

BOOK REVIEW: BRIAN LEITER'S *WHY TOLERATE RELIGION?*

JOSEPH WOLFE

MSc Philosophy and Public Policy, LSE

In March of 2012 I attended the Reason Rally on the National Mall in Washington, D.C., which was intended to be a sort of Woodstock for secularists and religious skeptics. A number of prominent irreligious people spoke, and Richard Dawkins gave the keynote address. I very distinctly remember him urging attendees to mock religious believers in public, because I found the call startling. Religion, Dawkins said, “makes specific claims about the universe which need to be substantiated and need to be challenged and, if necessary, need to be ridiculed with contempt.”

Dawkins and other so-called New Atheists have gone further still. The 1925 Scopes Monkey Trial in the United States overturned a \$100 fine on a Tennessee public school teacher who defended evolution. Some New Atheists want to push for penalties the other way: they say science teachers, physicians, and even applicants to certain science graduate programs should be excluded from these positions if they admit to being Creationists. If they reject cornerstone scientific theories and methodologies, an argument goes, then how can society certify them to teach or practice modern science *qua* scientists?

This sort of approach is what sprang to my mind when I saw the title of Brian Leiter's *Why Tolerate Religion?* (Princeton University Press, 2013). But Leiter—a law professor, blogger and Nietzsche scholar—isn't writing to rouse a crowd. He keeps his University of Chicago Professor of Jurisprudence hat on quite snugly for the duration. In fact, you'd be better off forgetting the title altogether: “Why Tolerate Religion?” is a bit misleading. Instead, the book gives a very narrow and considered argument against granting religious practices special status as an object of toleration in a liberal society, above and beyond other claims of conscience.

Leiter's argument is insightful and provocative. As he notes, a wide array national founding documents, as well as international documents like the Universal Declaration of Human Rights, explicitly protect religious beliefs or religious beliefs and other claims of conscience. Other Western democracies treat religious beliefs as special in practice. But what characteristics do religious beliefs have that make them worth distinguishing from other types of sincerely held beliefs?

A primary test case here is the Canadian Supreme Court's decision in *Multani v. Commission scolaire Marguerite-Bourgeoys*, which upheld the rights of a Sikh student to carry his sharp ceremonial knife, or *kirpan*, to school. Yet, Leiter reasons, it is unlikely that a similar exemption would have been granted to a student whose family had a longstanding but nonreligious tradition of presenting a

potentially dangerous “coming of age” knife, to be worn at all times, to its male offspring.

In Leiter’s distinction, toleration could be practical—meaning we have no effective and reliable way to end a disfavored group’s practices, or it could be principled—meaning that there are moral reasons to put up with those practices even if it were possible to end them. Leiter is happy to grant principled toleration to all conscientious beliefs, including religious beliefs, with the constraint of some version of Mill’s Harm Principle. However, he claims some additional justification is needed for a practice to qualify for exemption from the laws that govern everybody else in a society.

Leiter proposes a definition of religion that involves three major characteristics. First, in his view, religions issue in categorical demands on action, as experienced by believers. Second, they do not ultimately answer to evidence and reasons. Third, religions offer adherents existential consolation, including ways of understanding and bearing suffering and death.

He considers each characteristic from deontological and utilitarian perspectives, principally those advanced by John Rawls and John Stuart Mill. Among others, the discussion includes Rawls’ veil of ignorance argument for protecting liberty of conscience, an argument about enabling individuals to pursue their own conceptions of the good, an argument about the utility of religious existential consolation, and an epistemic argument about the place of religious beliefs within the marketplace of ideas. Leiter also devotes a chapter to Martha Nussbaum’s conception of respect as the basis of religious toleration, where he distinguishes between minimal respect for an individual’s moral right to hold a belief, and affirmative respect for that person’s beliefs themselves.

Leiter concludes that religion succeeds as a belief system that should be tolerated and minimally respected as a claim of conscience. It does not succeed, however, as a system deserving of special consideration over and above other claims of conscience.

Consequently, he favors a No Exemptions approach to claims of conscience within a societal culture, where a practice could violate Mill’s Harm Principle. Thus, he says, when it comes to carrying a knife to school, both the Sikh boy and the other boy should be “out of luck.” The French policy of *laïcité*, however, which has banned students from wearing many religious symbols altogether, is a case of impermissible intolerance. The *hijab* does not convincingly violate Mill’s Harm Principle.

Yet defining religion is an ambitious project in itself, and it isn’t clear that the definition offered in this book can ultimately hold up. Many secular, deontological moral systems would seem to issue in “categorical imperatives,” for instance, and religion is not unique in this regard. Second, those who do not share Leiter’s epistemic views on the relationship between scientific knowledge

and religious beliefs, and the nature of evidence in each, will have plenty of room to dispute his claims. Leiter ignores the fact that many theologians and religious people have rethought traditional views in light of scientific findings—Christians, for instance, who subscribe to the theory of evolution. Third, not only does Leiter give short shrift to the significance of religious existential consolation in many people’s lives, but there are many nonreligious perspectives which could provide consolation to adherents.

With the attempt to offer a categorical definition of religion, Leiter must also set aside the diversity of religions themselves. Each system of religious beliefs might have vastly different relationships with his three characteristics. They might have different relationships with common epistemic and moral arguments advanced in the public sphere. And we might find different religions, or religious practices, worthy of differing degrees of respect.

To be clear, Leiter’s argument is that nonreligious belief systems that share the characteristics of religion are not generally supposed to require special exemptions from the law, while religion is. Yet this point becomes muddled when Leiter suggests that pure liberal neutrality is undesirable. Society, he claims, should pursue a general Vision of the Good with aims like health, public safety, and individual well-being.

It is here that Leiter distances himself from the New Atheists. Though the question “Why tolerate religion” doesn’t seem the type to occur to a religious devotee, he also does not clamor for Dawkins-style reason, science, and secularism as the only acceptable basis for a societal culture. Society might be Muslim or Catholic, complete with religious state schools, so long as each person is free to live according to her own sincerely held beliefs and to attend the school of her choice. As Leiter writes, “British establishment of Anglicanism provides the natural counterpoint to French *laïcité*, as an example of an establishment of a *religious* Vision of the Good that does not impinge on the principle of toleration.” The United Kingdom funds some non-Anglican religious schools, for instance, and other religious institutions and their followers do not have their rights restricted.

Yet it is unclear how, in practice, institutionalizing a particular public religion could be considered anything but a type of special consideration. More than minimal respect for Anglicanism in Britain is implied through its practice by the royal family and the role of the Prime Minister in appointing Church of England bishops. Despite the obvious and significant efforts at equal treatment, the beliefs of religious minorities do not receive the same types of sanction.

While Leiter’s focus in this book is on whether there are principled reasons for special treatment of religion, his stance here does seem to be a nod to the practical and historical dimensions of religious toleration, which he otherwise sets aside. Indeed, it is interesting that he does not consider

the institutional characteristics of religion more strongly, even independently of the weight these institutions have in the public sphere. His decision to set aside the histories of conflict that have given rise to special protections for religious liberties in the first place, meanwhile, leaves open the possibility that pragmatic concerns might be needed to bolster his conceptual account in real policy making.

Nonetheless, *Why Tolerate Religion?* is a densely argued book, and on its narrow central inquiry—Are there principled reasons to treat religious beliefs differently from other claims of conscience?—Leiter makes some interesting clarifications. Though the arguments in *Why Tolerate Religion?* are rich for the irreligious, the book is open for debate from both sides. Its discussion of the contours and limits of religious tolerance make it an insightful and relevant contribution to modern applied philosophy.

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EQUALITY STATEMENT

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philosophy-dept@lse.ac.uk

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