlin: De Gruyter, 2017), 369–384.

[3] For an accessible treatment, see Edmund Waldstein, "An Integralist Manifesto," *First Things* 276 (2017).

[4] As political sociologist Larry Diamond has written: "The first and most basic role of civil society is to limit and control the power of the state"; Larry Diamond, "What Civil Society Can Do to Develop Democracy," https://web.stanford.edu/~ldiamond/iraq/Develop_Democracy021002.htm (accessed December 28, 2018).

[5] Joseph Raz, "Authority and Justification," *Philosophy and Public Affairs* 14 (1) (1985): 3–29.

[6] Two paradigms of contractualist moral and political theory are Rawls, *Theory of Justice*; and T. M. Scanlon, "Contractualism and Utilitarianism," in *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1982), 103–128.

[7] Perhaps the assignment of undue weights to losses or potential losses is an instance of the endowment effect and the related phenomenon of status quo bias; see Daniel Kahneman, Jack L. Knetsch, and Richard Thaler, "Loss Aversion, Status Quo Bias and the Endowment Effect," *Journal of Economic Perspectives* 5 (1) (1991): 193–206.

[8] 584 U.S. ___ 2018.

[9] 576 U.S. ___ 2015.

[10] Opinion of the Court, *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 584 U. S. ___ (2018), 1. The opinion can be found at https://www.supremecourt.gov/opinions/17pdf/16-111_new2_22p3.pdf (accessed April 8, 2019).

[11] See John Rawls, "Idea of Public Reason Revisited," *University of Chicago Law Review* 64 (3) (1997): 765–807.

[12] See David Cortman, Rory T. Gray, and Jeremy D. Tedesco, "Reply in Support of Petition for a Writ of Certiorari," SCOTUSblog, https://www.scotusblog.com/wp-content/uploads/2016/12/16-111-pet-cert-reply.pdf (accessed April 9, 2019).

[13] 380 U.S. 163 (1965). On third-party harms in *Seeger*, see Micah Schwartzman, Nelson Tebbe, and Richard Schragger, "The Costs of Conscience," *Kentucky Law Journal* 106 (2018): 881–912, 803–804.

[14] See Jack Phillips, "I'm the Masterpiece Cakeshop Baker. Will the Supreme Court Uphold My Freedom?" *The Washington Post*, April 26, 2018.

[15] They believe, in T. M. Scanlon's phrase, that their way of living is "uniquely *the* way for our society"; see T. M. Scanlon, "The Difficulty of Tolerance," in *The Difficulty of Tolerance: Essays in Moral and Political Philosophy* (Cambridge: Cambridge University Press, 2003), 187–201, 192.