

Book Symposium on Cécile Laborde's *Liberalism's Religion*
Guest Editor: Matteo Bonotti

The Duties of Political Officials in a Minimally Secular State

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ABSTRACT *Cécile Laborde's important book, Liberalism's Religion, attempts to develop an ethic governing political officials that requires that they only use, and be responsive to, accessible reasons. Laborde's accessibility requirement articulates her unique approach to the role of religion in liberal politics. This article challenges Laborde's accessibility ethic on three grounds: (1) the ethic suffers from a lack of idealisation, (2) there is little reason to prevent inaccessible reasons from defeating coercion, and her ecumenical approach to exemptions recognises this in effect, and (3), the question of whether the accessibility ethic is true is partly empirical, but Laborde does not supply us with an adequate empirical argument.*

The 1980s and 1990s witnessed a blossoming debate about the proper role of religion in the public sphere, especially in philosophy and political theory.¹ The approach to religion and politics that provoked the debate was a kind of familiar liberal secularism, which claims that the proper role of religion in the public life of liberal democracies is limited. Religious reasoning and argument should be subservient to secular, shared reasoning.

Over the last thirty years, things have changed. Most of the original advocates of what have often been called *doctrines of restraint*, principles of civic ethics that govern the reasons persons may act upon and be motivated by in politics, have greatly weakened their initial principles.² It is more common now to encounter religion and politics theorists focused on other topics, such as religious exemptions, religious establishment, and the duties of political officials.

Cécile Laborde's important new book, *Liberalism's Religion*, follows this trend. Laborde rejects doctrines of restraint for citizens, allowing ordinary citizens to appeal to whatever reasons they like in politics.³ But she spends a great deal of time exploring the case for religious exemptions, cataloguing and defending some varieties of religious and secular establishment, and developing a doctrine of restraint for political officials. This is all welcome. To further encourage religion and politics theorists to focus on these topics, I want to explore some of the subtleties in Laborde's ethic for political officials, especially with regard to the kinds of reasons that political officials may appeal to in various political contexts.

Laborde defends what has come to be called an *accessible reasons requirement* on which officials in their public activities must appeal to reasons that, while not accepted

by all, all can evaluate and potentially accept according to common evaluative standards.⁴ For instance, one can appeal to scientific theories in policy-making that, while not the only reasonable scientific theory in the empirical literature in that field, are grounded in reasons and modes of inquiry that all can appreciate as valid. Citizens can then be legitimately coerced in accord with accessible reasons even if they do not share them. The duty of political officials, therefore, is to appeal only to reasons accessible to citizens in justifying laws and policies.

I think Laborde's *accessibility ethic* for political officials is on the right track in certain respects, but her case for the accessibility ethic is incomplete unless we introduce three important distinctions (i) between public justification and public deliberation, (ii) between discursive ethics and motivational ethics, and (iii) between restraint on proposals and restraint on reasons. I explore these distinctions in Section 1. In Section 2, I outline Laborde's case for her accessibility ethic and show that her argument depends on ambiguities regarding the distinctions I outline. In Section 3, I attempt to construct a superior argument for the accessibility ethic that I think is congenial to Laborde's project, though, in Section 4, I conclude that the argument fails.

1. Justification, Deliberation, and Restraint

The goal of public reason liberal views like Laborde's is to establish that the coercive powers of the state are mutually justifiable. Governments are legitimate when and only when each person has sufficient justificatory reason to accept the government's exercises of political power. Notice that this is different from insisting that *state officials engage in discursive acts*. That is, justification *for* the public is distinct from acts of justification *to* the public. A law can be publicly justified for citizens even if no one bothers offering citizens the reasons that justify the law. Public deliberation and public justification are not the same thing. Deliberation reveals what is justified, or it changes the minds of citizens so that the reasons offered to them are accepted and so become justificatory.⁵

We can also distinguish between domains of activity that political officials engage in. In some cases, political officials engage in discussion or *discourse*. They might speak to citizens, or to other officials. One might formulate an ethic governing what sorts of reasons and rationales that political officials can use in those contexts. In other cases, political officials act to promote or pass or repeal legislation, and so are *motivated* by certain kinds of reasons and rationales. We can therefore formulate an ethic to govern discourse, motivation, or both.

Third, we can distinguish between whether restraint should govern *the reasons one uses* in discourse or motivation and whether restraint should govern *the proposals one supports*. We might develop an ethic that allows an official to act on whatever reasons she likes, but that constrains which proposals she can permissibly defend in public. Or we might insist that she only act upon and offer certain kinds of reasons for whatever proposals she decides to support. We can, therefore, distinguish between *reason restraint* and *proposal restraint*.

My view is that we can settle which forms of restraint should apply to officials based on a conception of what can be *justified for* citizens. The point of the liberal state, and the coercion it deploys, is to use coercion in ways that appeal to the reason of all and

to avoid coercing persons on bases they have sufficient reason to reject. An ethic governing the behaviour of political officials should be judged by whether political systems where officials comply with the ethic yields a superior spread of publicly justifiable laws than systems where the ethic does not apply. The case for restraint is thus partly empirical, since it is ultimately an empirical matter whether certain patterns of behaviour yield publicly justifiable laws.

2. Ambiguities in Laborde's Account

On all these matters, I am not sure where Laborde stands. To see this, consider several passages from the book. Laborde says that public reason liberalism grounds 'the legitimacy of the liberal state on its ability to justify coercive laws in terms that those affected by them can reasonably be expected to accept.'⁶ She claims that 'The *justifiable* state appeals to the idea that laws should be justified only by reasons that are accessible to citizens.'⁷ And her first principle of minimal liberal secularism is this: 'When a reason is not generally accessible, it should not be appealed to by state officials to justify state coercion.'⁸ Laborde also analogises public reasons, that is, reasons that can justify coercion, with 'official languages,' since public reasons 'are the vocabulary, grammar, and references of the shared political language of particular societies.'⁹

In the first passage, it looks like Laborde thinks that the legitimacy of the liberal state depends on the capacity of state actors to have the *ability to engage in discursive acts*. These discursive acts justify state coercion because the reasons offered to members of the public have some normative purchase for them based on their own evaluative commitments. In other words, discursive acts matter because they cite reasons that justify. In the second passage, Laborde notes that a justifiable state must be based in the idea that laws should be 'justified only by [accessible] reasons' which could mean that state actors must engage in discursive justification or that coercion-justifying accessible reasons *exist* even if they are not mentioned. And while, in the third passage, Laborde states her first principle of minimal liberal secularism in terms of what reasons state officials can appeal to, the best explanation of the truth of that principle is that inaccessible reasons are poor justifications for state power and coercion. Finally, in the fourth passage, Laborde stresses the discursive dimensions of public reasons in a way that suggests but does not imply their justificatory force.

My sense is that Laborde not only wants to place restrictions on how political officials should conduct public discourse, she wants political officials to be *sincere*.¹⁰ They should not only *mention* accessible reasons but try to be motivated by them. But I will not attempt to press her accessibility ethic into offering motivational constraints. This is because Laborde could allow that officials should offer reasons that they themselves do not think are good reasons, but that their constituents think are good reasons.

Next, it looks as though Laborde adopts reason restraint and only proposal restraint by extension. The accessibility ethic governs which reasons officials can appeal to in their public activities. But I assume that Laborde also thinks that officials should refuse to support proposals that they think cannot be justified in terms of accessible reasons. So the same considerations that motivate reason restraint will also apply to proposals in some way or another.

Given these ambiguities, Laborde's accessibility ethic is perhaps misapplied and under-defended. If we can classify Laborde's ethic with these distinctions, however, we can explain when the accessibility ethic applies and why we should adopt that ethic.

3. Ambiguities Resolved

As I read Laborde, the ultimate principle of legitimacy is that state laws and activities be justified for citizens according to accessible reasons. At least, state laws and activities can be imposed on citizens so long as those laws and activities can be justified according to accessible reasons that citizens may not share, but, given the accessibility of the reasons, cannot reasonably reject. As Laborde notes, 'It is one thing to be coerced in the name of reasons one does not understand ... and quite another to be coerced in the name of reasons that one does not agree with but can engage with.'¹¹ Accessibility is grounded in the importance of the fact that state coercion seems much more legitimate when it is grounded in reasons that those coerced can at least assess. So far, then, we're looking at a principle of *accessible justification*. States are legitimised by accessible reasons.

I will assume, therefore, that the case for any ethic governing official behaviour has an instrumental aspect: when officials follow the ethic, the political system is more likely to impose laws and policies that are justifiable in terms of accessible reasons. It would be odd for Laborde to claim that we should impose an ethic on officials that would undermine or not advance the goal of justifiable law.

Laborde might ground discursive principles directly in the common political values of respect, freedom, equality, etc. Perhaps these values have immediate implications for how to treat others in dialogue or discussion. But I don't think Laborde wants to go this route because she rejects restraint for citizens, and presumably the deontological arguments often used to ground restraint for officials apply to citizens. Laborde instead thinks that restraint is a 'scalar' duty that applies more strongly to people as they have more political power.¹² I assume that the motivation for this duty is that those with more political power have a greater impact on which laws and policies are imposed.

Consequently, I assume that the accessibility ethic is going to apply to the discursive acts that state officials engage in because their discursive acts affect which laws and policies are imposed on citizens. Their words will affect citizens when officials try to justify policies to those citizens. If citizens hear that the law or policy can only be justified on a sectarian, reasonably rejectable basis, this is likely to produce a number of bad effects, such as resentment, lower political trust, and political instability. But note that speaking to the public is a small part of what officials do and often has no effect on the content of the law; it therefore does not affect the basis on which citizens are coerced. Consequently, it seems natural to apply the accessibility ethic to official behaviour that affects which laws and policies are in effect. I conclude that the accessibility ethic should apply to most, if not all, of the efficacious policy-making activities that an official engages in. The accessibility ethic should apply to legally and politically consequential communication and motivation.

Finally, it is plausible that proposal restraint will be just as important as reason restraint in determining when citizens are coerced. We can imagine, for instance, a relatively mum politician who does not enjoy giving public speeches. She prefers to speak with constituents in small groups behind the scenes and enjoys the policy formation process far more than engaging in deliberation. She may not cite reasons very often, but she does formulate and impose proposals regularly. I assume that since Laborde wants law and policy to be publicly justifiable, she will want the mum politician to only advocate laws and policies that can be justified in terms of accessible reasons.

In sum, if we adopt an accessibility requirement on the reasons that justify coercion, then we should probably adopt an ethical principle of restraint on political officials that requires that they deliberate and act upon accessible reasons, and only support proposals that they think are justifiable in terms of accessible reasons.

4. Challenges to Laborde's Accessibility Ethic

I now raise three challenges for Laborde's accessibility ethic: (1) the ethic suffers from a lack of idealisation; (2) there is little reason to prevent inaccessible reasons from defeating coercion, and her ecumenical approach to exemptions recognises this in effect, and finally, (3) the question of whether the accessibility ethic is true is partly empirical, and Laborde does not supply us with an adequate empirical argument.

(1) Laborde says that 'for me, public reasons are reasons that actual (not idealized) publics find accessible.'¹³ It appears from this passage that public reasons are all and only those reasons that normal, real-world persons regard as evaluable or assessable by common evaluative standards. They do not have to accept the reasons, just jointly see the force of the reason according to modes of inquiry widely regarded as valid.

The most natural reading of Laborde's claim is that accessible reasons are those that real people regard as evaluable by common evaluative standards. But the difficulty with 'populist' accounts of justificatory reasons like this one is that members of the public are often deeply confused and uninformed about political matters and in some cases are deeply biased against laws and policies that they would endorse if they reasoned effectively.¹⁴ If we fail to idealise, we cannot show why the public is in error in failing to recognise some considerations as accessible or refusing to reject as accessible claims that *in fact* cannot be evaluated according to common evaluative standards. Consequently, law and policy will be structured by gross ignorance and bias, and that does not seem appropriate for public *reason* liberalism.

Laborde might reply that she only meant to argue that accessible reasons are those that real persons *find* accessible after some unspecified amount of reasoning. This would contrast with an idealised public whose members are in no way representative of real persons, as we find on Jonathan Quong's version of political liberalism.¹⁵ Thus, what real people find accessible is determined by some account of idealisation. This, I think, is a much more plausible position, but it raises the question of which account of idealisation best fills out what the public finds accessible. And, as a result, it is hard to know what the accessibility ethic would actually require.

(2) Laborde does not provide a satisfying argument for an accessibility requirement on justificatory reasons. Her arguments in favour of accessibility are meant to motivate

an accessibility ethic for political behaviour, and not an account of why accessible reasons should figure into public justifications. I have elsewhere defended an intelligibility requirement on reasons,¹⁶ sometimes based on arguments that Laborde rejects,¹⁷ and I do so partly on the ground that public reason liberals should allow comprehensive or private reasons to at least figure into the defeat of laws. That means an intelligible reasons requirement will lead to the defeat of some legislation and ground legal exemptions in other cases. Laborde can answer my concern with ease because she defends a remarkably expansive exemptions regime of the sort intelligibility theorists find congenial. Despite some important differences in justificatory structure, then, I believe both views yield broad exemptions regimes. The difference between Laborde and me is that she thinks accessible reasons are the only justificatory reasons and that religious exemptions are grounded on some other basis than the diverse reasons of citizens. But even Laborde allows appeals to a person's social identity, which I think is the prime source of intelligible defeaters for laws, and so she in effect acknowledges the normative force of private, intelligible reasons. This should weaken Laborde's opposition to an intelligible reasons requirement. I expect Laborde to nonetheless resist an intelligible reasons requirement in order to prevent the defeat of laws that she believes are essential to the liberal state. But it would be helpful for Laborde to elaborate on that concern to improve the defence of her accessible reasons approach.

(3) Whether an ethic helps to ensure that officials only impose laws justifiable by accessible reasons is, again, a largely empirical question. Perhaps following the accessibility ethic will ensure that publicly justified law and policy is imposed, but perhaps not. It might well be that an open-ended policy process, with no restraint on political officials, will help to ensure that laws and policies are publicly justified in accord with an accessibility requirement. The interaction between the uses of private reasons by political officials may cancel one another out, leaving only publicly justifiable laws and policies in place. Permitting the use of private reasons might also allow political factions to make sectarian alliances that yield legislative compromises that are publicly justified to most of the public based on accessible reasons. Without some account of how the accessibility ethic will work in practice, the case for it is lacking.

In conclusion, Laborde's accessibility ethic is attractive in various ways, but once we draw some important distinctions, it becomes clear that her defence of the accessibility ethic is incomplete.

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NOTES

- 1 Christopher Eberle & Terence Cuneo, 'Religion and political theory' in E.N. Zalta (ed.) *The Stanford Encyclopedia of Philosophy* (Winter 2017 Edition), URL =<<https://plato.stanford.edu/entries/religion-politics/>>.
- 2 Robert Audi, *Democratic Authority and the Separation of Church and State* (New York: Oxford University Press, 2011); Gerald Gaus & Kevin Vallier, 'The roles of religious conviction in a publicly justified polity: The implications of convergence, asymmetry and political institutions', *Philosophy and Social Criticism* 35 (2009): 51–76; Jürgen Habermas, 'Religion in the public square', *European Journal of Philosophy* 14 (1996): 1–25; John Rawls, 'The idea of public reason revisited' in S. Freeman (ed.) *Collected Papers* (Cambridge, MA: Harvard University Press, 1999), pp. 573–615.

- 3 Cécile Laborde, *Liberalism's Religion* (Cambridge, MA: Harvard University Press, 2017), p. x.
- 4 For discussion of accessibility, see Kevin Vallier, 'Against public reason's accessibility requirement', *Journal of Moral Philosophy* 8 (2011): 375–398.
- 5 I distinguish between deliberation and justification and introduce the three distinctions below in Kevin Vallier, *Liberal Politics and Public Faith: Beyond Separation* (New York: Routledge, 2014).
- 6 Laborde op. cit., p. 92.
- 7 Laborde op. cit., p. 8.
- 8 Laborde op. cit., p. 120.
- 9 Laborde op. cit., p. 121.
- 10 Micah Schwartzman, 'The sincerity of public reason', *Journal of Political Philosophy* 19 (2011): 375–398.
- 11 Laborde op. cit., p. 122.
- 12 Laborde op. cit., p. 125.
- 13 Laborde op. cit., p. 121.
- 14 Christopher Eberle, *Religious Conviction in Liberal Politics* (New York: Cambridge University Press, 2002), pp. 198–201.
- 15 Jonathan Quong, *Liberalism without Perfection* (New York: Oxford University Press, 2011), pp. 137–160.
- 16 Vallier 2014 op. cit., chapter 4.
- 17 Laborde op. cit., p. 280, fn. 28.