

Religion and Insularity: Brian Leiter on Accommodating Religion

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Brian Leiter has recently reflected critically on a practice of religious accommodation to which some liberal polities—notably the United States—are committed as a matter of legal mandate.¹ The kind of accommodation he has in mind has at least the following two features: the state exempts religious objectors from otherwise binding legal requirements, and in so doing, the state imposes nontrivial burdens on others not so accommodated.² So understood, accommodation constitutes a kind of privileged, beneficial treatment.³ It is, moreover, privileged treatment that only the religious enjoy; those who object on religious grounds enjoy the benefits of accommodation, but not those who object on secular grounds.⁴ But, says Leiter, religion does not warrant that kind of privileged, differentially distributed treatment.⁵ As a consequence, the state should, as a matter of law, treat religious objectors no differently than the state should treat secular objectors.⁶ That is, the state should accommodate both the religious and the secular, neither the religious nor the secular, but not one or the other.⁷ And at the end of the day, Leiter settles for a version of the neither option⁸: “[T]here should not be exemptions to general laws with neutral purposes, unless those exemptions do not shift burdens or risks onto others.”⁹

Crucial to Leiter’s overall case is the claim that there is no credible reason to accommodate religious objectors but not secular objectors: “[N]o one has been able to articulate a credible *principled* argument . . . that would explain why . . . we ought to accord special legal and moral

1. BRIAN LEITER, WHY TOLERATE RELIGION? 5 (2013). The legal mandate I have in mind is the Religious Freedom Restoration Act (RFRA). 42 U.S.C. §§ 2000bb–2000bb-4 (2012). As I understand it, RFRA imposes a demanding test on any and all enactments of the federal government, that is, should the federal government impose some substantial burden on religion, then it must do so in order to fulfill a compelling governmental interest and it must do so by employing the least restrictive means to achieving that interest. *Id.* § 2000bb-1(b). As I understand it, the RFRA test sometimes requires that religious objectors, and only religious objectors, be exempted from laws for which there is a fully sufficient justifying rationale. In some of those cases, the granting of an exemption shifts the burdens or risks onto others.

2. LEITER, *supra* note 1, at 93, 99.

3. *See id.* at 7.

4. *Id.* at 93.

5. *Id.* at 66–67.

6. *Id.* at 92.

7. *Id.* at 93, 100–01.

8. *Id.* at 130–31.

9. *Id.* at 4. As this citation indicates, Leiter has no problem with the state’s exempting objectors from complying with legal requirements when an exemption is available to both religious and secular objectors and when granting an exemption imposes no costs on others, say, for example, exemptions from uniform requirements. *See id.* at 162 n.11. I will not always mark the latter qualification in the ensuing discussion, but it should be assumed.

treatment to religious practices.”¹⁰ He reaches this skeptical conclusion, in significant part, because he takes religion to be afflicted with a troubling defect, that is, religion involves commitment to categorical demands that are insulated from scientific and commonsensical scrutiny.¹¹ But, I will argue, there is no good reason to believe that religion characteristically involves a commitment on the part of religious believers to insulate their normative convictions from critical scrutiny—scientific, commonsensical, or otherwise. I will also argue that, absent that supposed defect, one of the arguments canvassed by Leiter provides a credible consequentialist rationale for religious accommodation. That secular argument, I believe, can be amplified by various and sundry religious considerations. I conclude that the combination of these secular and religious considerations provides a credible overall case in favor of accommodating religious objectors, though not uniquely accommodating them. I take it that this marriage between religious and secular considerations is a normal and desirable, even if not obligatory, basis for the kind of political practice under discussion.

Before I set about explicating Leiter’s skeptical challenge to advocates of religious accommodation, let me specify from the outset the respect in which I respond to that challenge. Leiter’s denial that anyone has ever articulated even a credible moral argument for the state to accord privileged treatment to religion is crucial to his overall case against religious accommodation.¹² But he does not specify what he means by a credible argument.¹³ I take him to mean something like an argument that is worth taking seriously by morally and epistemically competent peers. As such, an argument can be credible—or what seems to be its equivalent *plausible*—without being sound, much less persuasive to all comers, or even persuasive to Leiter.¹⁴ In order to respond to his skepticism, we

10. *Id.* at 7.

11. *See id.* at 33–34.

12. *See id.* at 66–67, 93.

13. He does provide a number of exemplary cases. For example, the private space argument I soon discuss counts as a credible rationale for a general practice of toleration. *See infra* Part I. It is clearly nothing like a Cartesian demonstration.

14. The fact that Leiter demands only credibility and not demonstration explains why he articulates a number of distinct arguments for a policy of generalized toleration—Rawlsian and utilitarian arguments. Presumably, Leiter does not adopt this ecumenical approach because he thinks—or expects his readers to think—that both the Rawlsian and the utilitarian arguments are sound, much less that both are demonstrations. Rather, I take him to be of the view that each argument is such as to provide reasonable, sensible people with adequate moral reason to affirm a policy of generalized toleration. Moreover, I take Leiter to be of the view that there are no

need to identify some decent, sensible rationale for religious accommodation, not a Cartesian demonstration of the legitimacy thereof, not an argument that is acceptable to all reasonable citizens, and not even a rationale that persuades Leiter.

I am quite confident that I can offer nothing like an argument that is acceptable to all reasonable citizens—much less a Cartesian demonstration. I have no such argument to offer on any topic of note, and certainly not the topic at hand. Much to the contrary, many will disagree, and sensibly so, with the rationale that I develop herein—both as to whether it is sound and even as to whether it is credible. As I see it, this is entirely normal and expected. Many of the political controversies that roil pluralistic liberal polities such as the United States are such that we should expect to find that epistemic peers disagree with one another not only as to how to resolve those controversies but also as to whether their ideological competitors have credible reason for their side of the disagreement.¹⁵

I. A PRIVATE SPACE ARGUMENT FOR GENERALIZED TOLERATION

Leiter begins his brief against religious accommodation by articulating a number of arguments in favor of a generalized policy of state toleration.¹⁶ I begin my explication of Leiter's case by discussing one of them, his "private space" argument. It is easily put: "[B]eing able to choose what to believe and how to live . . . makes for a better life."¹⁷ Ordinarily, human beings are happier, are more fulfilled, and lead lives

arguments that meet even this relaxed standard in favor of a policy that accords religion special, beneficial treatment.

15. So, to anticipate, a credible case for religious accommodation might include religious premises, despite the fact that many epistemic and moral peers sensibly reject those premises.

16. Toleration and accommodation denote distinct practices, both of which involve "putting up with" objectionable beliefs or lifestyles. See LEITER, *supra* note 1, at 3. As I understand it, toleration is a matter of broad abstention: certain beliefs or ways of life are seriously defective in some respect, and the state could effectively suppress them absent unacceptable cost but refrains from doing so anyway. Accommodation is a matter of narrow abstention: the state enacts a given law, L, enforces L with coercive measures of various sorts, and so does not tolerate whatever L precludes, but exempts some who object to L, and so abstains from coercing them to comply. See *id.* at 14. So understood, it is plausible to suppose that the state can coherently tolerate what it does not accommodate. This is, roughly, Leiter's view: generalized toleration absent burden-shifting accommodation. See *id.* at 118–19, 133. The reverse—accommodation absent toleration—does not seem morally coherent. At least, it seems wildly implausible. If the state will not even tolerate citizens' adhering to some objectionable way of life and so deliberately tries to prevent them from doing so by employing some coercive means, what adequate moral reason could the state have to accommodate them—and so exempt them from the very laws that are supposed to bring them into line?

17. *Id.* at 17–18 (emphasis omitted).

more meaningful to themselves when they are not forced to adhere to state-mandated beliefs or lifestyles. Moreover, “[b]eing told what you must believe and how you must live, conversely, make lives worse.”¹⁸ Ordinarily, human beings are alienated, angered, and frustrated when the state compels them to believe or live contrary to inclination or conviction. Consequently, when the state accords each citizen the latitude to believe and live as each sees fit, at least when it does so within broad limits, the state adopts a general practice that maximizes net happiness.¹⁹ If this is the case, then we have broadly consequentialist reason to affirm a practice of state toleration; even when citizens affirm false or strange beliefs or pursue an unworthy or corrupt lifestyle, the state should, within broad limits, abstain from intervening.²⁰

Note three features of this argument. First, it provides a principled reason to affirm a practice of toleration and thus a rationale that does not depend merely on considerations of incapacity, incompetence, or political advantage. Thus, if the private space argument is sound, the state should allow citizens to believe and live as they see fit, within broad constraints, even when it can deter them from forming objectionable beliefs, even when it has the competence to discriminate between worthy and unworthy ways of life, and even when suppression would not elicit a debilitating reaction.²¹ Second, it constitutes a plausible, principled rationale for a practice of state toleration.²² Although he realizes that some citizens might “make themselves miserable” by making “foolish choices about what to

18. *Id.* at 18 (emphasis omitted).

19. *See id.* Leiter construes this argument as utilitarian, but I see good reason to understand it as a generically consequentialist argument and thus one that includes as relevant to moral assessment a broad variety of axiological considerations—not merely desire or preference satisfaction but also truth acquisition, virtuous or vicious epistemic activity, civic virtue, and the like.

20. The conclusion of this argument has a very wide scope: it mandates toleration not only of objectionable conscience but also of objectionable desire, preference, or lifestyle.

21. “Where a genuine ‘principle of toleration’ gets its purchase is in the cases where one group (call it the ‘dominant’ group) actively disapproves of what another group (call it the ‘disfavored’ group) believes or does; where that dominant group has the means at its disposal to *effectively* and *reliably* change or end the disfavored group’s beliefs or practices; and yet still the dominant group acknowledges that there are *moral* or *epistemic* reasons . . . to permit the disfavored group to keep on believing and doing what it does.” LEITER, *supra* note 1, at 13.

22. *Id.* at 18.

believe and how to live”²³ or by having to make such choices even when not foolish, Leiter grants that we may judge that these negative consequences are sufficiently counterbalanced by ample positive consequences. No doubt this judgment depends on some very contentious claims—difficult tradeoffs, tenuous axiological comparisons, and hazy predictions. The fact that Leiter’s private space argument depends on such claims helps to explain why it does not demonstrate its conclusion to all epistemically competent and morally conscientious peers. Nevertheless, difficult tradeoffs, tenuous axiological comparisons, and hazy predictions accompany all kinds of legitimate arguments that bear on significant state policies, and so we cannot sensibly dismiss the private space argument simply on that account.

Third, it provides a plausible, principled rationale for a general policy of state toleration—a policy that applies to belief and lifestyle whether religious or secular. It seems plausible to suppose that religious and secular citizens will find “being told what to believe and how to live” by the state equally alienating, frustrating, or angering. Given this parity claim, there is no reason to believe that tolerating only the religious has better consequences than tolerating both the religious and the secular, and so the state should tolerate both, again, within broad constraints.

The private space argument exemplifies Leiter’s understanding of what an acceptable argument for toleration looks like: principled, plausible, and general. Having vindicated a policy of generalized toleration, Leiter wants to know whether or not any argument is similar to the private space argument with respect to principle and plausibility but not generality. That is, he wants to determine whether or not there are credible moral grounds for the state to tolerate religion in particular, that is, toleration as accommodation. So the search is on for some feature that distinguishes the religious from the secular by virtue of which the state ought to accord the former beneficial treatment that it does not extend to the latter. As I noted at the outset, Leiter believes that this search is fruitless; there is no credible moral argument to the conclusion that the state ought to tolerate the religious that does not also establish the conclusion that the state ought to tolerate the secular, so there is no credible reason for any policy other than the state ought to tolerate the religious and the secular equally.²⁴

23. *Id.*

24. *See supra* note 9 and accompanying text. I should note that, even if there is no credible argument for the conclusion that the state ought to accord religion special, beneficial treatment, it could be the case that there is a credible argument to the weaker conclusion that the state may accord such treatment. So, for example, if we conclude that serious and weighty consequentialist considerations count for and against some such policy, and if we judge that those considerations roughly balance out, then we might conclude that the state may, but is not required to, accord religion special, beneficial

II. LEITER'S DIALECTICAL STRATEGY

How does Leiter go about vindicating this skeptical conclusion? Let me say a few general words about Leiter's overall dialectical strategy before I discuss some of the details of his argument.

There is a rather direct line of argument that we might reasonably take to vindicate Leiter's core commitment that the state ought equally to tolerate the religious and the secular. Simply put, differential treatment absent relevant difference is objectionably arbitrary, there are no normatively relevant differences between the religious and the secular, and thus the state should treat the religious no differently than the secular, and so the state ought to tolerate the religious and secular equally. In the service of this argument, we might avail ourselves of any number of parity claims. Religious doctrines are not more or less popular than secular doctrines. A religious way of life is no more and no less subjectively meaningful or important to its adherents than is a secular way of life. Religious citizens are no more and no less rational, moral, happy, or productive than secular citizens. Given various and sundry parity claims, and given that there are no important and relevant differences between the religious and the secular, the state should treat them equally.²⁵ In short, given parity across the board, then no privilege; if no privilege,

treatment. Although I will later articulate a consequentialist argument to accommodate religion, I do not pursue that possibility in detail.

25. A narrow parity claim in the vicinity seems to me to be very plausible, that is, that there are no epistemically important differences between religious and secular reasons—differences that could provide a basis for according to the former some justificatory role that is different than, and lesser than, that enjoyed by the latter. I have argued for this parity claim in a number of places. *See, e.g.*, CHRISTOPHER J. EBERLE, RELIGIOUS CONVICTION IN LIBERAL POLITICS 333 (2002). I will say something in its defense in the ensuing discussion. That said, I do not affirm anything like a generalized parity between the religious and the secular. There is always only parity between the religious and the secular in certain respects and with respect to certain issues. So, for example, I believe that religious and secular reasons differ in their content. No parity there. Moreover, differences in content might lead to differences in motivation, moral orientation, and practice. This is basically the position that I defend in this paper: the religious and the secular do not differ with respect to epistemology, they differ in their variegated understandings of the human condition, and these differing conceptions of the human condition might have—and seem to me likely to have—any number of politically relevant consequences that warrant differential treatment by the state.

then no toleration of religion only; and if no privilege, then no accommodation of religion only.²⁶

Now we might expect Leiter to take this direct—and to my way of thinking most promising—route to his favored conclusion.²⁷ After all, one parity claim lies at the heart of his private space argument: because being told what to do by the state is no more and no less alienating and frustrating to secular citizens than it is to religious citizens, the private space argument should be understood to vindicate a policy of generalized toleration. But Leiter does not take that rather direct dialectical route. Rather, he insists that religion is special. It is especially defective—defective in its epistemology. Religion is epistemically defective in the respect that religious adherents believe that they ought to insulate certain convictions from scientific and commonsensical scrutiny. More on this shortly.

Now it might seem that imputing significant defects to religion is a most unpromising basis for Leiter's commitment to equal toleration. After all, the defect that Leiter imputes to religion might seem to provide reason for intolerance: to suppress religion, to disfavor it, or to quarantine it in the private lives of the pious. This is the kind of view associated with a number of vocal antitheologians.²⁸ But Leiter does not draw this dubious and

26. This line of argument can be significantly aided by the familiar difficulty of defining religion. A difficulty that can, so far as I can tell, be settled only with the help of some substantial stipulatory component. If we take advantage of that difficulty by stipulating a most expansive conception of what makes for the religious, such as “a person's religion is whatever is most subjectively important to them,” then it will be exceedingly implausible to suppose that there are any normatively significant differences between the religious and the secular. It is no doubt the case that some secular concerns matter to some citizens more—far more—than some religious concerns matter to some religious citizens. Contrast the passion for a beloved soccer team exhibited by its fanatical supporters with the tepid piety exhibited by nominal churchgoers. Conversely, it seems to me that if we define religion rather narrowly, then we might sensibly accord the religious special treatment. The question will be, roughly, whether or not we have reason to think that religion, construed in that narrow way, is “good” or “bad” in respects that differentiate the religious from the nonreligious. All this is just to make the obvious point: whether or not the state's privileged, beneficial treatment of religion can be justified depends, at least in significant part, on our underlying understanding of what makes for religion.

27. This is a route taken, I believe, by a number of theorists, each of whom argues that precisely because there are no morally, socially, epistemically, or politically relevant differences between the secular and the religious, the state ought not accommodate the religious but not the secular. *See generally* RONALD DWORKIN, *RELIGION WITHOUT GOD* 105–47 (2013); CHRISTOPHER L. EISGRUBER & LAWRENCE G. SAGER, *RELIGIOUS FREEDOM AND THE CONSTITUTION* 78–120 (2007); JOCELYN MACLURE & CHARLES TAYLOR, *SECULARISM AND FREEDOM OF CONSCIENCE* 85–99 (Jane Marie Todd trans., Harvard Univ. Press 2011) (2010); Michael J. Perry, *Freedom of Conscience as Religious and Moral Freedom*, 29 *J.L. & RELIGION* 124 (2014).

28. *See* LEITER, *supra* note 1, at 59.

illiberal conclusion.²⁹ He explicitly denies that the epistemic defects that putatively afflict the religious provide reason for intolerance. This claim, Leiter insists,

[has] no part of the argument of the book: I have adopted throughout what seems to me the clearly correct Nietzschean posture—namely, that the *falsity* of beliefs and/or their *lack of epistemic warrant* are not necessarily objections to those beliefs; indeed, false or unwarranted beliefs are almost certainly . . . necessary conditions of life itself, and so of considerable value, and certainly enough value to warrant toleration.³⁰

29. Actually, Leiter claims that there is credible reason for a policy of general toleration and so for a policy of the state's putting up with objectionable religious and secular lifestyles, where Leiter's conception of putting up with is consistent with what many others will take to be intolerant practices. *See id.* at 170 n.37. How so? Leiter claims that a given state can practice a general policy of toleration and, without the slightest impropriety, that state can promote a secularist "Vision of the Good." *Id.* A state that promotes such a secularist Vision may shape its educational curriculum accordingly and so may appeal to that secular Vision as a basis for coercing citizens, given that the state compels participation in the schools in which that secularist vision is propounded. So, for example, Leiter believes that a secular state may force children to take biology classes in which they are indoctrinated into the theory of evolution, despite the fact that those children, or their parents, have what they regard as compelling reason to reject that theory. *Id.* Leiter regards exempting such students from what they regard as coerced indoctrination as "astonishing"; I think it simple human decency. *Id.* Indeed, I think that Leiter's considered position is far more humane than his explicit judgment about this case; he takes the view that religious and secular citizens may be accommodated when doing so does not shift burdens onto others. *Id.* In my view, exempting students from biology class imposes no harm—or risk of harm on anyone else—unless pretty much anything shifts burdens and the qualification is empty. For a fascinating discussion of related issues, though from a very different theoretical perspective than my own public reason liberalism, see KEVIN VALLIER, LIBERAL POLITICS AND PUBLIC FAITH: BEYOND SEPARATION 237–53 (2014).

30. LEITER, *supra* note 1, at 91. Leiter eventually asserts that religious believers are epistemically culpable for their continued adherence to beliefs such as that there exists "an omniscient, omnipotent, nonmaterial being." *Id.* at 78. As with belief that "the Hale-Bopp comet is a recycling facility for dead Californians," which "no one in their right mind should accept," religious belief, such as belief in God, is a "culpable form of unwarranted belief" given the "ordinary standards of reasons and evidence" appropriate to denizens of the twenty-first century. *Id.* at 78, 81 (emphasis omitted). But there seems to me to be a tension between Leiter's Nietzschean claim that adherence to unwarranted beliefs is a necessary condition of life itself and his claim that those who adhere to religious convictions are epistemically culpable. After all, it is very plausible to suppose that necessity is a defense against culpability. This is the case not only in morality but also in epistemology. I doubt that there is a sharp distinction between the two. If *S* cannot but form his beliefs in a certain way, for example, he is afflicted with a brain lesion that compels him to believe that he is always the smartest person in the

Well, then what role does Leiter's appeal to the distinctive defects of religion play in his argument? It functions as a defeater for arguments that putatively count in favor of religious accommodation. Bluntly put, the distinctive defects that Leiter attributes to religion defeat arguments for religious privilege but do not license intolerance. In order to see how Leiter's defeater is supposed to work, let me move from dialectical strategy to argumentative particulars.

III. LEITER'S CONJUNCTIVE CONCEPTION OF "THE RELIGIOUS"

It seems to me that Leiter regards a somewhat vague and amorphous consequentialist argument as one of the most promising on offer for the claim that the state may, or even should, accord religion special, beneficial treatment.³¹ His formulation of that argument, sensibly enough, depends on his understanding of what makes for religion. If he is correct, religion has three constitutive features: categoricity, insularity, and consolation. I discuss each of these in turn, suggest two friendly amendments, and then explain how Leiter's conjunctive understanding of what makes for religion shapes his understanding and assessment of that consequentialist argument.

First, religion provides its adherents with requirements that have distinctive normative force: "[F]or all religions, there are at least some beliefs . . . that issue in categorical demands on action."³² What is a categorical demand? One that "must be satisfied no matter what an individual's antecedent desires and no matter what incentives or disincentives the world offers up."³³ This formulation seems to indicate that Leiter understands a categorical demand as a requirement that enjoys a kind of normative precedence. Suppose that Marcus morally ought not to kill innocent and nonthreatening human beings, and yet he must kill an innocent and nonthreatening goatherd if he is to eliminate a serious

discussion, then we can hardly blame him for forming that belief, however obvious it is that his self-assessment is wildly at odds with reality and however little warrant he has for that belief. Correlatively, if *S*'s unwarranted belief in God is necessary to *S*'s life, then how can *S* be culpable for believing in God? *S* might be wrong to do so, wrong in the sense of having violated some intellectual obligation or epistemic duty. But he cannot be blameworthy. Well, perhaps "cannot" is too strong, but it is hard to tell given that Leiter is none too clear as to the respects in which false or unwarranted beliefs are necessary conditions of life itself.

31. So far as I can tell, Leiter does not distinguish between the claim that the state is permitted to accord religion privileged, beneficial treatment and the claim that the state ought to do so. It seems to me that a consequentialist argument for religious accommodation could vindicate either claim, or both, of course.

32. LEITER, *supra* note 1, at 33–34 (emphasis omitted).

33. *Id.* at 34.

threat to those with whom he is closely bonded.³⁴ If moral requirements are categorical, then Marcus's obligation not to kill the goatherd takes precedence over the very weighty considerations of personal well-being that count in favor of doing so, and thus Marcus must, all reasons considered, refrain from killing the goatherd. On this understanding, a categorical requirement is tantamount to an *overriding* requirement, that is, one that determines how one ought to act even given competing kinds of normative considerations, such as those of self-interest.³⁵

So does Leiter claim that religion is distinctive in that adherents believe in demands that putatively take precedence over competing kinds of consideration? No. After all, many secular theorists, such as Kant, have asserted that moral obligations have overriding normative weight and so are theoretically committed to the claim that human beings are bound by categorical demands.³⁶ That said, it is one thing to believe that some requirement is overriding and quite another to *experience* it as overriding. According to Leiter, the latter is a locus of religious distinctiveness: "Categoricity, it is important to emphasize, will be treated primarily as a property of how the religious commands are *experienced by believers*, though often enough the experience will track the formulation of religious or theological doctrine."³⁷

If Leiter is correct, religion provides its adherents with norms that are not merely theorized as categorical but felt, apprehended, or experienced

34. A scenario of this sort lies at the heart of a story of great interest to many of my students. See generally MARCUS LUTTRELL WITH PATRICK ROBINSON, *LONE SURVIVOR: THE EYEWITNESS ACCOUNT OF OPERATION REDWING AND THE LOST HEROES OF SEAL TEAM 10* (2007) (recounting the heroic tale of four United States Navy SEALs and their desperate battle in Afghanistan mountains that led to the largest loss of life in Navy SEAL history).

35. It seems to me that we best understand the notion of overridingness by reference to competing considerations of different kinds rather than, say, by reference to just any competing normative consideration. So, for example, when we say that moral requirements are overriding, we do not mean that a given moral requirement takes precedence over competing moral considerations, but that it takes precedence over competing nonmoral kinds of consideration, say, those of self-interest, communal well-being, legal rectitude, or whatever. On this understanding, overridingness comes in degrees: if reasons of kind X override reasons of kind Y but not of kind Z, then reasons of kind X are not absolutely overriding. Presumably, the more distinct kinds of reasons X-reasons override, the greater the degree of overridingness. If X-reasons override all other kinds of competing reasons, then X-reasons are absolutely overriding. Of course, individuating the distinct kinds of reasons is no small task.

36. See LEITER, *supra* note 1, at 38, 50.

37. *Id.* at 34.

as such. This is why religious actors are disproportionately willing to sacrifice their personal well-being for moral principle:

What is interesting and important about religion is that it is one of the few systems of belief that gives effect to this categoricity. Pure Kantian moral agents are few and far between . . . but those who genuinely conduct their lives in accord with the categoricity of the moral demands they recognize are overwhelmingly religious.³⁸

Distinctiveness is, however, not the same as uniqueness, and Leiter insists that religious actors are not the only ones who experience moral demands as categorical.³⁹ He notes, in particular, communists who sacrificed a great deal to resist Nazi tyranny.⁴⁰ So I take Leiter's considered view to be that religion is distinctive, but not unique, in providing motivational urgency to norms that are theorized as overriding by both secular and religious folk.

Second, religion incorporates claims that are insulated from commonsensical and scientific scrutiny: "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 in science."⁴¹ What does it mean to insulate a given religious belief, and what is it exactly that religious believers are supposed to insulate their beliefs from? Surprisingly, given the importance of his insulation claim to his argument, Leiter does not answer those questions with anything approaching systematic detail or even with one clear canonical statement. As a consequence, we are left to interpret his occasional—and sometimes cryptic—judgments about one or another case.

I judge that what Leiter has in mind, most centrally, by the claim that religion involves insulation from evidence, is that religious folk are unwilling to revise certain beliefs in light of certain kinds of evidence. So, for example, on Leiter's accounting, Marx offered what Marx took to be a scientific account of historical change, and as such, Marx's central theoretical claims were vulnerable to empirical counterexample. Eventually, the accumulation of counterevidence acquired by familiar historical and economic analysis required the revision or abandonment of at least some of those central theoretical claims, namely, to historical materialism.

This commitment to revise core claims in light of scientific counterevidence is part of what distinguishes Marxism from religion: "Marxism took itself to be answering to—not insulated from—standards

38. *Id.* at 38.

39. *See id.* at 132.

40. *See id.*

41. *Id.* at 34.

of evidence . . . in a way religion has not.”⁴² Even with respect to supposedly intellectualist religious traditions, Leiter asserts, “it never turns out that the fundamental beliefs are revised in light of new evidence.”⁴³ Citizens of faith do not revise or jettison their core theological commitments under pressure from the kind of empirical evidence that forced Marxists to revise or repudiate Marx’s understanding of the manner in which technological and productive substructure shapes cultural and political superstructure. In short, the “distinctively religious state of mind is that of” faith, and faith is “believing something *notwithstanding the evidence and reasons* that fail to support it or even contradict it.”⁴⁴

Given the importance of Leiter’s insulation claim to his argument, we should formulate it as sympathetically as possible. To that end, let me note that, although Leiter sometimes fails to qualify the claim that the religious insulate their convictions from scientific and commonsensical scrutiny, his considered position is that they do so with respect to only some of them: all major religions “countenance at least *some* central beliefs that are not ultimately answerable to evidence and reasons as these are understood . . . in common sense and in science.”⁴⁵ Again, although Leiter

42. *Id.* at 38.

43. *Id.* at 40.

44. *Id.* at 39. Note that this last statement includes two importantly distinct assertions about the respect in which the religious putatively insulate their convictions: faith involves belief in the absence of evidence and faith involves belief despite evidence to the contrary. These assertions denote two very different epistemic conditions. It is one thing for me to trust the uncorroborated testimony of some authority that an event in the distant past has occurred, say, a putative resurrection, and something very different for me to trust that testimony no matter how much empirical evidence accumulates that the event never occurred. For example, we find bodily remains in a properly marked tomb—name and all—and subsequently find multiple independently written confessions that the whole thing was a hoax. Belief in the absence of evidence is one thing, but belief no matter how compelling the contrary evidence is quite another. I think that religious faith involves the first kind of “insular” belief, and in that respect religious adherents form their convictions just as does any other rational agent, for we must all accept some beliefs absent evidence. Religious faith need not involve, and sometimes does not involve, the second kind of insular belief. Much to the contrary, a commitment to revise beliefs in light of counterevidence of various sorts—certainly including that of common sense—is entirely natural for religious believers. More on this when I discuss Leiter’s assessment of “reformed epistemology,” to which the rough distinction I have just drawn is crucial. *See infra* Part VI.

45. *Id.* (emphasis added). Of course, this formulation does not exactly say that religious believers exempt only some of their convictions from scientific and commonsensical scrutiny—“at least some” is not equivalent to “only some” and is consistent with “all,” not to mention “almost all” and “most.” Nevertheless, that this is Leiter’s considered view

sometimes seems to understand his insulation claim as a description of how religious folk actually govern their beliefs, his considered understanding of that claim is that it describes how religious citizens believe that they ought to govern their beliefs. That is, Leiter's insulation claim does not describe how adherents actually regulate their religious convictions, and it certainly does not specify how they ought to do so; rather, it describes how they believe they ought to regulate their religious convictions.⁴⁶ In short, it is a claim that religious adherents are committed to an epistemic norm that they take to apply to some of their religious convictions, that is, those particular convictions ought not be jettisoned or revised in response to commonsensical and scientific scrutiny.

Third, religion provides consolation and comfort in the midst of the many sorrows endemic to ordinary human existence. This is familiar territory. The life of even the most privileged human being is replete with disappointment, tragedy, loneliness, frustration, and unfulfilled desire. The lives of those not so privileged are in addition often afflicted with hunger, economically induced anxiety, mind numbingly boring work, hopelessness, and so on. Paradigm cases of religion explain why that is the case, provide some understanding as to the point or purpose of the suffering to which human beings are subject, and typically provide some account of what to do to rectify that condition. For both the privileged and the marginalized, religion provides hope, meaning, and consolation. So what distinguishes religion from, say, a personality cult of the Maoist variety is not merely categoricity and "insulation from evidence, but also that there are some beliefs in the religion that . . . render intelligible and

is clear from his response to a rough but fair-minded review by Susan Mendus. See Brian Leiter, *Susan Mendus Did Not Like "Why Tolerate Religion?"*, LEITER REPORTS (Sept. 17, 2013, 5:56 AM), <http://leiterreports.typepad.com/blog/2013/09/susan-mendus-did-not-like-why-tolerate-religion.html>. My thanks to Michael Perry for informing me about this blog post.

46. See LEITER, *supra* note 1, at 35, 39. There is excellent reason for Leiter to formulate his insulation claim as a matter of epistemic norm rather than practice. It is obviously possible that secular folks are just as insular about their convictions as Leiter claims that religious folk believe they ought to be. A "fanatical defender of the theory of gravity" might actually refuse to consider evidence that casts doubt on their theory, and in that respect, differs not at all from a religious believer who refuses to consider relevant objections to their belief that God exists. See *id.* at 35. But the former is presumably not committed to the claim that she ought not consider counterevidence, whereas the latter is so committed. See *id.* So, at least, Leiter contends. Whether the religious actually insulate their beliefs and whether they do so to a greater degree than those who do not believe they ought to do so are empirical questions to which Leiter does not attempt to provide an answer. Sensibly so, it seems to me, for acquiring the evidence needed to answer those empirical questions is a most daunting task.

tolerable the basic existential facts about human life, such as suffering and death.”⁴⁷

IV. TWO FRIENDLY AMENDMENTS

So much for Leiter’s account of the constitutive features of religion. I will have some fairly critical things to say about that account. But before I have at it, let me offer two friendly amendments.

Leiter mentions an additional feature that we might think helps to limn the boundaries that circumscribe the religious; namely, that religious belief involves, whether implicitly or explicitly, some “metaphysics of ultimate reality.”⁴⁸ Religion involves a metaphysics of ultimate reality in the respect that it incorporates some account of what is most important, valuable, or choiceworthy for human beings into its understanding of the basic structure of reality. So, for example, for theists in the Anselmian tradition, God is a maximally excellent being, friendship with God is the greatest good available to human beings, and God is also the primordial reality—responsible for all that exists that is distinct from God.

According to Leiter, valuationally laden metaphysical commitments of this sort help to explain the normative weight of religious requirements:

The *categoricity of commands* distinctive of religious beliefs are, in turn, related to this *metaphysics of ultimate reality* in the sense that [those commands] specify what *must* be done in order for believers to stand in the right kinds of relations to “ultimate reality”—that is, to the reality that makes their lives worthwhile and meaningful.⁴⁹

Given this understanding of the relation between the categoricity of religious requirements and religious metaphysics, Leiter declines to include this fourth feature into his understanding of what makes religion distinctive. Why? Leiter articulates an account of what makes for religion in order to ascertain whether or not there is credible reason to accord religion special, beneficial treatment. As a consequence, he incorporates into his understanding of religion only those features that might be relevant to the propriety of according special privilege to religion: “[W]e want to identify religion in such a way that we can see why it has some moral and possibly legal claim on special treatment.”⁵⁰ But the appeal to

47. *Id.* at 52.

48. *Id.* at 47 (emphasis omitted).

49. *Id.* at 48.

50. *Id.* at 30.

metaphysical ultimacy merely duplicates the categoricity of religious requirements. It does not, therefore, advance the case for or against special treatment and so may safely be ignored.

I think that Leiter would do well not to do so. Why? It seems to me that religious demands have distinctive—amplified—normative force, and that we can best understand in what respect they are distinctive by reference to the valuational conceptions of ultimate reality incorporated into the great religions. It is hard to communicate this point clearly and with complete generality, so I will make it by reference to the theistic traditions with which I am most familiar.⁵¹ Recall that Leiter understands a categorical requirement in terms of overridingness, where a requirement is overriding when it defeats other kinds of normative consideration in conditions of irremediable conflict.⁵² As I see it, the potential divergence between moral requirement and personal well-being that helps to provide content to the notion of overridingness is alien to familiar theistic conceptions. How so?

According to familiar theistic conceptions, obedience to God's commands will always further the genuine well-being of the obedient. So, for example, if friendship with God is the greatest good available to human beings and if that good is achieved by those who comply with God's commands, then to comply with God's commands is thereby to achieve the greatest good available to human beings. If that is correct, then there cannot be the kind of conflict between divine command and personal well-being presupposed by the claim that moral requirements are overriding; obedience to God's commands makes available the greatest good available to human beings and cannot but further the well-being of the genuinely obedient. Moreover, if the God who commands also providentially superintends all of created reality, then all normatively relevant factors point in the same direction, and so there cannot be any competing considerations for God's commands to override. Not really. So conceived, God's commands do not so much override as they overwhelm.

I take it that this is not the case with respect to secular conceptions of morality; they simply do not have the metaphysical resources to vindicate the claim that the human condition is as friendly to moral requirement as it is to divine command on familiar theistic conceptions. Consequently, secular conceptions of morality must envision circumstances in which moral principle and personal well-being come apart, and it is with respect to

51. I think that we could make essentially this same point with respect to a non-monotheistic religion such as Buddhism, given its commitment to a cosmic, transgenerational, karmic system that correlates various rewards and punishments with moral rectitude.

52. *See id.* at 34.

such tragic circumstances that the overridingness of moral demands does its work.⁵³

It seems to me that Leiter might well appeal to the kinds of metaphysical claims I have just elucidated to explain what seems to me to be a puzzling feature of his construal of religion. What puzzling feature is that? Leiter claims that both secular and religious citizens believe in categorical norms, and both are free to affirm the same theoretical commitment to overriding requirements. But he grants that religious citizens experience those overriding requirements with a subjective urgency—a categoricity—that secular citizens experience only in the exception.⁵⁴ Given the identity of theoretical commitment, this differential experience begs for explanation. Leiter offers none. As I see it, the appeal to metaphysical ultimacy might provide at least part of that explanation. Religious citizens construe moral norms not merely as overriding but also as overwhelming. This theologically shaped construal controls their apprehension of those norms, and their apprehension explains the experienced normative weight of those norms.⁵⁵ So, for example, if violation of moral requirements forsakes friendship with God, and if forsaking friendship with God is the greatest evil that can befall human beings, then it is only natural for decently socialized, properly functioning, and sincerely committed theists to construe violation of moral requirements as a primary way to betray God and thus to apprehend the prospect of violating moral principle as overwhelmingly abhorrent.

Let me mention, more briefly, a second friendly amendment. Leiter's portrayal of religion seems to me to be vitiated by a kind of ethereal individualism. Religion, as he construes it, is a property of particular human beings who gain solace and guidance from their faith but who

53. A brief word by way of explanation. I have been contrasting the manner in which familiar sorts of theism conceive of the relation between divine command and personal well-being and the manner in which familiar sorts of secularism conceive of the relation between moral requirement and personal well-being. Complicating—though not compromising, I hope—this simple contrast is the fact that theists ordinarily correlate divine command with moral requirement. For many theists, moral requirements are overwhelming because they are in some way associated with divine command, that is, God's commands are identical with moral requirements, or they generate moral requirements, or they overlap with moral requirements that obtain independently of God's commands.

54. LEITER, *supra* note 1, at 36–38.

55. See ROBERT C. ROBERTS, *EMOTIONS: AN ESSAY IN AID OF MORAL PSYCHOLOGY* 68 (2003) (relying on the author's understanding of emotions as concern-based construal).

could, for anything in Leiter's account, do so utterly isolated from any other human being. But, even granted that isolated individualistic religiosity is a logical possibility, it is an empirical outlier. Human beings characteristically practice their faith with one another, in community with others who share their convictions, shape their sensibilities, and cooperate in achieving common ends.⁵⁶

It seems to me that Leiter would do well to incorporate this fact into his construal of religion. Why? The communal aspect of religion helps to account for some of its morally salient features, which must factor into any consequentialist rationale for or against religious toleration.⁵⁷ Most pertinently at this point, the fact that human beings practice their faith in common helps to explain the experienced urgency of religious demands: normal, properly functioning, and decently socialized human beings care deeply about the communal memberships that help to define their identity. Thus, they care deeply about the beliefs that help to constitute membership in community and about acting in accord with those beliefs—not least beliefs about religious demands. Plausibly, then, if religious demands are experienced as categorical, then this is not only a function of theological doctrine but also of the role that those doctrines play in marking membership in communities that matter a great deal to their members. In short, the distinctive categoricity of religious demands has both a theological and a social basis.⁵⁸

56. One central difference between religion and spirituality, in my idiolect at least, is that the latter is individualistic in respects that the former is not. The radically subjective, individualistic “Sheilaism” made famous decades ago by Robert Bellah and his collaborators is not really religion; it is a vague, socially disembodied, and amorphous spirituality. See ROBERT N. BELLAH ET AL., *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* 221 (1985). For discussion and complications, particularly with respect to the “rise of the Nones,” see Mark L. Movsesian, *Defining Religion in American Law: Psychic Sophie and the Rise of the Nones* (European Univ. Inst. Robert Schuman Ctr. for Advanced Studies, Working Paper No. 19, 2014), available at <http://www.eui.eu/Projects/ReligioWest/Documents/events/workingpaper/RSCAS2014MovsesianIII.pdf>.

57. I will eventually refer to sociological evidence that religiosity has beneficial societal effects. It seems to me that many of those effects are partly to be explained by the communal membership that is typically associated with sincere religious commitment. See *infra* notes 135–142 and accompanying text.

58. At one point, Leiter acknowledges that his construal of religion might seem too “Protestant,” focusing as it does on individual belief to the exclusion of ritual and community. LEITER, *supra* note 1, at 149 n.19. He claims in response that conscientious belief is what matters for purposes of determining whether or not the state should accord privileged legal status to religion—conscientious belief putatively merits special privilege rather than “mindless or habitual behavior.” *Id.* at 35. But this response seems to me to be unnecessarily severe. After all, both might matter: sincere, conscientious belief on the part of individuals and the participation in communities in which sincere belief plays a defining or constitutive role.

V. A CONSEQUENTIALIST ASSESSMENT OF RELIGIOUS
ACCOMMODATION

As I noted earlier, Leiter employs his understanding of what makes for religion to formulate and assess a consequentialist argument in favor of privileging religion. That argument tracks the three features that conjunctively distinguish the religious from the secular.

According to Leiter, the categoricity of religious demands “accounts for both one of the most admirable and one of the most frightening aspects of religious commitment—namely, the willingness of religiously motivated believers to act in accordance with religious precepts, notwithstanding the costs.”⁵⁹ So, for example, religious believers have been at the forefront of some of the most important movements for justice in recent memory: the Protestant theologian Dietrich Bonhoeffer and the Catholic military officer Claus Schenk von Stauffenberg were among the small German minority who actively resisted Hitler’s genocidal tyranny; Bishop Desmond Tutu and Pastor Allen Boesak helped to mobilize opposition to the apartheid regime in South Africa; Reverend Martin Luther King Jr. and the Southern Christian Leadership Council were central actors in the American civil rights movement in the 1960s; and so on.⁶⁰ Plausibly, these religious actors were, in significant part, willing to risk a great deal to resist injustice because they were gripped by what they experienced as overwhelmingly weighty religious demands.

In each of these cases, plausibly, sincere religious commitment to honor God helped produce “moral gems” that merit our admiration whatever our theological or atheological convictions.⁶¹ Moreover, the morally salutary achievements of religious actors are not limited to the past; the categoricity of religious demands is presently “responsible for laudatory and courageous behavior.”⁶² So, for example, “[i]n capitalist societies, where market norms increasingly permeate all activities and values, one of the few sturdy bulwarks, with broad cultural resonance, against self-enrichment as the only ‘rational’ end remains certain kinds of deep religious commitment.”⁶³ Plausibly, the fact that religion has the power to motivate believers to achieve such socially salutary goods must

59. *Id.* at 36.

60. *Id.* at 36 & 150 nn.21–22.

61. *See id.* at 85–86.

62. *Id.* at 60.

63. *Id.*

count in any consequentialist assessment of the manner in which the state treats religious citizens and institutions.

Fair enough. But it goes without saying that the motivational power of religious norms is not an unambiguous good. The pious have been led by sincere religious commitment to engage in the self-sacrificial and personally injurious defense of injustice: German Christians who lent theological support to Nazi antisemitism; Dutch Reformed defenders of racial apartheid; theologically driven racists in the American south; not to mention those religious fanatics who, in more recent memory, “bomb abortion clinics and fly airplanes into buildings.”⁶⁴ “Better carnage than idolatry” is a normative stance not entirely relegated to the past. In consequence, the capacity of religion to motivate self-sacrifice for the cause of moral principle is systematically ambiguous; it motivates some believers to sacrifice their well-being to further the cause of justice and others to act in ways that retard it. The implications of this generalization for any consequentialist argument for religious toleration are apparent: we cannot reasonably conclude that the categoricity of religious demands engenders a balance of goods that can vindicate the state’s according religion special, beneficial treatment. Categoricity is a consequentialist wash.

What of insulation from evidence? Here, the relevant consequentialist considerations are rather more direct. Leiter seems willing to countenance the possibility that insulating some religious claims from commonsensical and scientific scrutiny has some slight beneficial effect. So, for example, it is possible that “nonstandard methods” of belief-formation provide access to important truths that are otherwise unavailable to those who adhere only to standard modes of belief-formation, such as science and ordinary sense perception.⁶⁵ Even so, insulation counts heavily in the consequentialist balance against the claim that we should accord religion privileged, beneficial treatment. Leiter mentions a number of relevant considerations.

So, for example, the fact that religious folk insulate certain core claims from scientific and commonsensical scrutiny has the consequence that they continue to adhere to beliefs that are clearly false. Indeed, “insulation from evidence is, to be sure, central to what makes theism possible.”⁶⁶ Moreover, their adherence to those false claims lacks epistemic warrant and culpably, so “religious belief is a *culpable* form of unwarranted belief” given “ordinary standards of reasons and evidence in common sense and

64. *Id.* at 36.

65. *See id.* at 56, 58.

66. *Id.* at 81.

the sciences.”⁶⁷ Perhaps most important to Leiter are the actual and potential harms engendered not merely by the fact that religious folk insulate some convictions from the appropriate kind of scrutiny but also by the fact that they insulate their religious demands from that kind of scrutiny. Here is Leiter: “If it is true that beliefs that support categorical demands that are insulated from evidence have potential (perhaps even a *special* potential) for harms to well-being—and surely they do—then that would be reason to doubt whether any [consequentialist] argument for tolerating religion qua religion will succeed.”⁶⁸

I understand Leiter to take the view, then, that the categoricity of religion, considered by itself, does not count for or against privileging religion, that the insularity of religion, considered by itself, counts somewhat against privileging religion, and that the combination of categoricity and insularity counts significantly against privileging religion. Of course, these are all gross, speculative estimates, but they are no different than the estimates

67. *Id.* To be clear, Leiter does not mention these considerations in his evaluation of the consequentialist argument for religious toleration. Rather, he does so in response to the argument that religion merits a kind appraisal respect that might form the basis for religious accommodation. But I see no reason not to include such considerations in Leiter’s assessment of that consequentialist argument, as they are surely relevant. If religion is associated with epistemic vice, then surely that must count in a broadly consequentialist assessment of policies that accord special privileges to religion.

68. *Id.* at 61. I have to say that I find Leiter to be of two minds regarding his understanding of the potential harms engendered by the concatenation of insularity and categoricity in religion. In the passage just cited in the text, Leiter asserts that insulation and categoricity have potential for harms to well-being—surely they do have that potential and perhaps special potential. Moreover, he is clear that the potential for harm that arises from the concatenation of categoricity and insulation helps to defeat the consequentialist argument for religious toleration. *See id.* at 62–63. Leiter also claims, however, that “there is no reason to think that beliefs unhinged from reasons and evidence and that issue in categorical demands on action are especially likely to issue in ‘harm’ to others.” *Id.* at 83. Perhaps they are, Leiter says, but we need more evidence. *Id.* at 84. What, then, is the significance of the claim that insularity and categoricity potentially engender harm? I suppose that any belief has the potential to play some causal role in engendering harm to others, including scientific and commonsensical beliefs—consider the relation between modern physics and nuclear bombs. And any belief has the potential for good as well, including categorical demands insulated from evidence. Unless categoricity and insularity have more than mere potential to cause harm to others, it is unclear why it would even in the slightest tip the consequentialist calculation against privileging religion. I suspect that when Leiter says that the concatenation of categoricity and insularity has the potential for harm he really means that it is likely to engender harm—and indeed that it does in fact harm others—despite the fact that he says we need more evidence for that claim.

on which Leiter's private space argument relies—and a good many other credible arguments as well. It also bears recalling that Leiter does not understand his consequentialist argument to provide positive reason not to tolerate religion; rather, his argument provides only reason that counts against according religion special, beneficial treatment.

The question is not whether toleration of *categorical demands on action* conjoined with *insulation from evidence* stands in the requisite causal nexus with harm or infringements of liberty such that we would be justified in *not* tolerating those kinds of beliefs. Rather, the question is whether there is any *special* reason to tolerate beliefs whose distinctive character is defined by the categoricity of its demands conjoined with its insulation from evidence.⁶⁹

Leiter is most definitely of the view that there is no such reason: Surely we ought not promote “this conjunction of categorical fervor and its basis in epistemic indifference,” but this is exactly what the state does when it accords religion privileged, beneficial treatment.⁷⁰

Now we might think, to the contrary, that “the fact that [religious] beliefs also provide *existential consolation* [might] save them from a [consequentialist] point of view.”⁷¹ Leiter seems willing to grant that the consolation provided to so many ordinary folk by religion is an important contribution to human well-being and that this contribution must count in a consequentialist argument in favor of privileging religion.⁷² We then face the central question raised by Leiter's formulation of the consequentialist argument for religious toleration: Would the fact that religion provides existential consolation “provide a [consequentialist] rationale for singling out matters of religious conscience for special protection, even conceding the potential (perhaps special potential) for harms to well-being that arise from the conjunction of categorical demands and insulation from evidence?”⁷³

Here, we find ourselves compelled to speculate. As with Leiter's private space argument, so also with respect to the consequentialist calculation now under discussion, there is no uncontroversial, formulaic way for us to balance out the goods and bads associated with existential consolation

69. *Id.* at 60–61.

70. *Id.* at 63–64.

71. *Id.* at 61.

72. *See id.*

73. *Id.* Leiter also claims that we would need to determine whether or not we could console ourselves over the death and suffering by which we are beset by adverting to beliefs and practices that do not involve the insulation of categorical demands that so disturbs Leiter. If we could so console ourselves, then that would discount the weight of existential consolation provided by religion in a consequentialist argument for religious toleration. *See id.* at 62–63. Because I deny that religion involves the insulation of categorical demands that Leiter imputes to religion, I will withhold evaluation of that claim.

and insulated categorical demands. Indeed, those who advocate that the state privilege religion must “bite the speculative bullet,” namely, that “the existential consolation functions of religion produce more utility than the harm produced by the conjunction of categoricity and insulation [from] evidence.”⁷⁴ Leiter sees no reason to do so “absent an antecedent bias in favor of religion.”⁷⁵

No doubt, Leiter nowhere shows that the harms engendered by the concatenation of insularity and categoricity outweigh the goods associated with existential consolation. But he does not need to make that affirmative showing. This is in keeping with his overall argumentative strategy; he intends only to defeat arguments in favor of privileging religion and if it turns out that the consequentialist argument is inconclusive then he has succeeded in his aims. As I read him, Leiter provides only a defense against privileging religion rather than a positive argument that we ought not privilege religion, and this he does by showing that the relevant considerations do not definitively count in favor of privileging religion.

VI. AGAINST INSULARITY

So much for explication. What should we make of Leiter’s argument? I hope it is clear that Leiter’s attribution of insularity to religion is crucial to his case against privileging religion. But there is no good reason to believe that insulation of that sort is actually characteristic of religion. At least, Leiter provides us with insufficient reason to believe anything of the sort. How so?

Let me begin with a methodological point. The claim that the religious believe that they ought to insulate certain core convictions from scientific and commonsensical scrutiny is a contingent factual claim. It is a claim about what the religious believe, hundreds of millions of them, the world over. It is a claim about what they believe about the epistemic norms that apply to their religious convictions. As such, Leiter’s insulation claim cannot be vindicated merely by stipulation. Nor is it the kind of claim that one can know merely by rational reflection. Any assertion about what so many human beings believe must be grounded on some kind of empirical evidence. And, in the nature of the case under discussion, that empirical evidence is going to be exceedingly hard to come by; many of us have at

74. *Id.* at 63.

75. *Id.*

best a hazy grasp of the epistemic norms to which we are committed, “the religious” are unlikely to have any clearer a grasp of their epistemic norms, and so it will be no easy thing for Leiter to show that the religious adhere to the epistemic norm that he attributes to them.

As it turns out, Leiter offers no evidence that establishes any claim about any epistemic norm to which so many are committed. A really nice poll from Gallup might help, or an illuminating and clever experiment from a famed social psychologist, or even an analysis of an appropriately representative spread of theological tomes. Something that provides some insight into the normative commitments of those included in the capacious scope of Leiter’s insulation claim. We are given nothing of the sort. What Leiter does offer is a brief reflection by a legal philosopher, Timothy Macklem, on the relationship between faith and reason, in which Macklem asserts that “faith exists as a form of rival to reason.”⁷⁶ This is, to put it mildly, a highly contested conception of the proper relation between faith and reason. Even so, Leiter imputes that conception to religious folk generally.⁷⁷ This is manifestly inadequate and mildly ironic; Leiter’s assessment of the consequentialist argument in favor of privileging religion depends on a claim about insulation from evidence for which he provides insufficient evidence.

Now this might seem like a really, really unfair niggler. After all, we often draw conclusions, and reasonably so, about what lots of folks think from anecdotal, but exemplary, evidence about what a few think. And Leiter does something of this sort. That is, after he proposes his insulation claim, Leiter considers several apparent counterexamples, concludes that those counterexamples actually comport with his insulation claim, and thereby provides evidence of a sort. But, as it turns out, the cases on which he reflects show no such thing. Let me assess two.

Consider first Leiter’s discussion of belief in the resurrection of Christ. Christians adhere to that belief on the basis of testimony contained in the New Testament documents.⁷⁸ Documentary testimony about events that have occurred long ago is an entirely acceptable kind of evidence, both in science and in common sense. So it seems that those who believe in the resurrection do so on the basis of evidence of a perfectly legitimate kind and thus seem to serve, at the very least, as exceptions to Leiter’s insulation claim. But Leiter is unimpressed: Testimonial evidence that is “inconsistent with all other scientific knowledge about how the world works is nowhere thought to constitute good evidence for belief in a

76. *Id.* at 31 (quoting Timothy Macklem, *Faith as a Secular Value*, 45 MCGILL L.J. 1, 33 (2000)).

77. *See id.* at 35.

78. *See id.* at 41.

particular proposition, and that is exactly the status of the putative evidence in support of the resurrection of Christ.”⁷⁹ Given that there are “massive amounts” of evidence—biological, physiological, and testimonial—that weigh heavily against the rather thinly sourced ancient testimony contained in the New Testament documents, it is plausible to suppose that those “who still persist in believing in the resurrection of Christ hold that belief insulated from reasons and evidence.”⁸⁰ And, of course, if Christians insulate their belief in the resurrection from scientific and commonsensical scrutiny, then how much more likely will other religious beliefs be insulated—beliefs for which there is nothing like the testimonial evidence that supposedly grounds belief in the resurrection?

What should we make of Leiter’s analysis? Two points seem particularly pertinent. First, suppose that it really is the case that a massive amount of evidence undermines ancient testimony about the resurrection. This assessment of the actual merits of the case for and against resurrection claims has at best an uncertain bearing on the claim that religious believers insulate some convictions from reasons and evidence, that is, they believe that they ought to do so.⁸¹ For of course it is possible that Christians persist in believing in the resurrection, not because they believe that they ought to insulate that claim from scientific and commonsensical scrutiny but because having scrutinized, they assess the relevant considerations differently than does Leiter.

Many philosophers of religion dispute Leiter’s assessment of the evidence for and against the resurrection, not because they are committed to dismissing or discounting the “massive amounts” of relevant counterevidence but because they deny that there exists such counterevidence. Perhaps they are wrong to do so. Even so, it might be the differential assessment of the relevant evidence that explains persistence in belief in the

79. *Id.*

80. *Id.* at 42. Leiter suspects that they do not give the right kind of weight to the relevant evidence; too much to ancient testimony, too little to science: “To say that some core beliefs in any religion are insulated from reason and evidence as understood in the sciences is to make a claim not only about the *kinds of evidence* but about the *kinds of epistemic weight* such evidence has in deciding what to believe.” *Id.* at 41.

81. Of course, Leiter might retreat from his considered understanding of the insulation claim, namely, that it captures how religious folks believe that they ought to govern their convictions. He might retreat to a claim about actual practice—that religious folk do in fact withhold certain convictions from critical scrutiny and secular folk do not. As I noted earlier, there is good reason why Leiter does not do so.

resurrection rather than any believed obligation to insulate convictions from scientific and commonsensical scrutiny.⁸²

Second, there is a large popular and philosophical literature on the rationality of belief in miracles like the resurrection.⁸³ None of it, at least none of which I am aware, defends the claim that belief in miracles ought to be insulated from relevant evidence of any sort—scientific, testimonial, commonsensical, or otherwise. Precisely the opposite. Because scientific and commonsensical objections are taken seriously, those who believe in the resurrection try to show that the relevant scientific evidence does not have the implication that Leiter claims that it has. Were such evidence against the resurrection merely to be discounted, why the effort to show that it does not lead where Leiter claims that it does? Why not just dismiss it as irrelevant, however massive the amount? Pretty clearly, many of those who believe in the resurrection do not act and write, as if they believe that they ought to insulate their belief in the resurrection from Leiterian scrutiny.

Consider another bit of potential anecdotal evidence. Leiter discusses a number of intellectualist religious traditions that might seem to count as counterexamples to his insulation claim. He mentions the natural theology of William Paley,⁸⁴ the neo-Thomism of John Finnis,⁸⁵ and the reformed epistemology of William Alston, Alvin Plantinga, and Nicholas Wolterstorff.⁸⁶ Each of these traditions, in their own way, defends the claim that religious belief can, and sometimes does, satisfy any and all defensible standards of rationality. Such intellectualist traditions clearly pose a threat to Leiter's overall argument: If they correctly capture the epistemic status of religious belief, then Leiter's less than complimentary construal must be significantly revised—with correspondingly deflating implications for his overall argument against the state's privileging religion.⁸⁷

82. More carefully put, differential assessment is at least as plausible an explanation of persistent belief in the resurrection as is insulation from evidence.

83. For those who are interested in a philosophically and historically sophisticated discussion, see generally C. STEPHEN EVANS, *THE HISTORICAL CHRIST AND THE JESUS OF FAITH: THE INCARNATIONAL NARRATIVE AS HISTORY* (1996). For a more popular approach, see generally C.S. LEWIS, *MIRACLES: A PRELIMINARY STUDY* (HarperCollins 2001) (1947).

84. LEITER, *supra* note 1, at 39.

85. *Id.*

86. *Id.* at 81.

87. Leiter seems to grant this in his assessment of John Finnis's case for the claim that religion deserves "appraisal respect":

Finnis follows Thomas Aquinas in claiming that "the rationality norms which guide us in *all* our fruitful thinking also, and integrally, summon us to affirm the existence and providence of God." These are astonishing claims, which, if

But Leiter is not at all impressed. So, for example, he takes Alston, Plantinga, and Wolterstorff's defense of the rationality of religious belief to be predicated on an "attack on 'Enlightenment-approved evidence,'" assumes that the whole program is "nothing more than an effort to insulate religious faith from ordinary standards of reasons and evidence in common sense and [the] sciences," and thereby eases his way to the conclusion that "religious belief is a *culpable* form of unwarranted belief given those ordinary epistemic standards."⁸⁸ Leiter's assessment of reformed epistemology comports with his take on intellectualist traditions generally:

[I]n the case of the sciences, beliefs based on evidence are also revisable in light of the evidence; but in the intellectualist traditions in religious thought just noted, it never turns out that the fundamental beliefs are revised in light of new evidence. The whole exercise is one of post-hoc rationalization, as is no doubt obvious to those outside the sectarian tradition. Religious beliefs are *purportedly* supported by evidence, but they are still insulated from revision *in light of evidence*.⁸⁹

Leiter does not substantiate these claims with anything like a detailed analysis of the relevant literature. Indeed, he is admirably forthright in admitting that he merely assumes, without any accompanying argument, that his negative assessment of reformed epistemology is correct. Now we are all entitled to our assumptions, even controversial ones. I help myself to more than a few in this paper. But our assumptions must at least be consistent with the relevant evidence. And as I see it, Leiter's assumed assessment of reformed epistemology is belied both by explicit statements of its most prominent advocates and by the underlying logic of their overall project.

Consider in this regard a short monograph authored some forty years ago by one of the founding members of reformed epistemology. Nicholas Wolterstorff's *Reason Within the Bounds of Religion* is a reflection on a topic of direct relevance to Leiter's insulation claim, namely, the role that religious conviction ought to play in devising and evaluating scientific

they could be made good, would require a wholly different approach to the law of religious liberty, as Finnis well appreciates.

Id. at 87 (quoting John Finnis, *Does Free Exercise of Religion Deserve Constitutional Mention?*, 54 AM. J. JURIS. 41, 56 (2009)). As I understand them, Alston, Plantinga, and Wolterstorff affirm Finnis's basic claim—that belief in God comports with the "rationality norms which guide us in all our fruitful thinking"—though I suspect they differ in their understanding of what those rationality norms are.

88. LEITER, *supra* note 1, at 81.

89. *Id.* at 40 (footnotes omitted).

theories.⁹⁰ In his book, Wolterstorff offers guidance to his fellow Christian scholars as to how they ought to go about regulating their beliefs, both scientific and religious. Its title might very well lead us to expect that its author affirms a version of the epistemic norm that Leiter attributes to religious folk generally. After all, if rational reflection ought to occur within the bounds of religious conviction, then those religious boundaries will constrain or control our rational reflections and thereby impede rational reflection from undermining, or forcing us to revise, our religious convictions. Unsurprisingly, Wolterstorff says things that sound somewhat like that. So, for example, at the heart of his understanding of proper belief-governance are the claims that each of us employ various “control beliefs” governing our assessment of scientific data, that those control beliefs rightly help us to determine which scientific theories to accept, and that “the religious beliefs of the Christian scholar ought to function as *control* beliefs within his devising and weighing of theories.”⁹¹ Wolterstorff is clear that when religious belief functions as control belief, it might legitimately provide reason to reject a scientific theory thought to be incompatible with authentic Christian commitment.⁹² That sounds at least a little bit like the religious intellectual Wolterstorff does in fact affirm the kind of epistemic norm that Leiter attributes to religious believers.

But not really. Wolterstorff is a sophisticated philosopher and he develops a nuanced understanding of the epistemic norms that apply to religious belief. In the course of so doing, he rejects pretty much exactly the insularity claim that Leiter imputes to religious folk generally. It is worth citing Wolterstorff at some length:

Christians have been mistaken in what they thought constituted authentic Christ-following; and sometimes they have become aware of their mistake through developments in science. Though authentic commitment ought to function as control within our theory-devising and theory-weighing, such activities will forever bear within them the potential for inducing, and for *justifiably* inducing, revisions in our views as to what constitutes authentic commitment, and thus, revisions in our actual commitment.

....

The scholar never fully knows in advance where his line of thought will lead him. For the Christian to undertake scholarship is to undertake a course of action that may lead him into a painful process of revising his actual Christian commitment, sorting through his beliefs, and discarding some from a position

90. NICHOLAS WOLTERSTORFF, *REASON WITHIN THE BOUNDS OF RELIGION* (2d ed. 1988). I have selected Wolterstorff’s book because it is, from among the many articles and books published by reformed epistemologists, one that affirms something that at least sounds like Leiter’s insulation claim.

91. *Id.* at 70.

92. *Id.* at 76.

where they can any longer function as control. It may, indeed, even lead him to a point where his authentic commitment has undergone change. We are all profoundly *historical* creatures.⁹³

This does not sound much like someone who believes that he, or his fellow believers, ought to insulate even some religious convictions from scientific and commonsensical scrutiny. The sensibility is exactly the opposite; your religious convictions will play an important role in your assessment of the many competing claims and arguments you will encounter during your scholarly sojourn, and precisely because they play that role, you must be prepared to alter them in light of your reflections. Moreover, you cannot control how your religious convictions will be altered. Anything and everything is potentially up for grabs. Whatever we might think of Wolterstorff's views, they do not license insularity from ordinary standards of reasons and evidence.

It is not merely the case that advocates of reformed epistemology explicitly reject Leiter's insulation claim. The very logic of their position is inconsistent with that claim. This is hardly the place to provide a systematic articulation of their project, of course, so let me make only a few relevant points.

First, reformed epistemologists uniformly reject the hegemonic modern understanding of what makes for rational belief-formation, namely, evidentialism, which is roughly the claim that in order for a given belief to be justified, entitled, or warranted that belief must be grounded on arguments or evidence of certain select sorts—self-evident intuitions, the evidence of the senses, or the like. So, for example, according to evidentialist conceptions of rationality, a theist's belief that God exists is rationally justified only if she has some appropriate argument in favor of God's existence—some version of the cosmological argument, a fine-tuning argument, or the like.

Second, Wolterstorff and his epistemological fellow travelers articulate their own favored conceptions of what makes for rational belief-formation and belief-governance. Plantinga developed an understanding of warrant,⁹⁴ Alston developed an understanding of justification,⁹⁵ and Wolterstorff

93. *Id.* at 95–97 (footnote omitted).

94. *See generally* ALVIN PLANTINGA, *WARRANT: THE CURRENT DEBATE* (1993); ALVIN PLANTINGA, *WARRANT AND PROPER FUNCTION* (1993).

95. *See generally* WILLIAM P. ALSTON, *EPISTEMIC JUSTIFICATION: ESSAYS IN THE THEORY OF KNOWLEDGE* (1989).

developed an understanding of entitlement⁹⁶ that each takes to be defensible independently of its bearing on religion.

Third, each claims that some religious beliefs can be rational—or justified, warranted, or entitled—absent any grounding argument. So, for example, in Plantinga’s terminology, belief in God can be properly basic, rationally believed without being grounded on anything like one of the traditional arguments for God’s existence.⁹⁷ In that respect, belief in God is very much akin to all manner of other beliefs for which we can provide no adequate and noncircular argument, say, that our sense-perceptual faculties are reliable or that we ought not torture children just for the fun of it.

Fourth, although religious beliefs need not have any evidential or discursive grounding, Plantinga, Wolterstorff, and Alston are insistent that any and all beliefs, including religious beliefs, must be consistent with relevant, genuine evidence. Properly basic beliefs are presumed innocent until they are proved guilty, can be proved guilty, and can be proved guilty by scientific and commonsensical considerations.

Fifth, the fact that basic beliefs, like belief in God, are only innocent until proven guilty explains why much of their work is dedicated to assessing the multitudinous objections to religious belief. This is why, for example, Plantinga has exhausted so many pages analyzing and responding to the many different versions of the argument from evil against God’s existence.⁹⁸

I take it that even this cursory summary indicates that the basic claims articulated by reformed epistemologists do not license insulating religious claims from Leiterian scrutiny. There is no plausible interpretation of their work according to which they say what Leiter says they say, namely, that their effort is “predicated on an attack on ‘Enlightenment-approved evidence.’”⁹⁹ Reformed epistemology is predicated on an attack on

96. See generally NICHOLAS WOLTERSTORFF, *Entitlement To Believe and Practices of Inquiry*, in 2 PRACTICES OF BELIEF: SELECTED ESSAYS 86 (Terence Cuneo ed., 2010).

97. See Alvin Plantinga, *Reason and Belief in God*, in FAITH AND RATIONALITY: REASON AND BELIEF IN GOD 16 (Alvin Plantinga & Nicholas Wolterstorff eds., 1983).

98. See ALVIN PLANTINGA, GOD, FREEDOM, AND EVIL 7–64 (William B. Eerdmans Publ’g Co. 2002) (1974); ALVIN PLANTINGA, ALVIN PLANTINGA, WARRANTED CHRISTIAN BELIEF 459–99 (2000).

99. LEITER, *supra* note 1, at 81. Leiter relies for this formulation on an article by Peter Forrest. But he does not seem to me to capture accurately Forrest’s explication of reformed epistemology. As I read him, Forrest basically takes the line I do in this paper: “As Plantinga develops it in his paper (1983), beliefs are *warranted* without Enlightenment-approved evidence provided they are (a) grounded, and (b) defended against known objections.” Peter Forrest, *The Epistemology of Religion*, STAN. ENCYCLOPEDIA PHIL., <http://plato.stanford.edu/entries/religion-epistemology/#RefEpi> (last updated Apr. 24, 2013). What this means is not that Enlightenment-approved

evidentialism, not evidence, whether approved by the Enlightenment or by anything else.¹⁰⁰ Its advocates deny that certain kinds of evidence are required as the basis for belief in God, but they insist that belief in God must not be defeated by any adequate consideration to the contrary. They insist, moreover, that belief in God—what God is like and what God does—should be revised in light of whatever considerations actually warrant revision, as Wolterstorff insists in the passage cited earlier. Scientific and commonsensical considerations paradigmatically exemplify the kind of consideration that might require revision.

Of course, reformed epistemologists like Wolterstorff might say such things in bad faith. They might say that they are willing to revise their religious convictions in light of compelling scientific and commonsensical considerations but be unwilling to do so. Leiter seems to insinuate this at times: that what reformed epistemologists say they are doing—criticizing a faulty, hegemonic conception of rationality—is not what is really going on. For example, he claims “that ‘[R]eformed [E]pistemology’ is nothing

evidence is somehow or other illegitimate or of no good epistemic account but that having such evidence is not a necessary condition of warranted belief. Moreover, warranted beliefs that are not grounded on Enlightenment-approved evidence—properly basic beliefs—must be defended against known objections, and some of those known objections will utilize Enlightenment-approved evidence. In short, there is no plausible interpretation of Plantinga’s work or the work of any other reformed epistemologist of whom I am aware according to which anything they actually say is predicated on an attack on Enlightenment-approved evidence. Now I suppose that Leiter could take the line that being grounded on Enlightenment-approved evidence is a necessary condition of rational belief-governance, that this requirement is one of the standards of reasons and evidence at work in science and common sense and that religious belief does not even aspire to satisfy that evidentialist standard. But this would require a very long and complicated argument that Leiter does not even attempt to articulate. In my judgment, there is excellent reason to be very skeptical of that move. The arguments articulated by Alston, Plantinga, and Wolterstorff on that score are in my judgment compelling. Faith always precedes discursive argument and the provision of Enlightenment-approved evidence—for secular and religious alike. The most compelling articulations of this case, I think, are WILLIAM P. ALSTON, *PERCEIVING GOD: THE EPISTEMOLOGY OF RELIGIOUS EXPERIENCE* (1993) and WILLIAM P. ALSTON, *THE RELIABILITY OF SENSE PERCEPTION* (1996). I should note that one prominent critic of the claim that the state may accord religion privileged, beneficial treatment is able to accommodate this core claim about the epistemology of religious and secular faith commitments. See RONALD DWORKIN, *RELIGION WITHOUT GOD* 17 (2013).

100. This is very clearly articulated by Nicholas Wolterstorff in his retrospective account of the history and core commitments of reformed epistemology. See NICHOLAS WOLTERSTORFF, *Reformed Epistemology*, in 2 *PRACTICES OF BELIEF: SELECTED ESSAYS*, *supra* note 96, at 334.

more than an effort to insulate religious faith” from appropriate criticism, despite the many declarations to the contrary.¹⁰¹ So perhaps Leiter thinks that we should impute to advocates of reformed epistemology claims that run directly contrary to their explicit statements as well as to their substantive arguments, and that we should do so because they are insincere, or self-deceived, or something of the sort. Here, of course, I am more than willing to rest my case. For this last move would be an act of dialectical desperation. Leiter offers no better evidence for his claim that reformed epistemology is really nothing more than an attempt to insulate religion than he does for the original claim that insulation is characteristic of religion.¹⁰²

Not only does Leiter fail to provide anything like adequate evidence for his insulation claim and the cases on which he reflects fail to provide even anecdotal evidence for that claim, Leiter’s insulation claim is also belied by a surfeit of counterevidence. Here I will be short because the counterevidence is so ample and easily accessible. It is abundantly clear that religious folk have been led by scientific and commonsensical scrutiny to revise and even to reject any number of religious claims. It used to be the case, I speculate, that every theist believed that the earth was stationary and that the sun revolved around the earth. This was apparently the clear witness of the Bible and obvious to common sense. Now, I speculate again, very few theists believe that. There is one and only one explanation for that alteration of belief: the salutary impact of scientific scrutiny on religious belief. Again, I speculate that some centuries ago, vast numbers of religious folk believed, based on calculation from scriptural sources, that human life on earth began some six thousand years ago. Now many believe that human life began much earlier than that. There is one and only one explanation for that alteration of belief: the salutary impact of scientific scrutiny. I could go on, pretty much indefinitely, but there is no need. It is obvious that religious folk have in fact altered their religious convictions when they took there to be compelling scientific or commonsensical reason to do so.

Now, of course, it could be the case that religious folk alter their religious convictions under pressure from scientific and commonsensical scrutiny,

101. LEITER, *supra* note 1, at 81. Leiter makes a similar assertion with respect to other intellectualist religious traditions: “[O]f course, [he says,] it is dubious (to the put matter gently) that these positions are really serious about following the evidence where it leads, as opposed to manipulating it to fit preordained ends.” *Id.* at 40. This is, of course, a suspicion that we might direct at a good many philosophers, both secular and religious.

102. *Id.* at 81. All we are given, so far as I can tell, is an appeal to what is “uncontroversial[] among most philosophers” who are not also reformed epistemologists. *Id.* This is not argument or philosophy, but sociology, and so can be safely dismissed as irrelevant.

but that they believe that they should not do so. Perhaps they are weak of will and cannot resist the allurements of modern science. So perhaps Leiter is correct; their practice to the contrary, religious folk believe that they ought not alter their religious convictions in light of scientific and commonsensical scrutiny. I leave it to the reader to decide whether or not that is a credible claim and whether Leiter has provided adequate evidence for that claim.

However that might be, I can afford to break off this line of argument because Leiter readily grants that religious adherents sometimes subject some of their convictions to scientific and commonsensical scrutiny. As I noted above, Leiter's considered understanding of his insulation claim is that the religious believe that they ought not subject some of their convictions to scientific and critical scrutiny. And so, he can easily grant that the religious believe they may rely on science to revise their religiously grounded beliefs about the relative movement of planetary bodies, and so also their convictions about human origins. Even so, they are committed to holding out on at least some other religious convictions. Which ones? Leiter does not tell us—at least not in any detail. There are some, no doubt they vary from religion to religion, and so it is likely not possible to say much at all that is helpful in a general way about what those beliefs are. At best, Leiter tells us, and only in passing, that religious folk insulate their central,¹⁰³ fundamental,¹⁰⁴ or core beliefs from scientific and commonsensical scrutiny.¹⁰⁵

Now in order to assess this claim, we need to know what makes for a core claim. Leiter does not tell us. One would think, though, that the primary doctrinal claims of a given religion will serve.¹⁰⁶ So, for example, the claim that God exists—an omnipotent, omniscient, and omnibenevolent Creator—is arguably fundamental to many religious traditions. Given this, the members of these traditions might be willing to revise their beliefs about particular events attributed to God—the creation of Adam and Eve or the creation of an immovable earth at the heart of the cosmos—and

103. LEITER, *supra* note 1, at 39.

104. *Id.* at 40.

105. *Id.* at 41.

106. There seem to me to be very different ways to understand what makes for a core or fundamental belief. So, for example, a belief can be fundamental conceptually—the belief that something exists is more fundamental than the belief that God exists—and yet not be morally or motivationally fundamental—the belief that God exists might be far more important morally and motivationally than the belief that something exists.

yet, refuse to do so with respect to God's existence and nature; God's omnipotence, impassibility, immutability, and so on. But once we formulate Leiter's position that way, we have excellent reason for skepticism.

Let me put the point biographically. I once had a friend, now deceased, who was a theist of a rather traditional Anselmian sort. He became interested in philosophy. He became particularly interested in the problem of evil. He read his way through the literature and became more and more skeptical of Anselmian conceptions of God. At the end of a long process of reflection, he did not conclude that God does not exist. Nor did he deny that God is good and loving. But he did conclude that God could not be omnipotent. He continued to believe in God even when, much later, he suffered a slow, lingering, and painful death. And as he suffered, he continued to believe that God wanted to but could not help him, as God lacked the power to do so. His conception of God altered, and it altered under pressure from the so-called argument from evil, and the argument from evil is about as commonsensical as one can get, given that it relies on ordinary sense perceptual claims about human suffering and familiar rules of logic. So, it seems to me that my friend's belief in God—his beliefs about what God is like, how God relates to the created order, and how God related to him—altered under the impact of exactly the sort of consideration from which religious folk are supposed by Leiter to insulate their core beliefs. Moreover, he believed that his understanding of God improved as a consequence of this alteration; he did not think he had done anything wrong or impious. If this is not a case of a religious person being willing to revise his core beliefs in light of scientific and commonsensical scrutiny, if this is not a case of a religious adherent embracing belief revision of core convictions as a good in his life, then I am at a loss as to what would count as such.¹⁰⁷

I could tell many more such stories. They are endlessly varied. I am sure that any theist who works in philosophy nowadays can do so. You can read many more such stories in the newspaper, on the Internet, and in memoirs. For those of us who live those stories, Leiter's construal of

107. Perhaps my friend had some other core belief that he thought he ought to insulate from the appropriate kind of scrutiny? What would that core belief be? Is there some specific set of doctrines, a different set for each religion, that ought not be subjected to scientific and commonsensical scrutiny? Then I would like to know what that doctrinal set is for the tradition I know best: which core set of beliefs are Christians supposed to insulate? I would like to know because I am aware of no claim about God or God's nature that has not been subjected to searching criticism and revision in light of that criticism. Is the claim that insulated core convictions differ from person to person? Or is it something along the following lines: For each adherent of each religion, that adherent will have some core religious belief or other that they believe they ought not subject to commonsensical and scientific scrutiny. How could Leiter possibly know that?

religion does not describe anything close to reality. His depiction of religion is a fiction; there are plenty of religious folk for whom there are no claims that they believe that they ought not be subject to appropriate scrutiny—scientific, commonsensical, theological, or whatever.¹⁰⁸ Of course they need not relish the prospect of revising or abandoning those beliefs. But then, who does? Very few people have acquired the peculiar academic taste for revising or jettisoning their most important and dearly held convictions. I judge that it is good that they lack that taste.

VII. AGAINST THE CONJUNCTION OF INSULARITY AND CATEGORICITY

As I see it, we have no good reason to believe, and very good reason to reject, Leiter's insulation claim. Suppose, however, that I am wrong on both counts. Suppose, that is, that religious adherents believe that they ought to insulate some of their religious convictions from Leiterian scrutiny. Further problems remain. For Leiter helps himself to other claims that are crucial to his rejection of the consequentialist argument and yet, for which he fails to provide an adequate rationale. Here I will be brief.

As I noted above, the main consideration that Leiter weighs against the consolatory benefits of religion are the harms, potential or actual, that arise from the concatenation of insulation and categoricity. The "combination of *categorical demands on action* and *insulation from evidence* seems a frightening one" to Leiter.¹⁰⁹ He is not very specific about what seems frightening about that combination.¹¹⁰ But I suspect

108. Frankly, the claim that certain religious convictions ought not to be subject to scientific and commonsensical scrutiny seems to me to be the kind of claim that is concocted by intellectuals who are driven to extremity by perceived theoretical necessity. I have in mind here the—now ancient—essay in which R. M. Hare develops the notion of a "blik" in response to the critical assault on religion by logical positivists like the eventual theist Antony Flew. R.M. Hare, *Theology and Falsification: The University Discussion*, in *NEW ESSAYS IN PHILOSOPHICAL THEOLOGY* 99–103 (Antony Flew & Alasdair MacIntyre eds., The MacMillan Co. 1973) (1955).

109. LEITER, *supra* note 1, at 59.

110. I have to say that the combination of insularity and categoricity does not seem to me frightening in the slightest. Not as such. In order for it to seem frightening, I would need to know a great deal more about the beliefs that are insulated. After all, if someone—call him Perkin—insulates his belief that God prohibits lethal violence even in self-defense, I should not be frightened but put at ease. I might even regard Perkin's determined commitment to personal pacifism to be morally admirable and socially beneficial, even if I also thought that he adhered to that belief only by violating some epistemic duty to scrutinize with common sense. The concatenation of insularity and categoricity should seem frightening only if the beliefs insulated are more likely than

that his apprehension is to be explained by the fact that he assumes that categoricity and insularity are related in very particular ways. I have in mind the following passage:

[T]here is no apparent moral reason why states should carve out special protections that encourage individuals to structure their lives around categorical demands that are insulated from the standards of evidence and reasoning we everywhere else expect to constitute constraints on judgments and action, even allowing that those demands may figure in systems of belief that have some utility-maximizing effects (e.g., existential consolation). Singling out religion for toleration is tantamount to thinking we ought to encourage precisely this conjunction of categorical fervor and its basis in epistemic indifference, and that we should simply bite the speculative bullet.¹¹¹

Here, we see that Leiter construes categoricity and insularity as bearing a very particular—and prejudicial—relation to one another: “[C]ategorical fervor” has “its *basis* in epistemic indifference.”¹¹² And he appeals to the conjunction of categoricity and insularity, so construed, as a consideration that has decisive weight in his consequentialist assessment of the state’s privileging religion. Thus, to privilege religion is to encourage categorical fervor grounded in epistemic vice, but to encourage that is to encourage very bad and potentially harmful behavior, and so we have excellent reason not to privilege religion, even though we thereby forego certain consolatory benefits.

But Leiter is not entitled to assume that any categorical beliefs are insulated from evidence, much less that the former are somehow or other grounded in the latter. Moreover, he provides insufficient reason to believe that religion characteristically involves any such conjunction, much less that it always does. Indeed, it seems to me that Leiter simply assumes that categoricity and insulation are associated in very particular respects. But what is wrong with that?

Note first that Leiter’s assumption is not implicit in, or otherwise implied by, his tripartate construal of religion. Consider a homely example. Suppose that I have ten bags of marbles. In each bag there are some green marbles and some red marbles. From these facts, it does not follow that any of my bags have marbles that are both green and red. It does not follow that the green marbles bear any particular relation to the red marbles; that a green marble lies atop, beside, or underneath a red one. It does not follow that the presence of the green somehow explains the inclusion of the red. It certainly does not follow that the green and red marbles produce

they would otherwise be to legitimize morally suspect or dangerous activity. Leiter does not attempt to vindicate that empirical claim.

111. *Id.* at 63–64.

112. *Id.* (emphasis added).

marbles of any other color. Absent any additional reason to think that marbles of particular colors are likely to relate to one another in particular ways, all that follows is the conclusion that each bag contains some red and some green marbles. The application to Leiter's argument is direct: from the facts that all religions include some beliefs about categorical demands and that all religions include some beliefs that are insulated from scientific and commonsensical scrutiny, it does not follow that there are any categorical demands that are insulated from such scrutiny or that the former bear any particular relation to the latter. Categoricality and insularity need be related to one another no more determinately than the red and green marbles.

Of course, Leiter's association of insularity and categoricality would be correct were it the case that all religious convictions are supposed to be insulated from ordinary standards of reason and evidence.¹¹³ Given that claim, and the claim that some religious convictions are about categorical demands, it follows that some categorical demands are insulated from Leiterian scrutiny. But it is not the case that religious folk think that they ought to insulate all of their religious convictions from ordinary standards of evidence and reason.¹¹⁴ Leiter knows that and explicitly rejects the stronger false claim.¹¹⁵

But is it not just obvious that some categorical demands will, as a matter of fact, be insulated by religious believers from scientific and commonsensical scrutiny? No doubt there might be some here or there for whom this is the case. For example, someone—call him Perkin—might adhere to a strange theological system according to which God demands that His followers support a flat tax, and he might simply refuse to consider any alternatives, no matter how much evidence piles up that such a tax policy would be morally and economically disastrous. God says it, that settles it, and Perkin therefore will not consider even the slightest progressivity. But I see no reason to believe that Perkin is characteristic of religious believers, much less that all religions involve something akin to Perkin's fideistic commitment to confiscatory equality. And more generally, I see no reason to believe that the conjunction of insulation and categoricality is sufficiently characteristic of religion as to count significantly in a consequentialist analysis of a policy of religious privilege.

113. *See id.* at 34–35.

114. *See id.* at 34.

115. *See id.* at 35.

The basis for my skepticism in this regard is perhaps best articulated by recalling the preceding discussion of Leiter's claim that the religious believe that they ought not revise their core or fundamental convictions in light of scientific or commonsensical scrutiny.¹¹⁶ Suppose that Leiter is correct: religious folk are willing to scrutinize convictions at the periphery of their faith, but they will not do so regarding at least some of their core commitments.¹¹⁷ What reason do we have to surmise that those core, and so insulated, commitments are related in any particular way to religiously grounded demands? None that I can espy.

So, for example, suppose that Perkin has two fundamental religious beliefs: that God exists and that God has, in some way or other, authored the Bible. He also has a buzzing, blooming confusion of additional religious convictions, none of which, let us suppose, can be true unless God exists and very many of which are grounded in his interpretation of the Bible. Suppose that none of these additional beliefs function as a core religious belief for Perkin: that God exists and that God has authored the Bible are central, meaning-giving, fundamental convictions for Perkin, and these two core claims are surrounded by an indefinitely large and coruscating periphery of additional beliefs—that God is the creator of every contingently existing thing, that the flat tax is Biblical policy, that the nuclear family is part of God's design plan for humanity, that Jesus had twelve disciples, and on and on. Many, though not all, of these additional, peripheral beliefs are about what God demands. Stipulate, for purposes of argument, that Perkin is unwilling to subject his two core convictions to Leiterian scrutiny. Perkin just cannot bring himself to consider seriously the possibility that science disproves the existence of God or the divine authorship of the Bible. What, however, of the epistemic stance Perkin takes up with respect to his multitudinous peripheral beliefs—a periphery, to remind, that includes all of his beliefs about God's commands? So far as I can tell, there is nothing internal to Leiter's understanding of insularity or categoricity, nor is there anything about the relation between core and peripheral beliefs that provides reason to conclude that Perkin must believe that one, some, or all of those additional, peripheral beliefs ought to be insulated from commonsensical

116. It is unclear to me whether or not Leiter thinks that all core or fundamental religious convictions are supposed to be insulated from commonsensical and scientific scrutiny. Compare *id.* at 40–41, with *id.* at 46–47. I will assume in what follows that only the weaker formulation captures Leiter's intent: that religious folk believe that they ought to insulate only some of their core religious convictions. This makes the assessment of his position more complicated but the position itself more plausible.

117. See *id.* at 40–42.

and scientific scrutiny.¹¹⁸ Moreover, and more importantly, Perkin might well have excellent religious reasons to subject those additional, noncore beliefs to Leiterian scrutiny. How so?

Suppose that Perkin affirms the following propositional package: that friendship with God is the greatest good to which he can aspire, that friendship with God requires a sincere willingness on his part to comply with God's demands, that a sincere willingness to comply with God's demands requires him to do his best to determine what God's demands really are, that doing his best to determine what God actually demands requires recourse to any and every available normatively relevant consideration, and that among the relevant kinds of considerations are scientific and commonsensical considerations. Should he assent to each of those propositions—and a great many religious folk will—then he has a particularly powerful reason to subject his beliefs about what God demands to the most searching scientific, commonsensical scrutiny consistent with fulfilling his other duties.¹¹⁹ What he will not do—what he has compelling religious reason to refrain from doing—is to insulate his understanding of what God demands from any consideration that might provide insight into what God actually requires of him. In short, even if Perkin insulates some of his core beliefs from Leiterian scrutiny, he might well take himself to have a religious duty to scour away at his religious demands with a hard scientific and commonsensical brush.

Might it be the case that some of Perkin's beliefs about God's demands are located at the core of his faith? I see no reason to believe that this must be the case. But even if some of Perkin's beliefs about God's demands are located in his noetic core, is it not most likely that those demands will be very general—"Do good and forsake evil" or "Do unto others"—rather than "Support the flat tax?" And if Perkin's core beliefs include general demands, then those demands will have to be applied to particular circumstances before they can rationalize harmful actions and policies. But then Perkin will have compelling reason to subject those applications to Leiterian scrutiny. There is a very great distance between "Do unto others" and "Support the flat tax." Scientific and commonsensical scrutiny will surely play a crucial role in moving Perkin from the first to the second, and, plausibly, this interposition of Leiterian scrutiny will

118. Leiter is mostly silent about the relation between core and peripheral beliefs. *See id.* at 46–47.

119. *See* EBERLE, *supra* note 25, at 328–29.

help to prevent whatever harms potentially result from the insulation of categorical demands.¹²⁰

How is all of this relevant to Leiter's argument? Even if we grant Leiter's insulation claim, we lack reason to conclude that belief in religious demands are the outflow of, or in any way connected to, epistemic indifference or insularity. But the supposed conjunction of categoricity and insularity is Leiter's primary reason for rejecting the consequentialist argument in favor of religious privilege: most of the negative consequences that Leiter weighs in the balance against the goods generated by the consolatory function of religion depend in some way on his conjoining insulation to categoricity.¹²¹ The demise of that conjunctive claim means that his defense against the consequentialist argument fails.

VIII. A REVISED CONSEQUENTIALIST ARGUMENT FOR RELIGIOUS ACCOMMODATION

Suppose that this last conclusion is correct. What follows? Well, then it seems that an appropriately revised version of Leiter's argument supports the conclusion that he sets out to deny. When we excise from Leiter's assessment of the consequentialist argument for religious privilege any and all claims about insulation from ordinary standards of reasons and evidence, indeed, when we recognize that religious folk are free to adhere to standards of rationality no different than those applicable to anyone else, then the resulting argument counts in favor of the state's providing religion with privileged, beneficial treatment.¹²² Stripped to its bare essentials, this revised consequentialist argument is that the state should accord privileged, beneficial treatment to religion because doing so has sufficiently extensive consolatory benefits—meaning, comfort, and moral orientation—in the face of death and suffering.¹²³ That is, the categoricity of religious demands remains a wash and the insulation of religious demands from appropriate scrutiny is a fiction, and so they do not factor into the calculation at all and what remains on the balance sheet is a net improvement by virtue of the distinctive capacity of religion to console human beings in the face of the death and suffering to which we are all vulnerable.¹²⁴ To accord religion privileged, beneficial treatment is, all things considered, good for human beings, good for society, and hence, eminently sensible state policy.

120. See LEITER, *supra* note 1, at 60–61.

121. So also, I should add, does Leiter's main objection to other arguments in the vicinity, most particularly the argument that we should accord religion special treatment by virtue of the fact that religion deserves "appraisal respect." See *id.* at 70–71.

122. See *id.* at 34.

123. See *id.* at 52.

124. See *id.* at 51–52.

I hasten to add that this revised consequentialist argument depends on Leiter's original construction, on his correctly identifying the relevant goods and bads generated by the state's privileging religion, on his estimate of the normative weight of those goods and bads, and so forth.¹²⁵ Even if we allow for the fact that Leiter's estimates are gross and that the categories he employs to make those estimates incorporate many distinct kinds of goods and bads, it seems to me that his argument is not without merit. After all, such gross judgments and hazy comparisons are absolutely normal in political discourse. If the revised argument is too simplistic, then so are many, many other arguments about public policies about which we must reach some resolution and for which we have little else to offer but vague consequentialist calculations.

IX. A REVISED AND AMPLIFIED CONSEQUENTIALIST ARGUMENT FOR RELIGIOUS ACCOMMODATION

Even so, it seems to me that the revised consequentialist argument is pretty thin gruel. Fortunately, it can be strengthened when we add to our assessment a number of factors that Leiter overlooks. I will mention two, not because they are the only additional factors but because they help to address specific concerns raised by Leiter.¹²⁶

First, when the state uses its coercive power to force citizens to violate their religious demands, the state imposes distinctively great costs on those citizens.¹²⁷ As I noted above, familiar theistic traditions take moral requirements to have not only overriding but also overwhelming normative weight: compliance with moral requirements is necessary to friendship with God, violation of moral requirements is tantamount to betraying God, friendship with God is the greatest good to which a human being can aspire, and betrayal of God is the greatest evil that can befall a human being. A theist who sincerely believes this way will take himself to have overwhelmingly powerful reason to comply with what he sincerely takes to be his moral requirements.¹²⁸ Other things equal, a theist who believes

125. See *id.* at 66–67.

126. I should note that the two additional considerations I discuss in this section correlate with the two “friendly amendments” I earlier offered to Leiter’s conception of religion. See *supra* Part IV.

127. This claim is implicitly incompatible with the parity claim at the heart of Leiter’s private space argument that I discussed at the outset. See *supra* Part I.

128. See EBERLE, *supra* note 25, at 146–47.

this way will take himself to have greater reason—much greater—to comply with his moral requirements than he would have were he no longer to believe that way.¹²⁹ If Perkin believes that he is morally required to support the flat tax, and he also believes that violating a moral requirement betrays God, then he will take himself to have greater overall reason to support the flat tax than he would have were he to believe only that he is morally required to support the flat tax. The sum of any number plus something must be greater than that number alone. Perkin's theism here exemplifies a more general phenomenon, one that I associate with religion generally: normative amplification. That is, religions of varied sorts associate ordinary moral consideration with various extraordinary and weighty reasons for action. In so doing, they provide their adherents with powerful additional reason to comply with those requirements.¹³⁰ Theistic traditions of various sorts provide paradigmatic examples of normative amplification, as do certain kinds of Buddhism I believe.¹³¹

Now I assume that there is a rough—perhaps very rough—correlation between believed normative weight and subjective urgency. Other things equal, the greater the normative weight of the reasons that we sincerely believe count in favor of some course of action, the more it will matter

129. *See id.* at 323.

130. *See* LEITER, *supra* note 1, at 41. As I see it, normative amplification of this sort is constitutive of the religious. If this excludes certain religions, then so be it. We all have to make our cuts. I am quite confident that there is no characterization of religion that covers everything that everyone thinks is religious. Similarly, of course, for many other contested concepts such as evidence, necessity, justification, rationality, and on and on.

131. I am by no means an expert—I am barely passingly familiar with Buddhism—but from what I have read, it seems to me that karmic considerations serve the same amplifying function for Buddhists that friendship with God does for theists. It is just part of the moral order that present acts have consequences in future lives and that the moral quality of those acts influence what those future consequences will be.

As regards the fruits of actions in a future human life: mercilessly killing and injuring living beings leads to being short-lived; . . . being jealous and spiteful leads to being of no account; being stingy leads to being poor; being haughty and disrespectful leads to being of a lowly family; and not asking about what is morally wholesome and unwholesome leads to being weak in wisdom. The opposite good actions lead to a heavenly rebirth or the opposite kinds of human life.

. . . .

The law of karma is seen as a natural law inherent in the nature of things, like a law of physics. It is not operated by a God, and indeed the gods are themselves under its sway. Good and bad rebirths are not, therefore, seen as 'rewards' and 'punishments', but as simply the natural results of certain kinds of action.

PETER HARVEY, AN INTRODUCTION TO BUDDHIST ETHICS 16 (2000) (footnote omitted).

to us that we follow that course of action.¹³² Again, other things equal, the greater the normative weight of the reasons that we sincerely believe to count against some course of action, the greater our aversion to pursuing that course of action. If this is the case, then, plausibly, religious citizens who are forced by the state to violate what they take to be a moral requirement will, other things equal, undergo greater suffering, alienation, and frustration than they would were they to lack any comparable religious belief. Crudely put: someone who takes herself to be morally prohibited from “X-ing” and who also believes that X-ing betrays God, will, other things equal, be more alienated, frustrated, and angered when forced by the state to X than she would be were she to have exactly the same moral convictions about X-ing but not believe that X-ing betrays God.¹³³ Given that for a theist betraying God is the worst thing that can befall a human being, she will likely be very much more alienated in the first condition than she will in the second.

I take it that the distinctive bads engendered when the state forces religious folk to violate what they take to be their moral requirements are relevant to any consequentialist assessment of the state’s according privileged, beneficial treatment to religion. Moreover, it seems to me to be a very weighty consideration: the alienation engendered in sincere believers by the prospect of betraying God is so great that we have powerful reason to do whatever we feasibly and permissibly can to accommodate them.¹³⁴ Similarly, of course, with respect to the alienation engendered in those nontheists for whom the violation of moral obligation holds out the prospect of being reincarnated as a lesser animal. Similarly for other

132. This seems to be the case with respect to distinct moral considerations. So, for example, if Perkin sincerely believes that he is morally required not to eat fish on Friday, and if he sincerely believes that it is morally good but supererogatory for him to fast on Thursday, then, other things equal, Perkin will likely care more about eating fish on Friday than he does about fasting on Thursday. This is because moral obligations have greater normative weight than mere goods, and what matters to a decently socialized, properly functioning human being like Perkin is proportioned to the normative weight of the reasons that apply to them. This is armchair psychology, I realize. Every once in a while, though, armchair psychology is correct, and I hope that it is in this case. That said, human beings have extremely complicated and unpredictable subjective responses to normative reasons, and there is little doubt that there are many—perhaps all of us on some occasions—for whom the posited correlation between believed normative weight and subjective mattering come apart. For some, I suppose, there is a systematic disconnect; those popularly referred to as sociopathic. See EBERLE, *supra* note 25, at 168–69.

133. See *id.* at 168–69.

134. See *id.* at 323.

religions. If this is correct, then we can articulate a revised and amplified consequentialist argument in favor of privileging religion. For the state to accord religion privileged, beneficial treatment—by granting religious objectors exemptions from otherwise justified laws—is for the state to promote religion, and for the state to promote religion in that way is for the state to help to bring about important consolatory benefits as well as to prevent considerable alienation, frustration, and anger among its citizenry. Plausibly, the consolatory goods achieved and the alienation avoided outweigh any negative costs engendered thereby. Consequently, there is excellent consequentialist reason for the state to privilege religion by accommodating religious objectors.

There are further considerations relevant to our revised and amplified consequentialist argument that are not included in Leiter's initial formulation. I want to mention one more, one that helps to address a moral objection that Leiter lodges against religious accommodation. If the state promotes religion by according it privileged, beneficial legal status, then the state thereby promotes a wide diversity of socially beneficial goods. This is because religiosity is, apparently, correlated with an astonishingly wide range of really terrific things. Here I rely on a recent compendium of sociological literature by Rodney Stark, who consolidates a wide range of empirical research in support of that claim.¹³⁵ So, to take a few of Stark's examples, religious Americans are much less likely to commit crimes than the irreligious;¹³⁶ weekly church attenders are much more likely to do volunteer work than nonattenders;¹³⁷ weekly church attenders are more likely to donate to a secular charity than nonattenders;¹³⁸ religious Americans greatly outlive nonreligious Americans;¹³⁹ and religious

135. RODNEY STARK, *AMERICA'S BLESSINGS: HOW RELIGION BENEFITS EVERYONE, INCLUDING ATHEISTS* (2012); *see also* ROBERT D. PUTNAM & DAVID E. CAMPBELL WITH SHAYLYN ROMNEY GARRETT, *AMERICAN GRACE: HOW RELIGION DIVIDES AND UNITES US* 443–93 (2010).

136. STARK, *supra* note 135, at 55.

137. *Id.* at 120.

138. *Id.* at 117–18 (“All respondents were asked whether they had given money to a charity in the past year. Seventy-eight percent of Americans said, ‘Yes.’ Eighty percent of Protestants and Catholics said they had done so, as did 96 percent of the Jews . . . but only 66 percent of those saying they had no religion gave money to a charity in the past year. As for the effect of church attendance, 87 percent of the weekly attenders, 80 percent of those who attend less often, and only 60 percent of the nonattenders said they had donated. The effects of church attendance hold up among both men and women, whites and African Americans.”).

139. *Id.* at 106–07 (“[M]any careful studies have all found that modern Americans who attend church weekly greatly outlive those who never attend. The best national study suggests that attenders have an average of 7.6 years of greater life expectancy at age 20 than do nonattenders. Most of this difference in life expectancy remains even after removal of the religion-related effects of ‘clean living.’” (footnote omitted)).

Americans are more likely to get married and stay married than are the irreligious.¹⁴⁰ Stark offers evidence for many more such social benefits, including blood donation, fertility, performance on standardized tests, graduation from high school, skepticism about paranormal phenomena such as Bigfoot, UFOs and ghosts, and on and on.¹⁴¹ He even tries to quantify the results in a final, culminating, monetary aggregation: “American religion . . . provides a great many tangible benefits to all of us[,] having an annual cash value of more than \$2.6 trillion,” and this does not include the many intangible benefits of religion.¹⁴²

Now I have to say that I do not have the expertise to assess these claims. Stark is clear that the data are contested, which is hardly a surprise. My point in referring to his work is that there is a credible empirical case to be made in favor of the claim that promoting religion has a very wide diversity of socially beneficial consequences, that it is therefore reasonable to believe that promoting religion has those kinds of socially beneficial consequences, that those benefits are relevant to any consequentialist assessment of the state’s according religion a privileged legal status, and that, if Stark is actually correct, then they count significantly in favor of the state’s doing so.

One implication of Stark’s work is that it provides a basis for responding to one of Leiter’s main concerns with a subclass of religious accommodations, that is, those exemptions that shift burdens, or the risk thereof, to others not so exempted. Leiter claims that this is unfair; accommodating religious objectors is inequitable when excepting believers from a given law makes those who must follow the law worse off.¹⁴³ But Stark’s work provides reason for pause. If accommodating religion promotes religion, and religiosity has the kinds of effects that Stark enumerates, then it is plausible to suppose that accommodating religion has beneficial consequences even for those to whom accommodation is not extended. Concretely put, if religion is really terrifically effective in preventing crime and reducing recidivism, and if this means that there

140. *Id.* at 64 (“[A]mong adults ages 30 to 45—the prime marriage years—people who never attend church are twice as likely as the weekly attenders to have never married or to currently be divorced or separated.” (footnote omitted)).

141. For a summary of results, see *id.* at 4–5.

142. *Id.* at 168.

143. See LEITER, *supra* note 1, at 100. Actually, Leiter articulates this “Rousseauian” objection to burden-shifting exemptions generally, not merely to burden-shifting religious exemptions. *Id.* at 100–01. But if it applies to all burden-shifting exemptions, then it applies to the religious ones as well, which is sufficient for my purposes. *Id.*

are fewer criminals on the streets, then it is plausible to suppose that the state's promoting religion helps to protect everyone from crime. Less crime means less crime for everyone—secular and religious alike.¹⁴⁴ Similarly for blood donation, increased fertility, graduation from high school, and so on. In short, although not everyone enjoys the benefits of each particular religious exemption, everyone benefits from the general policy of the state's granting religious exemptions. And, of course, the revised and amplified consequentialist argument under consideration is supposed to provide a credible rationale for a general policy of religious accommodation.

The revised, and now amplified, consequentialist argument is obviously not a demonstration such that it should persuade each moral and epistemic peer. It depends on any number of contestable claims: that the consolatory benefits of religion count in favor of privileging religion, that insularity is not a characteristic or defining feature of religion, that sincere belief about normative weight roughly correlates with subjective urgency, that the religious are less likely to commit crimes than the irreligious, and so on. Epistemically competent and morally serious people can, and no doubt will, dispute such claims. I take it that this is par for the course for consequentialist arguments about significant public policies. That is, reasonable disagreement regarding consequentialist arguments is entirely normal, expected, and legitimate in political argument. It will bedevil the revised and amplified argument for religious privilege, just as it no doubt bedevils other consequentialist arguments, such as Leiter's private space argument. But it is a credible argument, one such that it is worth taking seriously by our moral and epistemic peers. That is, it is "a credible *principled* argument . . . that . . . explain[s] why . . . we ought to accord special legal and moral treatment to religious practices."¹⁴⁵

144. See generally BYRON R. JOHNSON, *MORE GOD, LESS CRIME: WHY FAITH MATTERS AND HOW IT COULD MATTER MORE* (2011).

145. LEITER, *supra* note 1, at 7. Suppose that my consequentialist argument is inconclusive in the respect that the goods and bads engendered by a general policy of accommodating religion roughly balance out. Then, plausibly, that argument vindicates the claim that the state may accord religion special, beneficial treatment but not the claim that the state ought to do so. As I understand it, a consequentialist conception of morality mandates policies and practices that maximize net happiness—or whatever the relevant axiological considerations happen to be—permits policies the relevant consequences of which balance out and prohibits the remaining nonmaximizing alternatives.

X. A REVISED AND RELIGIOUSLY AMPLIFIED CONSEQUENTIALIST
ARGUMENT FOR RELIGIOUS ACCOMMODATION

The revised and amplified consequentialist argument is a credible secular argument for religious accommodation.¹⁴⁶ I believe that it is a good and terrific thing that there is such a secular argument. It is a good thing not merely pragmatically but also morally. Religious citizens in liberal polities have a moral duty to do their best to articulate reasons for their favored policies that persuade their compatriots, and so their secular compatriots. Thus, they have a moral duty to do their best to articulate persuasive secular reasons for their favored policies. They need not regard those secular reasons as sound, of course, and they may support policies for which there are no persuasive secular reasons. Nevertheless, they ought to try to articulate them.¹⁴⁷ Note, however, that this obligation does not apply only to religious citizens. Secular citizens are no less obligated to try to articulate reasons persuasive to their religious compatriots than the reverse.¹⁴⁸ Given that the revised and amplified consequentialist argument will be utterly unpersuasive to some religious citizens, how might we fulfill our obligation to persuade them?¹⁴⁹

We could, of course, articulate a different—perhaps nonconsequentialist—secular argument for religious accommodation. Frankly, I have no idea how such a nonconsequentialist argument would go. We could also

146. I mean by a secular argument one the conclusion of which does not decisively depend on any claims about the existence of God, the afterlife, or any other supernatural realities. So, for example, although the revised and amplified consequentialist argument for religious accommodation depends on claims about the salutary societal effects of religious practice or the negative psychological consequences of violating believed religious norms, it does not depend on the claim that God exists, that human beings will be reincarnated in some future existence, or anything of the sort.

147. On this supposed obligation, see EBERLE, *supra* note 25, at 323. I hope that I have discharged that obligation by articulating the revised and amplified consequentialist argument for religious accommodation.

148. See Christopher J. Eberle, *Religious Reasons in Public: Let a Thousand Flowers Bloom, But Be Prepared To Prune*, 22 ST. JOHN'S J. LEGAL COMMENT. 431, 441 (2007). Of course, neither of the duties to persuade that I mention in the text are legal duties. They are moral duties attached to the social role of citizen in a liberal polity.

149. I am assuming here that to provide a religious believer with a secular rationale such as the revised and amplified consequentialist argument is not to thereby provide any reason that does, might, or should persuade the believer. Pretty clearly, a religious believer might have excellent reason, as rationally judged by that believer, to reject what is in fact an objectively sound secular rationale—as I believe the revised and amplified consequentialist argument to be.

articulate a religious argument for religious accommodation. There are many such candidates. Various theorists, past and present, have appealed to the unpredictability of divine action, a paramount duty to obey God, or some distinctive feature of religious faith as a basis for concluding that the state ought to accord religious dissenters privileged, beneficial treatment.¹⁵⁰ Given the prominence of such religious arguments, and given that, I suspect, many citizens in the United States are led by religious reasons to believe that the state ought to accommodate religious objectors, it seems important to say something about the role that religious reasons might play in vindicating religious accommodation. Unfortunately, doing so systematically would send us on a very long detour; one that I decline to take. Consequently, I will briefly suggest how certain religious considerations might help to augment the secular argument that I have already articulated.

Let me begin by returning briefly to Leiter's argument. As I noted above, Leiter claims that "absent an antecedent bias in favor of religion" there is no reason to conclude that the relevant consequentialist considerations actually tally in favor of a policy of religious accommodation.¹⁵¹ Now bias is persuasive language. To my ears, it is bad to be biased. Better—more evenhanded—is the rather antiseptic language of antecedent commitment: unless we bring to our assessment of his argument the belief that religion is wonderfully terrific, life-enhancing, or something of the sort, then we have, says Leiter, no reason to believe that the relevant consequentialist considerations vindicate religious accommodation.¹⁵² Suppose that he is correct about that. Well, then, what is so bad about being antecedently committed? After all, it is a truism in contemporary philosophy that precommitments of various sorts inevitably shape our normative reflections. Plausibly, that truism applies to the particular topic at hand. There is no theoretically or normatively neutral way either to identify

150. I have found the following helpful: THOMAS S. KIDD, *GOD OF LIBERTY: A RELIGIOUS HISTORY OF THE AMERICAN REVOLUTION* (2010); NICHOLAS WOLTERSTORFF, *A Religious Argument for the Civil Right to Freedom on Religious Exercise, Drawn from American History*, in *UNDERSTANDING LIBERAL DEMOCRACY: ESSAYS IN POLITICAL PHILOSOPHY* 329 (Terence Cuneo ed., 2012); NICHOLAS WOLTERSTORFF, *THE MIGHTY AND THE ALMIGHTY: AN ESSAY IN POLITICAL THEOLOGY* (2012). It would perhaps be best to articulate a number of religious arguments relying on different premises drawn from distinct religious traditions.

151. LEITER, *supra* note 1, at 63. As the reader will recall, Leiter claims that absent bias in favor of religion there is no compelling reason to conclude that "the existential consolation functions of religion produce more utility than the harm produced by the conjunction of categoricity and insulation [from] evidence." *Id.*

152. What I mean by a precommitment is pretty much what Wolterstorff means by a control belief, as I briefly articulated above. *See supra* text accompanying notes 91–92.

the considerations that are relevant to a consequentialist assessment of the policy of religious accommodation or to assess the relative weight of the relevant considerations once they have been identified. In short, no one can, or ought to, assess consequentialist arguments of the sort articulated by Leiter absent various antecedently held and broadly applicable commitments about human nature, religion, proper human functioning, epistemic vice, the common good, and the like. This is, of course, exactly what Leiter does. Absent a bias in favor of scientific and commonsensical criticism, not to mention a bias against insularity, it is hard to see how Leiter's case against accommodating religion could even get off the ground.

Not only must, and so may, we assess Leiter's consequentialist argument for religious accommodation by relying on some precommitments, we may also do so by relying on relevant religious precommitments.¹⁵³ For reasons articulated some forty years ago by Nicholas Wolterstorff in *Reason Within the Bounds of Religion* and by many other theorists since then, religious adherents have every epistemic right to rely on their religious convictions when they assess the kind of claims that bear on a consequentialist assessment of religious accommodation.¹⁵⁴ Precommitment there will be; religious precommitment there may be; and some of those religious precommitments will be pro-religious. Plausibly, those pro-religious biases will powerfully shape our assessment of the consequentialist argument for religious accommodation. How so? It is hard to be both clear and general, so I will again put the point in theistic terms.

Many theists believe that human beings have been created by God, that we are created for friendship with God, that we can fully flourish only when we strive to befriend God, and that our deepest aspirations cannot therefore be fully satisfied by ordinary human goods. In brief, many theists believe that God has designed human beings in such a way that we can fully flourish only when we are related in appropriate ways

153. We may also do so by relying on our antireligious precommitments—perhaps Freudian, Feuerbachian, or Marxist claims about the psychological or social (dys)functions of the religious. Presumably, those who assess the consequentialist argument in light of such antecedent biases will reach a very different result than I do.

154. Of course, Wolterstorff has continued to make that case, and with ever increasing sophistication, in the ensuing forty years. See, e.g., NICHOLAS WOLTERSTORFF, JOHN LOCKE AND THE ETHICS OF BELIEF 82–83 (1996); WOLTERSTORFF, *supra* note 90, at 98–100; NICHOLAS WOLTERSTORFF, THOMAS REID AND THE STORY OF EPISTEMOLOGY 256–60 (2001).

to God. This is a very familiar theistic understanding of human nature and human well-being. It was, for example, famously expressed at the outset of Saint Augustine's *Confessions*:

Great are you, O Lord, and exceedingly worthy of praise; your power is immense, and your wisdom beyond reckoning. And so we humans, who are a due part of your creation, long to praise you—we who carry our mortality about with us, carry the evidence of our sin and with it the proof that you thwart the proud. Yet these humans, due part of your creation as they are, still do long to praise you. You arouse us so that praising you may bring us joy, because you have made us and drawn us to yourself, and our heart is unquiet until it rests in you.¹⁵⁵

Now suppose that we adhere to this Augustinian conception of human nature and well-being. Suppose that we are epistemically entitled to do so. And suppose that we bring that conception to bear on our analysis of the consequentialist case for religious accommodation. That is, our theologically grounded understanding of human nature and well-being does not lie inert in some nether region of our noetic structure but shapes our reflections on what I take to be the central question raised by Leiter's discussion of the consequentialist argument, that is, whether or not the state's promoting religion by way of accommodating religious objectors is a good thing, overall and in the long run, for human beings and human society.

How might that Augustinian conception of human well-being help to answer that question? In two importantly distinct ways, at least. First, if Augustine's conception is correct, friendship with God is a crucial component of human well-being. It is not good intrinsically or in the abstract but good for those who actually befriend God. If the state's accommodating religious objectors does in fact promote friendship with God, and if friendship with God is a central component of human well-being—as it is on this Augustinian conception—then the state's accommodating religious objectors will thereby promote a central component of human well-being.¹⁵⁶ I take it that the implications of this conclusion for a

155. SAINT AUGUSTINE, *THE CONFESSIONS* 39 (John E. Rotelle ed., Maria Boulding trans., New City Press 1997) (1990) (footnotes omitted).

156. I take there to be no insuperable moral impediment to the state's promoting religion any more than there is to the state's promoting art, or tolerance, or altruism, or patriotism. Of course, from the fact that the state may promote religion by way of exempting religious objectors, it hardly follows that the state may promote religion in just any other way. So, for example, I deny that the state may promote religion by paying the salaries of clergy or by persecuting religious skeptics. The first has proven to be disastrous for religion, stultifying its production of socially beneficial goods, not to mention friendship with God. The second violates very important rights. Promoting religion by exempting religious objectors suffers from neither of those defects. No one has a right that the state refrain from promoting religion in any and all respects.

consequentialist assessment of religious accommodation are sufficiently apparent that they need not be spelled out.

Second, the state's promoting religion by accommodating religious objectors produces an indefinitely wide and varied number of secondary and tertiary goods: altruism, generosity, repentance, courage and solace in the face of death and suffering, and so on. The existence and extent of such goods are indicated by the aforementioned bits of scientific and commonsensical evidence, such as the survey results marshaled by Stark, the testimonials about the comforts of religion, and so on. But those who adhere to the Augustinian conception of human nature and flourishing will reasonably believe that those bits of evidence do not fully capture the reality for which they provide some evidential indication; if God has created human beings so that they flourish when they strive to befriend God, then the benefits, social and personal, engendered by religious practice will be far more extensive than those verified by the genuinely helpful but limited tools of survey research. In short, someone who assesses the consequentialist argument for religious accommodation from the perspective provided by the Augustinian conception of human flourishing will reasonably believe that accommodating religion achieves many goods undetected by science and commonsense and may rationally conclude that the consequentialist case for religious accommodation is very strong indeed.

Of course, many citizens and public officials in a pluralistic liberal polity such as the United States will find the Augustinian conception of human nature and well-being that I have just sketched incredible. As a consequence, they will not be persuaded by this religiously amplified consequentialist argument. That fact, undoubted as it is, is not particularly relevant to my discussion. For the religiously amplified argument is not supposed to persuade them. Nor must it persuade them. It is not important, much less necessary, that there exist one, canonical, or widely shared rationale for the policy of religious accommodation. It is sufficient, even for some card-carrying public reason liberals, that each citizen have reasons that convince them.¹⁵⁷ And for secular citizens there is, I submit,

157. Gerald F. Gaus, *The Place of Religious Belief in Public Reason Liberalism*, in *MULTICULTURALISM AND MORAL CONFLICT* 19, 25–26 (Maria Dimova-Cookson & Peter M.R. Stirk eds., 2010); Gerald F. Gaus & Kevin Vallier, *The Roles of Religious Conviction in a Publicly Justified Polity: The Implications of Convergence, Asymmetry and Political Institutions*, 35 *PHIL. & SOC. CRITICISM* 51, 58–59 (2009). As I understand Gaus and Vallier, roughly, each citizen must have reasons that persuade them to support

the revised and amplified consequentialist argument for religious accommodation.

More relevant is the fact that the vast majority of citizens and public officials in the United States are, and will for the foreseeable future remain, religiously committed. They might very well find the Augustinian conception of human nature and flourishing persuasive—or perhaps some relevant correlate drawn from another religious tradition. They will naturally draw on that conception when they attempt to determine whether or not the state's accommodating religious objectors is good for society in the aggregate and over the long run. And they might rationally be persuaded that the state should accommodate religious objectors because doing so provide citizens with the social space to engage in the religious practices that help them to flourish in accord with God's design plan for human beings. For them, commitment to religious accommodation will therefore be a religious commitment.

It could, moreover, be an ineliminably religious commitment. Citizens and public officials who accept some variation on the Augustinians conception of human nature and well-being might rationally conclude that only the religiously amplified version of the consequentialist argument is compelling, such that they would not find the consequentialist argument compelling but for their Augustinian precommitment. In that case, plausibly, both religious and secular considerations play a decisive role in persuading them to support a practice of religious accommodation.¹⁵⁸ As I see it, there need be nothing even slightly morally troubling should

a state policy, but this condition can be satisfied when different citizens are each persuaded by different and perhaps incompatible reasons. I should note that Gaus and Vallier lay down this requirement only for coercive state policies rather than noncoercive policies, as the policy of accommodating religious objectors arguably is. See Gaus & Vallier, *supra*, at 53–54.

158. Let me briefly explain this last claim. A religious reason, R, plays a decisive role in justifying state policy, P, just in case P would not be permissible in the absence of R, that is but for R. On this understanding, R can play a decisive role in justifying P even if it is not the *only* or *exclusive* rationale for P. So, for example, suppose that some secular reason S provides substantial but insufficient support for P. Suppose further that R provides substantial but insufficient support for P, whereas those reasons jointly render P permissible. I think that a moral and epistemic peer might reach this conclusion after assessing the consequentialist argument for accommodating religion and its religious amplification. In that case, P is justified but not in the absence of R. Of course, since the parallel point is also true of S, it follows that, in the case under consideration, both religious and secular reasons play a decisive role in justifying P. I think that when religious reasons do play a decisive justificatory role, they will typically do so in this collaborative manner. That is, even when religious reasons play a decisive justificatory role, they will almost always do so with substantial and necessary secular support. Perhaps this is the case with respect to religious accommodation. Even if that policy decisively depends on religious considerations for its justification, it also depends decisively on secular considerations as well.

citizens and public officials in a liberal polity such as the United States support and advocate for a policy of accommodating religious objectors even though it cannot, they believe, be justified absent religious augmentation. For them, the state's policy of accommodating religion would be a component of a religious Vision of the Good. On that score, at least, Leiter need not object, for he sensibly rejects the aspiration to state neutrality associated with so-called public reason liberalism and argues that a modern pluralistic state may establish any number of competing Visions of the Good—both secular and religious.¹⁵⁹

XI. ACCOMMODATION OF RELIGION ONLY?

I want to conclude this discussion by addressing one final question: whether a state that accommodates religious objectors ought also to accommodate secular objectors.¹⁶⁰ It might seem that the consequentialist argument that I have articulated vindicates only religious accommodation. That is, it might seem that the various distinctive features of the religious, as well as the religious considerations that augment the consequentialist case for accommodation, imply that the state should accommodate religious objectors but not secular objectors. I do not draw this conclusion. As I see it, the state should accommodate certain secular objectors. So, religious objectors are not unique in meriting accommodation. That said, religious objectors are distinctive in meriting accommodation. What does this mean? Having a religiously grounded objection to a given law is sufficient for a citizen to be exempted from that law—subject to familiar constraints. By contrast, having a secularly grounded objection to a given law is not sufficient for a citizen to be exempted from that law; unlike the religious, only some secular objectors should be accommodated. In that respect,

159. LEITER, *supra* note 1, at 13. Leiter's primary constraint on the establishment of a Vision of the Good, whether religious or secular, is that it respects liberty of conscience: "[W]hat I will call henceforth 'a Vision of the Good'—a vision, broadly speaking, of what is worthwhile or important—is compatible with toleration as long as it does not have as its purpose to burden coercively minority claims of conscience, beyond what would be licensed by the Harm Principle." *Id.* at 118–19 (footnote omitted).

160. I hope that it is obvious that distinguishing between religious and secular objectors is a mere convenience. Religious objectors are those who object to a law for religious reasons, and secular objectors are those who object to a given law for secular reasons. Of course, a deeply religious person can object to a given law for exclusively secular reasons, in which case that religious person is, for purposes of accommodation, a secular objector.

religious objectors are, as a class, distinct from secular objectors. Let me now explain this distinctive but not unique, all religious, some secular, practice of accommodation, though I do not intend to provide anything like a systematic defense. I will have to leave the details to some future effort.

I begin with the assumption that accommodation comes with potentially substantial moral costs. If a given law, L, is supposed to achieve some important moral good, then exempting some citizens from the requirement that they obey L might impede the state from achieving the target good—to some extent at least. Presumably, the greater the number of exempt citizens, the less likely that L will achieve its intended good. And for the state to exempt any and all objectors would defeat the purpose of achieving goods by enacting L as a law. On this score, Leiter is surely correct. A policy according to which the state exempts any and all objectors, whatever their reasons—secular or religious—is a recipe for political anarchy.¹⁶¹ Plausibly, then, we need to discriminate between different kinds of objectors—some should enjoy the benefits of accommodation and some need not. Plausibly again, that discriminating judgment will depend on a gross and difficult to formalize assessment that balances relevant costs and benefits. In the nature of the case, that assessment will be controversial among moral and epistemic peers—no doubt reflecting the conflicting precommitments on which we cannot but do rely when we make such judgments.

Recognizing the epistemically precarious condition in which we find ourselves, how should we make that cut? I suggest that we distinguish between objectors on the basis of the normative weight of the reasons that sincerely lead a given citizen to object to an otherwise justified law. What is normative weight? The best way to convey the idea is by example. So, consider a range of reasons on the basis of which a citizen might object to being conscripted by the state to go to war:

- Conscription prevents Jane from satisfying her desire regularly to enjoy ice cream.
- Conscription requires Jane to engage in strenuous exercise, which she really detests.
- Conscription prevents Jane from regularly enjoying ice cream and requires her to engage in strenuous exercise—the combined prospect of which makes her absolutely miserable.
- Conscription greatly increases Jane’s chances of suffering grave physical and psychological harm.

161. LEITER, *supra* note 1, at 94.

- Conscription prevents Jane from fulfilling her promise to care for her elderly parents.
- Conscription requires Jane to kill innocent human beings.
- Conscription requires Jane to kill innocent human beings and thereby excludes her from membership in the pacifist community that helps to define her identity.
- Conscription requires Jane to kill innocent human beings, excludes her from membership in the pacifist community that helps to define her identity, and renders her an enemy of God—with all that enmity with God entails.
- Conscription requires Jane to kill innocent human beings, excludes her from membership in the pacifist community that helps to define her identity, and holds out the prospect that she will be reincarnated as a lesser animal.¹⁶²

Each of the reasons just listed counts against Jane's being conscripted by the state to go to war. So, to focus on one, suppose that Jane's being conscripted will involve her playing some non-negligible role in killing innocent human beings. Innocent human beings have a right not to be killed, and their right not to be killed implies a moral obligation on Jane's part to refrain from killing them. The fact that she is morally obliged not to kill those innocents counts against her going to war, and thus constitutes a reason that counts against the state's employing its coercive power to compel her to go to war. Of course, the original supposition might not be correct: it might not be the case that conscription will involve Jane in killing innocents. Nevertheless, Jane sincerely affirms that supposition and so she has what she takes to be a compelling reason to object to her being conscripted.

Note that the reasons that lead Jane to object to her being conscripted are distinct from her other subjective attitudes towards the prospect of killing innocents: the emotions and aversions evoked in her by the impending possibility that she will take innocent human life and the

162. There are no doubt a number of complicating additions we might make to this list. So, for example, suppose that conscription requires Jane to forego engaging in a practice that she takes to be conducive to, but not necessary for, achieving a good of the greatest weight, say, a future life of eternal friendship with God. This is a very weighty reason that counts greatly against her being conscripted, far more so than, say, the fact that conscription precludes her from keeping her promise to go to Disney World with her child. I realize that some will find this judgment controversial. So be it. My aim in offering this list is to illustrate, not to systematize.

evaluative role that Jane's commitment to refrain from killing innocents plays in her life projects. More particularly, the fact that Jane's belief that being conscripted to go to war would require her to kill innocents counts against her being conscripted whether or not she is intensely averse to killing innocents and whether or not her belief that she ought not do so plays a guiding role in determining her other life choices.¹⁶³ Her sincerely held reason for objecting to conscription is one thing, the subjective importance to her of acting in accord with that reason is another, and the two can come apart.¹⁶⁴ But as with the rest of her species-mates, Jane is a complicated—and potentially corrupt—creature. It could be the case that she is not really all that averse to killing innocents—she might

163. Of course, these can vary depending on the particularities of Jane's circumstances; at one point in her life she can be intensely opposed to killing innocents and at another point indifferent to the prospect.

164. The reason that I distinguish so sharply between believed normative weight and other subjective attitudes is that some theorists have articulated an account of religious accommodation that seems similar to the account that I suggest here, but that also seems to me to be vitiated by the fact that they confuse normative weight and subjective intensity. I have in mind here the position developed by Charles Taylor and Jocelyn Maclure. They claim that the state ought to accommodate citizens whose objections are grounded on their "core" or "meaning-giving" commitments. MACLURE & TAYLOR, *supra* note 27, at 76. It seems to me that they understand the notion of a core or meaning-giving commitment functionally: "[C]ore beliefs and commitments, including religious ones, must be distinguished from other personal beliefs and preferences because of the role they play in individuals' moral identity." *Id.* Commitments that do not play this role do not merit accommodation: "If beliefs and preferences do not contribute toward giving a meaning and direction to my life, and if I cannot plausibly claim that respecting them is a condition for my self-respect, then they cannot generate an *obligation* for accommodation." *Id.* at 76–77. They also associate core commitments with psychological intensity: "[T]he intensity of the person's commitment to a given conviction or practice" is the similarity between religious and secular convictions by virtue of which they both deserve accommodation. *Id.* at 97. I cannot here discuss these claims in detail. Suffice to say that a properly functioning person who sincerely believes that a given reason has very great normative weight will ordinarily intensely desire to act in accord with that reason. Again, that reason will ordinarily play a role in forming his moral identity. But intensity of feeling and relevance to moral identity are a function, in central part, of believed normative weight. Moreover, believed normative weight need not translate into intensity of feeling or importance to moral identity, just as importance to identity or intensity of feeling need not be tied to normatively weighty reasons. Human beings can shape their identities, or be quite passionate, about comparatively trivial projects—sexual conquest, or the success of a local soccer team, or the acquisition of money. Subjective mattering and normative weight can come apart, and when they do, it seems to me that normative weight should be the decisive factor in determining accommodation. Why this is the case I hope to explain on some other occasion. Here, I am merely trying to lay out the main elements of the position I favor.

even have some corrupt desire to do so—and yet she still has reason to object to being conscripted.¹⁶⁵

Not only do each of the reasons listed above count against Jane's being conscripted but each of those reasons also differ with respect to normative weight. The fact that being conscripted to go to war prevents Jane from satisfying her desire to eat ice cream counts less against her being conscripted than does the fact that conscription prevents Jane from satisfying her desire to eat ice cream and requires Jane to engage in strenuous exercise, which she detests.¹⁶⁶ The fact that being conscripted to go to war prevents Jane from satisfying her desire to eat ice cream counts far less against her being conscripted than does the fact that fighting in war involves her killing innocent human beings. The fact that fighting in war involves Jane's killing innocent human beings counts far less against her being conscripted than does the fact that fighting in war involves her killing innocent human beings and excludes her from the community that defines her identity and renders her an enemy of God. Each additional normative consideration increases the aggregate normative weight of Jane's reasons for objecting to conscription.¹⁶⁷ Of course, the distinction between believed normative weight and subjective mattering remains in force. Although decently socialized and properly functional human beings will enjoy some rough correlation between believed normative weight and subjective mattering, the two kinds of mental state can come apart. Jane might care less about reasons that she believes to have great normative weight than she does about reasons that she believes to have far less normative weight.¹⁶⁸

165. In fact, Jane might strenuously insist that she not be conscripted both because she believes that this will involve her killing innocents and because she desires to do so, and so she will be tempted further to corrupt herself, by action and not merely by desire.

166. As I noted earlier, any number plus something must be greater than that number alone.

167. I realize that the epistemology of these claims is mysterious, as is the epistemology of morality generally. That is just another way of saying that although these claims seem true, it is very difficult to justify them—certainly to anyone who determinately rejects them.

168. It is a sad and troubling fact that human beings can care far less about killing innocent human beings than they do about being deprived of familiar creature comforts, even though they are well aware of the difference in normative weight between the two. This is commonly acknowledged in the testimony of combat soldiers, the most compelling of which is E.B. SLEDGE, *WITH THE OLD BREED: AT PELELIU AND OKINAWA* 152–53 (1981). Also relevant is the more recent book by Jim Frederick. JIM FREDERICK, *BLACK HEARTS: ONE PLATOON'S DESCENT INTO MADNESS IN IRAQ'S TRIANGLE OF DEATH* 257 (2010).

Whether or not Jane should be accommodated depends on which reasons lead her to object to conscription. As I see it, Jane should not qualify for exemption if her reason for objecting lies at the top of the list; that conscription frustrates her desires. Again, she should qualify for exemption if her reason for objecting to conscription lies at the bottom of the list; enmity with God and reincarnation at a lesser state are exceedingly weighty reasons. But of course, between these terminal reasons there is a vast and complex diversity of distinct reasons for objecting to conscription. I do not believe that there is any way to specify exactly where to draw the line. Or better, there are many sensible, appropriate ways to draw the line. One of these sensible, appropriate ways to make the required distinction is the traditional, conservative position that the state must accommodate those citizens, and only those citizens, whose reasons for objecting have the greatest normative weight. The idea is that this constrained practice of accommodation has the best results in the long run and in the aggregate. Exempting only a few, and only those with the weightiest objections, achieves the optimal balance between the reduction of alienation among those subject to the law and the goods to be achieved by that law. In effect, this understanding implies that the state ought to accommodate all and only religious objectors. Given that religion involves the normative amplification of reasons for action, religious objectors will always have reasons located at the upper end of the spectrum of normative weight, and so they all qualify for accommodation. Given again that religious reasons involve normative amplification, they will always have greater normative weight than secular reasons, and so it could be the case that only religious reasons qualify for accommodation.

That said, we are not compelled to make the relevant cut between the religious and the secular. So, for example, we might draw the line at convictions of conscience: if Jane sincerely believes that being conscripted will involve her violating a moral obligation, then the state should exempt her from being conscripted. And the state should do so irrespective of whether she has religious or secular reason for believing that conscription will involve her in violating that obligation. Here again, however, judgments about normative weight seem relevant. For Jane intentionally to kill a human being is a far greater wrong than is her failure to keep a promise to her parents—even a very important one, such as to take care of them late in life. Plausibly, the state ought to refrain from forcing Jane to go to war if she adduces as her reason that going to war will involve her killing innocent human beings. The state need not do so, however, if

Both are superlative reflections on the troubling effects of combat on the moral emotions of soldiers.

Jane adduces as her reason any number of lesser moral requirements, such as the fact that going to war precludes her from taking care of her parents late in life, much less that this prevents her from fulfilling her promise to take her son to Disney World for his thirteenth birthday. Plausibly, some secular reasons of conscience qualify Jane for accommodation and many do not.

What this indicates, I think, is that the state may adopt a policy that discriminates systematically in favor of religion but not uniquely so. Religious objectors as a class qualify for accommodation. The state should accommodate those who adduce religious reasons as a basis for their objecting to a given law, but familiar caveats apply: no accommodation for those who believe that they have a religious duty to sacrifice children. This is by virtue of the fact that religion involves the normative amplification of reasons for action. Secularly grounded objections depend on the particulars. Those who object on the basis of mere preference do not qualify for accommodation: to accommodate those who merely want not to obey a law for which there is a perfectly fine rationale really is to court anarchy. Those who object on the basis of moral requirement might qualify for exemption, depending on the moral requirement involved. Violating a requirement not to kill innocents is one thing, but violating a requirement to keep one's promises is quite another. So it seems that the state should recognize an important asymmetry between the religious and the secular: all of the former qualify for accommodation, but only some of the latter. Religion deserves special, beneficial treatment; treatment that is distinctive, but not unique, to religious objectors.¹⁶⁹

169. As I see it, this asymmetrical policy is the mirror image of a familiar position on another topic in the vicinity, that is, the proper role of religious reasons is political discourse. According to one popular view, religious reasons cannot, as such, play a decisive role in justifying coercive policies in liberal polities. They are excluded from playing that justificatory role as a class. By contrast, secular reasons are not excluded as a class. Some secular reasons can decisively justify state coercion and some cannot. Those that cannot share some feature in common with religious reasons—inaccessibility is a popular candidate, or some other supposed epistemic defect or disability. Those within the privileged class of potentially decisive justificatory reasons share the complementary property: accessibility. I do not believe that there is a coherent and otherwise defensible formulation of this position. I hope that the same is not the case of the asymmetrical view of religious accommodation that I suggest here.

