

Book Review

Brian Leiter, *Why Tolerate Religion?* Princeton University Press, 2013, 187pp., \$24.95, ISBN 978-0-691-15361-2

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One way in which our society ‘tolerates’ religion is by exempting citizens from laws that compel them to act in ways their religions forbid, or that forbid them from acting in ways their religions require. According to Brian Leiter, religious tolerance, in this sense, is *prima facie* morally justified.¹ It is *prima facie* morally justified because religion is a source of claims of conscience, and liberty of conscience is supported on both broadly Kantian and utilitarian grounds. People will likely be happier in a society that allows them a “private space” in which “they can freely choose what to believe and how to live,” and affording each other this space is one important way in which we show respect for each other as persons (15-19). So the book’s title should not be taken as expression of skepticism on Leiter’s part concerning the case for religious tolerance. Leiter affirms the strength of that case in the book’s opening chapter.

But Leiter does question a tendency in our society—and, indeed, all present-day Western democracies—to regard the case for religious tolerance as especially compelling. As he points out, we seem to regard religious claims of conscience, *qua* religious, as deserving of “special moral and legal solicitude” (92). To take just one of many possible examples, the Supreme Court will soon decide whether legal exemptions will be granted to employers who oppose, on religious grounds, the Affordable Care Act’s ‘contraceptive mandate.’ This mandate, employers argue, compels them to subsidize the cost of contraceptive measures that their religions strictly prohibit, and thus compels them to act against religious dictates of conscience. However this issue gets decided, it seems fair to say that there would be no issue at all if the employers had objected to the mandate for moral-philosophical

reasons. One does not have to be religious to hear the voice of conscience, but if one is seeking exemption from the law it certainly helps. As Leiter puts it, under our legal system “individuals with claims of religious conscience can request, and sometimes secure, exemptions from generally applicable laws, an opportunity unavailable to the individual with a ‘merely’ secular claim of conscience” (93).

What should we make of this? Does the state have a special obligation to accommodate religious claims of conscience? This is the principal question Leiter addresses in this lucid, punchy book. In addressing that question, Leiter develops and defends two central theses:

(1) There are *no* compelling moral reasons for treating religion in general, and religious claims of conscience in particular, as *especially* deserving of legal accommodation (Chapters I-IV).

Therefore,

(2) For reasons of fairness, the state should replace current policies which privilege religious over non-religious claims of conscience with policies that give equal consideration to all claims of conscience (Chapter V).

After providing an overview of Leiter’s book, I’ll highlight one aspect of Leiter’s argument that is, in my view, vulnerable to criticism.

The Case Against Religious Exceptionalism

Let us call the prevailing view, and Leiter’s critical

target, ‘religious exceptionalism’. At the outset it is important to stress that Leiter is interested in assessing the availability and strength of *moral* arguments for this view. Leiter is well aware that there are various sorts of non-moral arguments for religious exceptionalism. For example, one could defend religious exceptionalism on legal-constitutional grounds: religious claims of conscience enjoy more authority or status under the law because they are directly connected to the individual’s constitutionally guaranteed right to free exercise of religion. However, there is no constitutionally guaranteed right to free exercise of morality, and so secular-moral claims of conscience lack comparable status and authority. Alternatively, one could defend religious exceptionalism on epistemic or pragmatic grounds: religious claims of conscience are easier to validate, and we recognize “the great practical advantage of a regime that privileges liberty of religious conscience is that it gives courts a more robust evidential base for their determinations” (95). But neither of these arguments bears on the question of moral justification that interests Leiter. The legal-constitutional defense simply pushes Leiter’s question back: why think the free exercise of *religion* is particularly worthy of legal-constitutional protection? As for the epistemic or pragmatic defense, there are various respects in which unjust regimes may have practical advantages over just regimes—such advantages, of course, don’t bear on the moral defensibility of the regimes.

According to Leiter, a successful moral defense of religious exceptionalism would have to show that there is something distinctive about religious belief that warrants, from a moral point of view, special tolerance or respect. So Leiter endeavors, first, to identify the distinctive features of religious belief—features of belief by virtue of which it is appropriately called ‘religious.’ On Leiter’s analysis, which he develops and defends in the book’s second chapter, religious belief is, paradigmatically:

- (i) Belief issuing in *categorical* demands on action—“that is, demands that must be satisfied no matter what...incentives or disincentives the world offers up” (34).
- (ii) Belief which, “in virtue of being based on ‘faith,’” is “insulated from ordinary standards of evidence and justification, [such as the standards] we employ in both common sense and science” (34).

(iii) Belief which involves, in some sense, a “metaphysics of ultimate reality” (47).

(iv) Belief which provides “existential consolation” by rendering “intelligible and tolerable the basic existential facts about human life, such as suffering and death” (52).

Although this is not the place for a critical examination of Leiter’s analysis of religious belief, it will likely strike many readers as the most tendentious and least persuasive aspect of his overall discussion. Why, for instance, should we agree with Leiter that it is part of the very meaning or concept of ‘religious belief’ that it be held on faith, and ‘insulated’ from reasons and evidence? That seems objectionably stipulative. Surely it is possible for a person to hold a religious belief in light of his understanding (however deficient that understanding may be) of reasons and evidence, such that a change in his understanding of reasons and evidence would lead him to revise or even jettison the belief in question. For example, the undergraduate in his first philosophy class might embrace theism after reading Aquinas, only to abandon it later after reading Hume. On Leiter’s analysis, however, any belief that is sensitive to changes in a person’s estimation of reasons and evidence in this way is, *a fortiori*, not a religious belief. It is not a belief held on faith, to be sure, but Leiter claims to be giving us an analysis of ‘religious belief,’ and not ‘belief held on faith.’

Leiter himself seems sensitive to this worry, as he draws attention to an ostensibly rich source of counterexamples to his analysis of religious belief as, *qua* religious belief, insulated from reasons and evidence. He considers whether his analysis is defeated by what he calls the “intellectualist tradition in religious thought,” a tradition, represented by ‘philosophical’ theists like William Paley in the 18th century and contemporary philosophers like Alvin Plantinga and John Finnis, ostensibly devoted to demonstrating the rationality of belief in the existence of God. But Leiter doesn’t think this tradition undermines his analysis of religious belief, since, he claims, philosophical theists “manipulate” reasons and evidence, rather than following the reasons and evidence wherever it leads: “the whole exercise,” claims Leiter, “is one of post-hoc rationalization, as is no doubt obvious to those outside the sectarian tradition” (40). But this response misses the mark. Even if Leiter is right that purport-

edly rational religious belief is really just rationalized religious belief, that is a point about the psychology of religious believers, and not the nature of religious belief. To support his analysis of religious belief, Leiter would have to show that religious beliefs, as he puts it himself at one point, are “*supposed* to be insulated from reasons and evidence, [and] not whether some believers so hold them” (35; my emphasis). As far as I can tell, there is no argument for the former claim in Leiter’s book.

But let us set these concerns about Leiter’s analysis of religious belief to the side. With that analysis in hand, Leiter goes on argue that, from a moral point of view, there is no reason to single out beliefs having features (i)-(iv) for special tolerance and respect (chapters III and IV). Now for Leiter, examining religious exceptionalism from ‘a moral point view’ means adopting one of two general moral perspectives. There is, on the one hand, a Kantian–Rawlsian moral perspective, from which we assess the morality of certain rules—for instance, a rule privileging religious over nonreligious claims of conscience—by asking whether rational persons would agree to those rules in an initial situation of equality (the ‘original position’). There is, on the other hand, the utilitarian moral perspective, from which we assess the morality of certain rules by asking whether a society governed by these rules is likely to be ‘better off’ (according to some familiar measure) than a society governed by different rules. Leiter quickly dismisses the possibility of a Rawlsian argument for religious exceptionalism, claiming that the Rawlsian argument supports liberty of conscience, including liberty of religious conscience, but does not support liberty of religious conscience *in particular* (55).

Leiter’s analysis of religious exceptionalism from the utilitarian perspective is more lengthy and complicated. Here we may omit details and go straight to the upshot of Leiter’s analysis. According to Leiter, we will find the utilitarian case for religious exceptionalism persuasive

[o]nly if we are willing to speculate that the existential consolation functions of religion produce more utility than the harm produced by the conjunction of categoricity and insulation from evidence; and only if we are willing to speculate that the preceding net gain in utility would be greater than the alternative ways of producing

existential consolation without the conjunction of categoricity and insulation from evidence. It is not obvious, I dare say, why one would bite the speculative bullet, absent an antecedent bias in favor of religion (63).

Leiter’s conclusion here might seem disappointing. Couldn’t one respond that it is not obvious why one *wouldn’t* bite the speculative bullet, absent an antecedent bias *against* religion? But Leiter would rightly insist, I suspect, that the burden of proof falls on those who defend religious exceptionalism. It is, after all, a liberal platitude that departures from equality, and equal treatment under the law, require moral justification. Since it is the religious exceptionalist who is defending unequal treatment, he carries a heavier justificatory burden. The tie goes to Leiter.

Thus concludes Leiter’s case against religious exceptionalism: if religious claims of conscience warrant toleration and respect, Leiter contends, it is “because they involve matters of conscience, not matters of religion” (64).

Implications of Rejecting Religious Exceptionalism

If Leiter is right that there is no morally relevant difference between religious claims of conscience and nonreligious claims of conscience, then the worry is that the state acts unjustly by privileging the former over the latter. In effect, then, Leiter’s argument against religious exceptionalism raises the possibility that our toleration of religion—a cornerstone of the liberal political tradition—is, as currently and traditionally practiced, *illiberal*. Absent a moral justification for religious exceptionalism, it seems that prevailing liberal policies treat religious and nonreligious groups unequally on the basis of morally irrelevant differences between them (*viz.*, whether their ‘claims’ are religious or nonreligious). The pressing question becomes: how should claims of conscience be handled in a society that (i) aspires to ‘tolerance’ and respects liberty of conscience, but (ii) recognizes the “lack of any good moral reason for treating the nonreligious unequally with regard to claims of conscience” (93). Leiter addresses this question in the book’s fifth and concluding chapter.

Leiter identifies two general alternatives to religious exceptionalism, each of which, in different ways, ac-

cords equal weight to religious and nonreligious claims of conscience. First, Leiter considers a policy he calls “universal exemptions” (UE), according to which religious and nonreligious claims of conscience receive equal accommodation. Leiter raises three objections to UE. First, adopting UE would be tantamount to granting citizens a “right to civil disobedience” (94). Second, UE would unfairly shift the burdens of justice (the burdens of complying with generally applicable laws) to those who have “no conscientious objection or cannot successfully establish their conscientious claim” (99). Third, adopting UE would undermine social welfare (on the plausible assumptions that general compliance with the law promotes social welfare, and UE would lead to significant non-compliance). Alternatively, the state could adopt a “no exemptions” policy (NE), according to which “there will be no [burden-shifting] exemptions for claims of conscience, religious or otherwise” (101). Although Leiter does not find NE altogether satisfactory—“it will undoubtedly burden religious [and minority] claims of conscience more than nonreligious [and majority] ones,” as the former are more likely to conflict with the law than the latter—NE is, Leiter argues, the best the state can do in light of the moral objections to the policies of religious exceptionalism and universal exemptions. As it turns out, then, the *prima facie* case for tolerating religion, which Leiter laid out in the book’s opening chapter, is by the book’s closing chapter shown to be defeated on grounds of fairness or equality. We cannot, Leiter argues, accommodate religious claims of conscience exclusively, but nor can we accommodate religious *and* nonreligious claims of conscience, and so we should accommodate neither.

But is NE the approach that makes the most sense given Leiter’s arguments against religious exceptionalism? I’m not so sure. At first glance, anyway, it seems a stronger case could be made, on utilitarian grounds, certainly, and possibly also on Kantian-Rawlsian grounds, for a policy we may call “secular exceptionalism,” according to which legal exemptions on the basis of conscience will only be granted to those who can point to ‘public reasons’ for opposing a given law. After all, why should the inability to accommodate religious and nonreligious claims of conscience lead us to endorse a policy in which we accommodate none? Rather, if Leiter is right that we cannot endorse all, let us endorse those more worthy or deserving of accommodation—presumably, on Leiter’s analysis, nonreligious claims of conscience. Granted, from the

utilitarian point of view we lose the social utility Leiter associates with religious tolerance, but we lose that utility when we adopt Leiter’s NE, as well.

Does Leiter’s Argument Prove Too Much?

In arguing that there is nothing about religion that justifies special accommodation, from a moral point of view, Leiter clearly wants to resist the stronger claim that religion isn’t entitled to accommodation at all (91). Leiter characterizes religion in such a generally unsympathetic way, however, that the reader may wonder why Leiter doesn’t embrace the stronger claim. After all, Leiter characterizes religion as a belief system “unhinged from reasons and evidence,” and religious belief as a “potentially harmful brew of categorical commands and insulation from evidence” (62). As for religious believers, Leiter claims they are not just wrong, but *culpably* wrong: they should know better than to hold the beliefs they hold (77-78). Assuming Leiter’s characterization of religion is fair and accurate, the obvious question is: why not, then, single out religion as an *illegitimate* basis on which to grant legal exemptions?² If Leiter is right that religious claims of conscience are singularly baseless and unwarranted, why think they warrant accommodation in the first place?

To Leiter’s credit, he anticipates this worry, asking at one point in his discussion whether his argument against religious exceptionalism might “form the basis of an argument for why there are special reasons *not* to tolerate religion?” (59) But he denies that his argument has this implication, on the grounds that the general moral arguments for tolerating religion—the Kantian-Rawlsian and utilitarian arguments—retain their force despite the (alleged) irrationality of religious belief. For example, Leiter claims that religious belief, although “false” and “unwarranted,” nonetheless has significant social utility. Indeed, Leiter recommends that when it comes to religious belief we adopt a “Nietzschean posture,” and acknowledge that “false or unwarranted beliefs are...necessary conditions of life itself, and so of considerable value, and certainly enough value to warrant toleration” (91). Now although it is not entirely clear, from Leiter’s discussion, in what way (some) false or unwarranted beliefs are supposed to be ‘necessary conditions of life itself,’ it seems plausible to suggest that Leiter is drawing attention to the fact that beliefs with even the poorest epistemic credentials may still have sig-

nificant existential import—they might instill hope, a sense of belonging, meaningfulness, value, a sense of one’s own identity, and so forth. But I wonder whether in acknowledging this fact Leiter weakens his case against religious exceptionalism. After all, it seems reasonable to suggest that *religious* belief is especially likely to have the kind of existential import I am assuming Leiter has in mind. If that’s right, then his response to the charge that his argument against religious exceptionalism proves too much might open the door to the proponent of religious exceptionalism. The religious exceptionalist could argue that regardless of what one thinks about the *epistemic* credentials of religious belief, its (unique?) existential significance in the lives of believers cannot plausibly be denied, and it is *this* value that commands special toleration and respect.

The objection I am (only barely) sketching here might be put as follows. Leiter assumes that a successful defense of religious exceptionalism will have to show that there is a morally significant feature that belongs to all and only religious beliefs (27). But this assumption may be false. A defense of religious exceptionalism might succeed by showing that there is a morally

significant feature of belief—existential import, or the conferral of significant practical benefits on society and the believer—that religious belief is more likely to have, and has to a greater degree, than nonreligious belief (including nonreligious moral belief).

Conclusion

Enough quibbling. *Why Tolerate Religion* is a very good book that should be of interest to a wide range of readers. Leiter addresses a clear and undeniably important question in a philosophically rigorous yet accessible way. The book will generate debate inside and outside academia, and I, for one, am looking forward to Leiter’s future work on the issues he has helpfully and forcefully raised.

Endnotes

¹But only ‘prima facie’—for reasons that will become clear in the course of this review.

²Cf. Michael Stokes Paulsen, “Is Religious Freedom Irrational?” *Michigan Law Review* 2014 (Vol. 112): 1043-67.