

## Taking Rites Seriously: Law, Politics, and Reasonableness of Faith (notes)

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### I. Faith, Reason, and Jurisprudence

A. Secular Rationalism: Religious beliefs are irrational because they are based on (1) unprovable claims (in the sense that they are the sorts of beliefs that cannot in principle be proven), (2) incontestable claims (in the sense that they are the sorts of beliefs that cannot in principle be falsified), and (3) claims that cannot change or develop because they are insulated from the ordinary standards of evidence and rational justification.

1. The Courts
2. The Legal Scholars

B. Critique of Secular Rationalism

1. SR is epistemically suspect
2. SR begs substantive questions
  - a) Religious claims are unprovable
  - b) Religious claims are incontestable
  - c) Religious claims cannot change or develop because they are insulated from the ordinary standards of evidence and rational justification.
3. SR confuses religion as such with particular religions and beliefs tethered to them, e.g., abortion and sanctity of life, pledge of allegiance case.

### II. From Political Liberalism to Hegemonic Liberalism

- A. The roots of contemporary political liberalism (Rawls, Dworkin, Nagel, etc.)  
Apparent embracing of epistemic modesty and the state's burden of justifying coercion of citizens on contested moral questions.
- B. The rise of hegemonic liberalism, e.g., HHS mandate, forcing religious vendors to participate in liturgical events contrary to their faith. Hegemonic liberalism seems to mimic the extreme perfectionism that political liberals claimed they were fighting.
- C. Have conservatives and liberals switched sides on taking rites seriously?: the strange case of same-sex ceremonies and wedding vendors.
  1. Majority opinions in several recent state court cases reflect this shift from political to hegemonic liberalism, and as a consequence diminish the importance of religious liberty, e.g., cases concerning a baker in Colorado, a photographer in New Mexico, and a florist in Washington state.
  2. Courts seem to not understand the nature of the religious beliefs in question, i.e., for many or most citizens, weddings, like baptisms, bar mitzvahs, burials, and

ordinations, are inextricably tied to a transcendent reality to which these events point and by which they are imbued with meaning and significance.

3. Jefferson: "No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burdened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief." E.g., the fictional cases of Baptist photographer Russell Less and Ms. Stained Glass.

## **Taking Rites Seriously**

### **Recommended Readings**

1. Francis J. Beckwith, *Taking Rites Seriously: Law, Politics, and the Reasonableness of Faith* (Cambridge University Press, 2015)
2. Francis J. Beckwith, "Political Liberalism, Religious Liberty, and Christian Higher Education," Symposium on Religious Liberty and Christian Higher Education, Two Kingdoms Network: A Project of Concordia University, Nebraska (Feb 2017), <https://twokingdoms.cune.edu/symposium-beckwith>
3. Francis J. Beckwith, "Religious Belief, Religious Liberty, and the Art of Taking Rites Seriously." *Liberty Law Forum* (27 May 2016): <http://www.libertylawsite.org/2016/05/27/religious-belief-religious-liberty-and-the-art-of-taking-rites-seriously/>
4. Francis J. Beckwith, "Religious Liberty After Locke," *Liberty Law Forum* (7 November 2016), <http://www.libertylawsite.org/liberty-forum/religious-liberty-after-john-locke/>
5. Francis Canavan, S. J., *The Pluralist Game: Pluralism, Liberalism, and the Moral Conscience* (Lanham, MD: Rowman & Littlefield, 1995)
6. Michael McConnell, "Why Protect Religious Freedom?," *The Yale Law Journal* 123.3 (December 2013), 770-810. Review of Brian Leiter's *Why Tolerate Religion?*
7. Michael Sandel, "Freedom of Conscience or Freedom of Choice?" in *Articles of Faith, Articles of Peace: The Religious Liberty Clauses and the American Public Philosophy*, ed. James Davison Hunter and Os Guinness (Washington, DC: Brookings Institute Press, 1990), 74-93.