State imposition of religious orthodoxy is widely held to constitute an illegitimate exercise of political authority. According to the conventional view, free and equal persons enjoy not only *freedom of religion*, which is the liberty associated with the active pursuit of religious heterodoxy; they are also entitled to *freedom from religion*, which is the negative liberty associated with the absence of state-imposed religious orthodoxy. Thus, it is not uncommon to find courts, scholars, politicians, and laypeople expressing the thought that freedom of and freedom from religion are deeply connected principles—that whatever it is that gives rise to freedom of religion seems also to underwrite the principle of freedom from religion.

In spite of its conventional appeal, however, the thought that the two freedoms can hang together in a coherent way has so far remained puzzling in theory. Thus, there exists a gulf between the lived experience, moral and legal, of these freedoms and the theory that explains this experience. There are, in fact, three separate worries concerning the possible unity in question. The first two are that the principles of freedom of religion and freedom from religion are, separately, incoherent or, at best, redundant. The third is the concern that even given that each of these freedoms is a freestanding principle of political morality, they resist theoretical unity, in which case achieving reconciliation is contingent upon purely pragmatic considerations that, typically, take the form of *ad hoc* balancing (and, to this extent, render reconciliation unstable in principle).

I devote these pages to the worry concerning freedom from religion. My argument develops two main claims. Negatively, I seek to repudiate the core of the case against the redundancy of a principle of freedom from religion. The centerpiece of my argument at this stage is that the two prevailing theories of freedom from religion fail...
to take seriously the political circumstances—viz., democratic politics—under which claims for freedom from religion arise. Affirmatively, I shall seek to develop an account of freedom from religion—I do that by elaborating the democratic conception of freedom from religion. On the proposed account, freedom from religion is a freestanding moral principle, by which I mean a principle that secures political freedom from infringements that are *distinctively* associated with religion. The point of freedom from religion, I shall argue, is the protection of citizens from being (illegitimately) governed by public laws that are, nonetheless, grounded in religious reasons. Its basic point is to sustain political solidarity among citizens—who stand in the relation of co-rulers to one another—rather than among mere subjects—who share the status of being ruled together by another.

I. Freedom From Religion: Two Theories, One Neglect

A. Setting the Stage: The Theoretical Challenge

I shall seek to show that contemporary invocations of the principle of freedom from religion purport to generate moral and legal rights (against state imposition of religious orthodoxy) far exceed what the prevailing theoretical accounts of this principle could possibly underwrite. This mismatch between theory and practice, moreover, is merely a surface symptom of a deeper deficiency that these approaches hold in common—that they purport to develop accounts of freedom from religion that can be appreciated by resort to abstract liberal ideals that remain fundamentally pre-democratic.

To set the scene, consider the two generic cases against which claims for state violation of freedom from religion often arise: First, laws that render prohibited an otherwise permissible activity on account of its inconsistency with the dictates of religion, such as Sunday closing laws insofar as they deem illegal commercial activities on Sundays;

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and second, laws that express government’s favoritism of a particular religious belief or of religious faith in general. Examples include fixing a crucifix to the walls of public school classrooms as well as many other cases involving the “endorsement” of religion by government fiat.

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Both cases are of a piece insofar as they feature legal norms that draft persons into the service of sustaining the conformity of the public sphere with the dictates of religion (orthodox or otherwise). They differ in that the former does the drafting *directly*, that is, requiring persons to act in conformity, though not necessarily in

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3 The endorsement test was first introduced by Justice O’Connor, as a clarification of the *Lemon* test, in her concurring opinion in *Lynch v. Donnelly*, 465 U.S. 668, 687-688 (1984) and implemented by a majority of the Supreme Court reviewing the constitutionality of displaying religious symbols in government buildings in *County of Allegheny v. ACLU*, 492 U.S. 573, 592-593 (1989).
compliance, with religious commands. The latter, by contrast, does the drafting *indirectly*, which is to say persons are forced to support—either through tithing or simply by not interfering with—the government's effort to display religious favoritism. But other than that, the two generic cases feature a similar moral and legal complaint—that the state confronts the non-religious people in a way that is disrespectful of their rights not to be subjected to public laws that are grounded in religious convictions.

Now, the main theoretical challenge that these two types of cases raise is this. Public laws seeking conformity with religious dictates need not amount to coercing anyone to practice the particular (or any) religion whose dictates lie beneath the relevant legal norm. Likewise, these laws do not compel the affirmation of a religious conviction. Thus, in the former case, both employers and employees are not coerced to observe (or affirm) the Lord’s Day. Nor are they forced to abstain from a self-imposed (religious or non-religious) duty to work on Sundays. Instead, Sunday closing laws merely restrict their economic freedom. The same is true in the latter case, for a state’s favoritism of religion does not convert taxpayers into religious devotees. Nor does it compel students attending public schools decorated with crucifixes to engage in religious practice of whatever sort.

Against this backdrop, the theoretical challenge is that of explaining how it is that both cases are, nonetheless, a form of illegitimate coercion by virtue of subjecting the non-religious to legal norms grounded in religious reasons. Thus, the case for (or against) freedom from religion depends on showing that grounding public law in religious reasons in particular renders these laws fundamentally *private* ones, in which case the enforcement of these "laws" amounts to nothing more than engaging citizens in the mode of brute and, indeed, arbitrary imposition. As I shall seek to argue, the two leading theories of freedom from religion cannot make good on this showing.

**B. Freedom From Religion as Freedom Of Religion**

On this account, freedom of religion includes not only the liberty to engage in religious practices, but also the liberty to disengage oneself from these practices, either partially or entirely. This expansive reading of freedom of religion begins with the proposition that no genuine freedom to exercise religion can be had without holding the right to choose what religion to exercise in the first place. And holding this right, the argument goes, means that persons, religious and *otherwise*, must be at

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4 As I shall explain in the main text below, the difference between an obligation to act in conformity, rather than in compliance, with religious beliefs has important implications for freedom from religion.
5 The claims typically raised in petitions against Sunday closing laws are not cast in terms of state interference with an ethical or religious duty to work on Sunday.
6 This is not to say that economic freedom is not important or even that it is less important than freedom from religion. Rather, the point of my argument is that an infringement of the former freedom should not be confused with infringement of the latter freedom.
liberty, at any given moment, to decide whether or not to adopt a religious course of action. For this reason, coercing a non-religious person to comply with a religious practice (say, to attend church on Sunday) violates this person’s freedom from religion precisely because it denies her freedom of religion, which is to say the right to choose for herself whether this practice is worth her allegiance.\(^7\)

To be sure, this way of grounding freedom from religion in the principle of freedom of religion does not rest on the dubious assumption that non-religious persons engage in an ongoing deliberation about whether or not to join a religious sect (and, by implication, about whether or not to attend church on Sunday or go to work instead). Rather, it assumes, with John Locke, that sincere faith is constitutive of the very possibility of any act to count as an exercise of religion. Accordingly, coercion in the form of compelled submission to religious command is inimical to freedom from religion because it thereby deprives individuals of the freedom essential to practicing religious belief, which is the freedom of religion.

I shall set aside the merits of this account of freedom from religion. In particular, I shall not discuss the question of whether the value of sincere belief warrants a sufficiently broad prohibition against all forms of state imposition of religious orthodoxy, whether in the form of straightforward oppression, or in the milder form of providing persons with incentives to adopt a religious way of life. Instead, I shall only focus on the gulf between this theory and the contemporary practice of the principle of freedom from religion.

Certainly, the theory in question fails entirely to account for the two generic cases mentioned above as exemplified by a certain version of Sunday closing laws and by some instances of public display of religious symbols. To repeat, the argument for the violation of freedom from religion that these cases often raise does not turn on any accusation that the state persecute, coerce, or even merely encourage persons to comply with the dictates of religion in some or all aspects of their practical affairs.\(^8\) And although in some of these cases the state does encroach on their freedom (say, of contract or of occupation), none implicate the state in the business of directly or indirectly requiring persons to practice religion, in part or in its entirety.

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\(^7\) My reconstruction of the account of freedom from religion in terms of freedom of religion shows that the critique leveled by Sapir and Statman against this account is misplaced. According to Sapir and Statman, freedom of religion does not include freedom from religion insofar as the latter purports to protect the interest of the non-religious in autonomy (or even negative liberty). See Gidon Sapir and Daniel Statman, "Why Freedom of Religion Does Not Include Freedom from Religion," *Law & Philosophy* 24 (2005): 467, 489-494. Contrary to Sapir and Statman, I show in the main text that the reconstructed account does not appeal to negative liberty *simpliciter*, but rather to the distinctive freedom associated with the exercise of religion by providing an expansive interpretation of the content of freedom in connection with the exercise of religion.

\(^8\) Of course, I do not deny that some government programs (such as public displays of religious symbols) may carry positive effects for some, and perhaps even that this is their purpose, that is, to produce state-based religious propaganda. That said, the case for the violation of freedom from religion does not rest on the happenstance of these effects, which depends, to an important extent, on a causal or psychological argument.
C. Freedom From Religion as Liberty of Conscience

This account partially replicates the previous account's attempt to explain away the principle of freedom from religion, since it, too, reduces the principle under consideration to another principle, that is, freedom of conscience. Thus, a claim for the violation of freedom from religion is, in essence, an assertion of a right to enjoy one's liberty of conscience. And, our lived experience to the contrary notwithstanding, this is just another way to concede that there exists no such freestanding principle of freedom from religion.

But the liberty of conscience account may also depart substantially from its predecessor. More specifically, whereas the account that grounds freedom from religion in freedom of religion purports to defend the former by reference to religion in particular, the argument from conscience grounds freedom from religion in general moral terms that are not necessarily, and even not directly, distinctive of religious belief (or disbelief). Indeed, disobeying a state imposition of religious orthodoxy is simply one case among many of adhering to one's own set of deep beliefs and commitments, religious or otherwise.

Normally, proponents of the move from freedom from religion to liberty of conscience are forced to grapple with an embarrassingly immense gap. Rather than being swallowed by the right of conscience, the principle of freedom from religion (and, likewise, freedom of religion) figures prominently in legal practice and in the lived experience of the modern state, more broadly. Attempting to address this challenge—viz., that the argument from conscience explains away what it is intended to explain, namely freedom from religion—proponents of liberty of conscience offer two contrasting responses. First, some proceed by telling a causal story, the point of which is to introduce new and contingent reasons that could justify special protection of liberty of conscience in matters of religious belief and disbelief, as opposed to all other matters. For instance, the story could emphasize that religious oppression has...
on balance far more adverse consequences than all other cases involving coercing a person to act against the commands of her conscience.\textsuperscript{12} Second, a diametrically opposite response is to follow the argument from conscience to its logical conclusion—that is, to articulate a revisionist account of freedom from religion (and freedom of religion as well). On this account, liberty of conscience’s historical cradle, the principles of freedom offrom religion, is just that: an historical contingency. To overcome this contingency, we are told that it must be the case that all moral and legal claims for the violation of liberty of conscience ought to be treated alike.\textsuperscript{13}

Although these two contrasting responses to the gap between the argument from conscience and the principle of freedom from religion are helpful as far as they go, they do not go far enough. In particular, none of them can make sense of the two generic cases mentioned above—that is, they run afoul of settling a reflective equilibrium between the theory and the lived experience of freedom from religion. This is so for two main reasons. To begin with, as mentioned above, the morality of liberty of conscience is over-inclusive in the sense that it cannot account for the distinctive place of religious belief (or disbelief) in cases in which the state purports to adjust the public sphere in the light of the dictates of religion. In principle, there should not be a difference between a state program motivated by religious persuasion and one which expresses commitment to extra-religious belief systems. To the extent that they authorize the use of coercion in furtherance of their respective goals, both programs may give rise to claims of equal moral weight for the violation of liberty of conscience. The argument from conscience, therefore, renders an independent principle of freedom from religion redundant.

Moreover, and more dramatically, liberty of conscience is also under-inclusive in a way that brings me back to the centerpiece of my argument at this stage, which is the theoretical challenge of casting contemporary invocations of the principle of freedom from religion into sharp relief. Indeed, the two generic cases in question involve public laws that track the dictates of religion but that do not coerce an affirmation of, let alone a participation in, a religious practice. Thus, even if liberty of conscience could adequately justify the need for a special protection of religious conscience, the contemporary resort to the principle of freedom from religion would still remain alarmingly mysterious.\textsuperscript{14} As already explained, the lack of compelled affirmation of


\textsuperscript{14} There is another reason (which is related to my argument indirectly only) for thinking that liberty of conscience is inadequately narrow—some claims for the violation of freedom of religion cannot be explained by reference to the right of any particular individual. They sometimes invoke the right of a religious group as opposed to, and even against, the religious conscious of their members, taken severally. See, most recently, \textit{Hosanna-Tabor Evangelical Lutheran Church and School v. EEOL}, 565 U.S. ___ (2012).
or participation in religious practices deprives of the argument from conscience its natural appeal.

Finally, it turns out that neither freedom of religion nor liberty of conscience can make good on the theoretical challenge of explaining what it is about the principle of freedom from religion that warrants a freestanding place in the constitutional architecture of the modern state.15

II. Identifying the Source of the Problem: The Democratic Neglect

In this stage of the argument, I shall seek to explain why the two leading theories discussed a moment ago fail to account for the lived experience of freedom from religion. In particular, I shall argue that both proceed on the false assumption that the main (or even only) reason for concern about illegitimate imposition of religious orthodoxy by the state is that of violating fundamental—viz. pre-political—human rights, especially the rights to liberty of religion or conscience. This assumption is false insofar as it completely neglects the possibility that illegitimate state imposition of religious orthodoxy can also have a political source—that religious imposition of religious orthodoxy may be democratically illegitimate. The gulf between the lived experience of freedom from religion and the failed theories of this freedom reflects the distance between two notions of legitimate authority: The democratic and the liberal ones, respectively.

To see precisely what keeps the theory and the practice of freedom from religion apart, and to take one step forward toward a successful integration, it will prove helpful to begin with the distinction between the concept of freedom from religion and its various conceptions.16 The concept of freedom from religion picks out the problem of explaining the legitimacy of state imposition of religious orthodoxy. It emphasizes that the core problem that needs to be addressed by this concept is that of political legitimation—how political authority in matters of religious concern is possible. The various conceptions of freedom from religion provide different theories of the concept—that is, each conception consists of a set of principles that purports to resolve the problem picked out by the concept. As I shall now seek to show, the two accounts of freedom from religion discussed above ignore the concerns of political

15 The modern state may surely mean different things in different contexts. I use the adjective modern to emphasis a political community that adheres to some version of state/church separation. On this view, the version of state/church separation adopted by the U.S. Constitution's First Amendment is not the only one currently invoked by modern states. For an intriguing account of some of the variety of such versions, see James Q. Whitman, "Separating Church and State: The Atlantic Divide," in Law, Society, and History: Themes in the Legal Sociology and Legal History of Lawrence M. Friedman, eds. Robert W. Gordon and Morton J. Horwitz (Cambridge and New York: Cambridge University Press, 2011), 233.
legitimation that are distinctively associated with democratic rule, properly conceived.\textsuperscript{17}

Both of these accounts are best understood as expressing a classical liberal ideal of political legitimation. On this view, the baseline against which the liberal conception of freedom from religion determines the terms of the legitimate exercise of political authority is that of fundamental human rights. In the case at hand, two such rights suggest themselves: freedom of religion and liberty of conscience. The state enjoys the legitimate power to enact public laws concerning religion only insofar as the laws fully respect these two rights.

To be sure, it might turn out that these laws feature an illegitimate exercise of political authority after all, but this will be so only if other rights, but not those of religion or of conscience, are being transgressed. For instance, Sunday closing laws might not pass the liberal bar of political legitimacy on account of their encroachment on economic freedoms (such as freedom of contract or of occupation). But, once again, these laws—or all other laws falling within the two generic cases, more generally—do not raise the specter of illegitimate religious coercion insofar as the question of legitimation is determined by reference to the liberal conception of freedom from religion.

Of course, state commitment to protecting fundamental rights is no doubt crucial for establishing its legitimate authority, including in the context of state/church relations. However, this alone could not possibly provide a satisfactory account of the problem of political legitimation as we know it, which is that democracy, characterized as a political practice of collective self-rule, generates an independent source of legitimate authority.\textsuperscript{18}

Determining what counts as illegitimate (religious) coercion by reference to fundamental rights leaves unaddressed the existence of democratic political authority

\textsuperscript{17} Before getting on to these two accounts, it will be apt to mention that a cluster of conceptions of freedom from religion can also be characterized by their sectarian origins. For them, the legitimacy of state imposition of religious orthodoxy depends on divine authority. The question of whether or not to impose must be resolved by reference to the best (or true) interpretation of what state allegiance to God requires. And here there can be—as history actually shows—different answers. These answers span the full range from the unrelenting power of religious persecution (as in the Inquisition of the Middle Ages) to Post-Reformation's commitment to an increasingly broader conception of toleration (mainly between Protestant sects at first followed by a gradual extension of toleration toward Jews and Catholics, among others). For the former, see David Nirenberg, Communities of Violence (Princeton: Princeton University Press, 1996). For the latter, see John M. Barry, Roger Williams and the Creation of the American Soul (London: Viking, 2012); see also Martha Nussbaum, Liberty of Conscience: In Defense of America's Tradition of Religious Equality (New York: Basic Books, 2008). The two accounts of freedom from religion discussed above—the freedom of religion and the liberty of conscience accounts—may be grounded in some of these sectarian conceptions of freedom from religion (such as those originating from the theologies of Luther and Calvin and culminating in the sectarian theory of liberty of conscience advanced by Roger Williams).

\textsuperscript{18} This abstract characterization of democracy requires further elaboration which I intend to sketch in Part III below.
and hence overlooks the threat of illegitimate coercion that can distinctively arise from democratic politics, badly done (as will be explained below). Indeed, the liberal conception of freedom from religion is so far removed from the democratic structure of the modern state that its normative materials fit perfectly with an explanation of the proper bounds of political authority in the matter of religion in the early modern, pre-democratic state. It is not surprising, therefore, that this conception reached its intellectual maturity, as it were, in roughly speaking a pre-democratic age, almost one century before the great revival of republicanism.19

At any rate, whatever its peculiar history is, the liberal conception conceives of citizens as mere subjects, who are entitled to equal protection of fundamental rights against their ruler, possibly a minority class (or even an individual) in power. I do not argue that this must be so or that the liberal conception is inconsistent with the democratic idea of citizenship (on which more below). Rather, the point is that the liberal conception does not require a democratic rule and hence does not bring the central place that citizenship occupies in a democracy to bear on the question of legitimate political authority in the context of religious matters.20 This is just another way to say that, on the liberal conception in question, illegitimate religious coercion can be determined solely by reference to rights possessed by the ruled against the ruler.

But the democratic neglect, so to speak, intrudes into the liberal conception of freedom from religion precisely at this point: Democracy turns the distinction between the ruled and the ruler on its head. The freestanding authority of democracy arises from the thought that the ruled are in fact self-ruled, not merely as it happens, but rather as a matter of principle. Accordingly, the political authority that democracy generates in its own right, and that the liberal conception overlooks, may suggest that the problem of illegitimate coercion that the concept of freedom from religion picks out cannot possibly be adequately resolved by resort to the liberal conception alone. It further suggests that the gulf between the theory and the practice of freedom from religion that I observed above may in the end be real. More importantly, the preceding analysis also implies that the theory—the liberal

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19 For historical analyses of the transition from pre- to democratic rule, see, e.g., I R. P. Palmer, The Age of the Democratic Revolution (Princeton: Princeton University Press, 1959); Gordon Woods, The Idea of America: Reflections on the Birth of the United States (New York: Penguin Press, 2011), 57-60. Although he was not the first, John Locke (1632-1704) is probably the most important thinker to contribute to the early modern development of the liberal conception of freedom from religion. According to Locke, "the Law of Nature stands as an Eternal Rule to all Men, Legislators as well as others." John Locke, Two Treatises of Government, ed. Peter Laslett (Cambridge: Cambridge University Press, 2nd ed. 1967), II: §135, p. 376. Even those who give a rather generous—and, for that reason, a somewhat anachronistic—reconstruction of Locke's constitutional theory, admit that the role of the legislature is to "pin down more precisely the rules and distributions that already exist in rough and ready form in the law and in the state of nature." Jeremy Waldron, The Dignity of Legislation (Cambridge: Cambridge University Press, 1999), 67. See also n. 20 below.

20 It is not surprising, therefore, that Locke discusses the limits of legislative authority in connection with this matter: "Legislative, whether placed in one or more, whether it be always in being, or only by intervals..." Locke, Two Treatises of Government, 375.
conception of freedom from religion—is the main suspect to blame for the gap's opening. In other words, the gulf reflects the basic shortcoming in the liberal conception of freedom from religion, which is its inability to account for democratic political authority and, by implication, for religious coercion that is the distinctive (negative) upshot of democratic rule.

III. Freedom From Religion: A Republican Theory

The republican conception of freedom from religion that I shall seek to outline in this Part identifies an intimate connection between democratic politics and religious coercion. The centerpiece of the argument going forward is that public laws whose grounds are fundamentally religious represent a form of illegitimate political power even when these laws do not violate basic liberties (including liberty of conscience). The reason is that by invoking these grounds, one shuns one's compatriots, and thus undermines the possibility that the democratic system of collective self-rule could deliver legitimate political power. On the proposed account, certain forms of religious grounds might render the democratic process neither collective—because invoking these grounds amounts to turning one's back on others—nor an example of self-rule—because these others cannot understand themselves as co-authors of the laws in question. The right to freedom from religion, on the proposed account, is the right to be free from being subjected to laws grounded in religious belief.

I shall begin with a brief discussion of the freestanding political authority of democracy (III.A). I shall then elaborate on the legitimation difficulty that arises in connection with the use of certain forms of religious reason in and around the democratic process of decision making—I also seek to emphasize that the difficulty in question is distinctively about some religious reasons (III.B). Finally, I take up the practical implications of the republication conception of freedom from religion—in particular, I discuss the possibility and limits of enforcing a legal right of freedom from religion (III.C).

A. The Authority of Democracy

A democratic process of decision making purports to garner legitimation even when the decisions it yields cannot be justified by reference to the demands of reason (whatever they are). This is true not only in trivial matters but also in a wide variety of issues including even disagreements about justice and the general good. 21

21 Of course, there may be limits to the free-standing authority of democracy (such as in the case of the tyranny of the majority). It is a separate question, however, as to what grounds these limits—liberal or republican conceptions of legitimate authority.
The ground of democracy’s independent authority lies in the special connection that democratic politics seeks to establish between each participant, the community of participants as a whole, and the outcome of the participation; this connection is most pointedly referred to as co-authorship. In particular, those subject to political authority have a reason to understand themselves, by virtue of their participation, to be the co-generators of this authority. For this reason, the official pronouncements of this authority—laws giving rise to new policies, rights, and obligations—are at bottom self-given. They reflect a shared responsibility for settling together the terms of our political life. This is especially important in the case of out-voted participants who are, nonetheless, required to display allegiance to these new rights and obligations and thus to recognize the collective will as authoritative over their own personal (and out-voted) wills. The force of the democratic process, in other words, permits the dissenting citizen fully to respect the legitimacy of the solution produced by this process, to regard it as the solution we, rather than they, reached. To this extent, democratic politics may present the best interpretation of the otherwise fanciful characterization of legitimate political authority by Rousseau in terms of a political process by which each participant “uniting with all, nevertheless obey only himself and remain as free as before.”

None of this could be true were the democratic process of will- and opinion-formation entirely reducible to the aggregation of sheer preferences, that is, preferences formed prior to and independently of any political engagement. To be sure, I do not argue that preferences are irrelevant or unimportant for democratic politics. Nor do I embrace the opposite extreme, namely, that democratic politics consists in pure, moral reasons. Rather, the republican theory of freedom from religion that I prefer emphasizes that democratic politics properly conceived turns on the exchange of reasons—not necessarily pure reasons—which is generated by the preparedness of participants to justify their preferences and judgments to their fellow citizens.

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24 See Waldron, The Dignity of Legislation, 156 referring to the complicated, democratic procedures of the legislation process as ‘the grounds of [the statute’s] authority.’
26 Engagement in politics is not limited to voting (in election or in parliament). It extends to participating in the public discourse, political parties, houses of representatives, and a variety of many other fora for political deliberation and debate.
27 As I mention below, the exchange of reasons will typically include prudential, strategic, and other forms of instrumental reasons. I make this clarification to forestall misunderstanding concerning the republican foundations of my account of freedom from religion. In particular, nothing I argue in these pages turn on a naïve view of the quality of deliberation and participation in democratic politics. The legitimate authority of democracy, on my account, depends on the possibility of engagement between citizens qua citizens, rather than qua philosophers, qua publicly-spirited attorneys, or even qua publius-like citizens whose lives are fully dedicated to public debate.
To fix ideas, consider a hypothetical world in which politics is replaced by sophisticated software that collects preferences for and against potential policies. No freedom of speech, free press, public deliberations, political parties, debates on the parliament’s floor, and so on. A policy can be adopted (or rejected) depending on preference counting—preference majoritarianism rule, pure and simple.\(^\text{28}\)

Those whose preferences are on the losing side do not have a reason to conceive of themselves as authors of the collectively preferred law. In particular, there is nothing in a pure process of preferences aggregation that could tie the out-voted to the outcome in the way that the ordinary democratic process could do. Certainly, the fact that my preference loses and a majority of others’ happens to win can hardly turn the preferred policy into a decision that I can view as mine, too. The idea of settling together the terms of our existence becomes unintelligible in the absence of political engagement among citizens, and indirectly among their representatives. Coercing me to act according to the dictates of the majority’s aggregated preferences raises the specter of illegitimate power, since a preference—or a group of preferences—cannot serve as its own justification.

But even given that no functioning mechanism of collective decision-making can do away with politics (however defined), the freestanding authority of democracy cannot be recovered simply by returning to public fora of political engagements insofar as the manner in which these engagements proceed is limited to making public each one’s private preferences for or against a certain policy. It is hard—implausible, really—to view an interaction in which participants disclose their respective preferences as anywhere close to a discussion, debate, or deliberation. Here, too, there is nothing in their so-called engagement that could transform, with Rousseau, the “sum of [their] particular wills,” taken severally, into a genuinely public law expressing “the general will” of all participants, the out-voted included.\(^\text{29}\)

Thus, for a process of collective decision-making to establish collective self-rule, political engagement must move beyond the aggregation of sheer preferences in order to underwrite a political community in which members stand to one another as co-authors of the norms by which they live. The missing element is, roughly speaking, the reason-giving character of political debate and discussion. It is only when reason is invoked that one's brute preference becomes a political argument properly so called.

Indeed, political engagement in all its forms and fora may succeed in tying the participants to one another and, by implication, to the outcome of their joint enterprise because the use of reason—and the disagreement that (typically) follows—can transcend the brute imposition of preferences. It does so not because reason—and


\(^{29}\) Rousseau, *Of the Social Contract*, 60.
rationality, more broadly—gets society closer to achieving desirable goals by public law-making, such as doing justice or promoting well-being (although it surely may do that as well). Rather, reason-giving is crucial to collective self-rule because it enables participants to engage one another in ways that can establish a community of co-authors of the laws under which they live as free and equal persons. Justifying one's preferences opens one up to the critical judgment of others and, thus, invites them to share in (or repudiate) one's point of view about the matter at stake. And at the wholesale level of democratic politics, the decision reached by participants committed to this notion of mutual justification is such that each participant, simply by virtue of participating in this process, can assume responsibility for it.

That said, a democratic practice informed by reason-giving cannot accommodate just about any kind of reason. Once again, the point of reason-giving in this context is not merely (and, perhaps, not necessarily) to increase the rationality of democratic decision making, but rather to establish a process of collective undertaking. Accordingly, some reasons might not be apt to sustain the requisite process as they isolate, rather than unite, the reason-giver from her fellow citizens. As I shall now seek to explain, certain forms of religious-based reasons do just that. And as I shall further argue, these forms of reason are characteristically religious ones, since they express a commitment to engage the divine, rather than people.

B. Freedom From Religion

On the republican conception of freedom from religion, citizens should not be required to concede authority to legal norms grounded in religious belief because these grounds cannot possibly sustain the political engagement of will- and opinion-formation that underwrites collective self-rule.

To investigate the nature of the tension between certain forms of religious grounds and the freestanding authority of democracy, consider the recent political quarrel over public transportation in Tel Aviv on the Sabbath. The city's mayor, responding to the demands of secular social movements, called for the introduction of a public bus service on the Sabbath. For this to happen, the Tel Aviv municipality would need to receive the permission of the Israeli government and, in particular, the Minister of Transportation. Unsurprisingly, the result has been a debate in which both citizens and representatives have taken part.

30 While I do not deny that political engagements committed to the use of reason may increase the chances of getting close to the truth (as epistemic democrats believe), I insist that there is no relationship of entailment between a democratic process of decision-making and right reason. Within limits, a decision produced through the democratic process (when properly constructed and executed) may garner political legitimation even when it falls short of the demands of right reason. Indeed, this possibility expresses, in a nutshell, the basic intuition behind the notion that democracy can give rise to a freestanding source of political legitimation.
Some opponents articulate their arguments by reference to secular values such as protecting the environment or the bus drivers and their families, indirectly. The other class of opposition is cast in terms of religious reasons. There may be different variations, but they are all on the same theme; in particular, the non-secular argument against public transportation on the Sabbath invokes the ultimate reason, which is to say the religious sanctity of this day. Proponents, by contrast, provide a variety of reasons unrelated to church/state relations (such as, most obviously, equal freedom of movement). They argue that the absence of buses on Saturday denies them reasonable access to wherever they wish to go.

But there is an importantly different line of argument in support of the mayor's initiative, one which responds directly to the use of the ultimate religious reason mentioned above: that the legal ban on public transportation on the Sabbath, because it is grounded in the sanctity of this day, amounts to a religious coercion in violation of freedom from religion. And this violation, the argument goes, does not turn on further encroachments on other fundamental rights—it might be the case that the ban does not, after all, deny reasonable access or that people can easily do without buses on Saturdays. Rather, the violation is in the very idea of being dependent on, and thus liable to, the power of the Minister of Transportation to fix their normative situation based on a purely religious belief in the sanctity of the Sabbath. In other words, the difficulty lies in the fact that the minister (or, for that matter, any other state official) proceeds as though it is morally permissible to put citizens under a legal duty, namely, to obey the law on public transportation on the Sabbath, on the basis of a religious belief. But it is not permissible to do so because it undermines collective self-rule and hence renders the minister's exertion of political power illegitimate.

To begin with, a formal political authority, such as the one vested in the Minister of Transportation to allow or prohibit public transportation, is never a reason for itself. The democratic legitimacy of this authority depends, instead, on the political process that generates a co-authored outcome (whatever it is). In particular, it depends on a set of practices and institutions through which participants could publicly deliberate on the matter at stake by engaging one another with reasons they can come to share or reject.

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31 It is an open question, however, whether these reasons can explain why Saturday of all days. There may be a pragmatic, non-religious justification for singling out Saturday (this could include a path-dependence argument to the extent that our market and political institutions are pre-configured in a way that makes Saturday the preferred resting day for most people, religious or otherwise).

32 By normative situation I mean the rights and duties held by those who are liable to the minister's authority; by being liable to the minister's authority I draw on Hohfeld's famous taxonomy of rights. See Wesley Newcomb Hohfeld, "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning," *Yale L.J.* 23 (1913): 16.

33 To be sure, the reasons in question need not be philosophical or otherwise sophisticated justifications of political power only. Democratic politics are famously open to pragmatic and, indeed, political reasons (including in the pejorative sense of the word 'political').
But by invoking an ultimate religious reason in its support, political power fails to garner democratic legitimacy. For this reason replaces a concern for addressing other citizens (or persons, more generally) with a concern for addressing the divine. Indeed, participants who ground political power in an ultimate religious reason forswear political engagement that is necessary for a legal authorization of power to be considered co-authored (in the appropriate sense). Simply saying that a public bus service on the Sabbath is prohibited because of the sanctity of this day is tantamount to turning one’s back on one’s fellow citizens. More specifically, the retreat from political engagement, that is, the retreat from opening oneself up to the critical judgment of deliberating others, manifests itself in two ways: concerning the accessibility of a religious reason and concerning the attitude presupposed in invoking this reason. I take each in turn.34 (Note that I shall not take up the question of whether these two concerns appear outside the purview of religious-based reasons until Part IV.A. below)

First, the merits of the ultimate religious reason are not susceptible to critical assessment in the sense that the force of this reason need not turn on whether it can withstand normative or empirical inquiries by others (the non-religious included). An appeal to the sanctity of the Sabbath just is an appeal to that which obtains regardless of what human inquiry could reveal by resort to practical or theoretical reasoning.35 In other words, the success and failure conditions of an ultimate religious reason, such as the argument from the sanctity of the Sabbath, do not leave sufficient space for positive and normative considerations by (non-religious) others.36

Second and relatedly, the act of giving reasons in support of arguments (political or otherwise) presupposes a commitment on the part of reason givers to recognize the conditions of their own failure.37 In particular, reason givers, by virtue of using reason, commit themselves to adopt a reflective attitude of the sort Thomas Nagel calls “preparedness,” which is the willingness to open themselves up to the critical judgments of others.38 Of course, I do not claim that participants in political debates are self-consciously aware of the reflective attitude that, on my account, is presupposed by being engaged in the practice of reason giving. Rather, my argument

34 The following discussion draws on Dorfman, "Freedom of Religion," 307-18.
36 There may remain some space for interpretive considerations. Thus, the argument from the sanctity of the Sabbath, one could argue, does not provide the best interpretation of the scriptures or that it fails to take into account the changing conditions that underlie the original obligation to desist for everyday affairs. That said, to the extent that the argument from the sanctity of the Sabbath is not entirely false (so that it could be supported, say, by the plain language of Exodus 31: 13-17), it is not clear what sort of counter-argument could be made in criticizing the person who (sincerely) believes that that argument reflects God's will.
37 For instance, those who argue against public transportation on the Sabbath on the basis of environmental considerations must assume that all the (factual and moral) premises in the argument obtain; otherwise, they must disassociate themselves from uttering it.
is that anyone who gives reasons in support of an argument must accept as valid any criticism which shows that these reasons are unsupported, unconvincing, or simply false.\textsuperscript{39}

Each of these two features, because it undermines the possibility of critical reflection through public deliberation, severs the connection between the democratic process and collective self-rule. It prevents the ultimate religious reason from sustaining a political process the outcome of which citizens can respect even as they remain unpersuaded by it. Accordingly, participants in a democratic process cannot understand themselves, and at the very least have no reason to understand themselves, as authors of a law grounded in an ultimate religious reason. Their democratic citizenship is being reduced to the status subjects who are being ruled by another and therefore in violation of their political freedom. The principle of freedom from religion is just the institutional expression of the need to insure against this violation.

Against this backdrop, the republican conception of freedom from religion gives rise to a principle against the imposition of religiously-grounded political power. On this conception, the Minister of Transportation violates citizens' freedom from religion when he decides, on the basis of the sanctity of this day, to outlaw public transportation on the Sabbath.\textsuperscript{40} In this way, now returning to the apparent gap between the practice and the theory of freedom from religion, the liveliness of claims for the violation of freedom from religion can finally be cast into sharp, theoretical relief—these claims are properly generated out of concerns for political legitimation that are distinctively associated with democratic rule.\textsuperscript{41}

Moreover, I do not deny that religious people do not acquire some reflective attitude toward their beliefs. But to the extent that they do, it seems that this attitude is different from the one mentioned in the main text above in at least two ways: concerning its scope and character. Begin with scope. A reflective disposition on the part of a religious adherent in matters of religious conviction is typically directed toward the grand question of whether or not to remain faithful to his or her religion at all. It is not directed at any particular religious-based reason that is given during participation in public debates (say, the religious argument against public transportation in the Sabbath). This is true even when skepticism at the wholesale level—viz., of one’s own religion—can be causally traced back to the retail level—viz., to one’s rejection of a particular religious-based reason (say, that the sanctity of the Sabbath justifies the denial of public transportation on that day). Concerning character, the reflective attitude characteristic of the religious adherent is typically self-directed; generally speaking, one’s faith is not the business of other citizens. Whereas, the attitude of preparedness on the part of reason-giving citizens is, first and foremost, other-directed in the sense that it implicitly or explicitly asserts the validity of the reasons they given and, hence, invites the critical judgments of others.

It remains to explain what the implications of the republican conception of freedom from religion to the participating citizens are (on which more below).

\textsuperscript{39} Moreover, I do not deny that religious people do not acquire some reflective attitude toward their beliefs. But to the extent that they do, it seems that this attitude is different from the one mentioned in the main text above in at least two ways: concerning its scope and character. Begin with scope. A reflective disposition on the part of a religious adherent in matters of religious conviction is typically directed toward the grand question of whether or not to remain faithful to his or her religion at all. It is not directed at any particular religious-based reason that is given during participation in public debates (say, the religious argument against public transportation in the Sabbath). This is true even when skepticism at the wholesale level—viz., of one’s own religion—can be causally traced back to the retail level—viz., to one’s rejection of a particular religious-based reason (say, that the sanctity of the Sabbath justifies the denial of public transportation on that day). Concerning character, the reflective attitude characteristic of the religious adherent is typically self-directed; generally speaking, one’s faith is not the business of other citizens. Whereas, the attitude of preparedness on the part of reason-giving citizens is, first and foremost, other-directed in the sense that it implicitly or explicitly asserts the validity of the reasons they given and, hence, invites the critical judgments of others.

\textsuperscript{40} It is important to note, in case it is not apparent by now, that my argument does not target religious reasons, tout court. Rather, it focuses on religious reasons that are grounded in the divine—in God’s commands directly or indirectly through its earthly agents. The argument from the sanctity of the Sabbath is a case in point as well as some of the arguments that are being made in contemporary public debates about family values (especially in connection with same-sex marriage), abortion, immigration policy, settlements in the Occupied Territories and so on. However, there exist other instances in which advancing religious-based reasons in public debate may not pose the threat of illegitimacy discussed a moment ago. This is so whenever these reasons do not depend on the divine in ways that violate the freedom from religion of other citizens. For instance, some such reasons have their historical roots in religion. Others are equally founded on non-religious moral outlooks. And others
C. Freedom From Religion: Practical Implications

The republican conception of freedom from religion purports to guide the conduct of state officials and citizens with respect to the appropriate ways of deliberating and participating in the democratic process. On this conception, state officials vested with the powers of making and executing laws are required, negatively, to abstain from acting on the ultimate religious reason and, affirmatively, to justify their powers through reasons that are susceptible to common reflection and criticism. It is less clear, however, whether the same conclusion holds with respect to deliberating citizens. As I shall seek to argue, it is one thing to say that an obligation against invoking religious reasons in public deliberation arises from the ethics of citizenship; quite another to make this obligation a legally enforceable one.

To begin with, participating citizens invoke reason in order to justify and criticize a certain course of action. State officials, by contrast, are required to justify not merely a certain course of action, but rather the course adopted (or is about to be adopted) by the state. As a result, the use of the ultimate religious reason at the antecedent stage of deliberation merely undermines the idea of political engagement that underlies the democratic authority of the engagement’s outcome. That said, using such a reason need not render the outcome democratically illegitimate, especially when the supporting arguments behind the outcome are not grounded in, and may even stand in opposition to, the ultimate religious reason.

More importantly, there are reasons to believe that the obligations associated with the ethics of citizenship should not be automatically assimilated in political morality. For instance, casting a vote in an arbitrary manner (say, voting for whomever wears

yet may have their intellectual roots in religion (on which see Jeremy Waldron, "Religious Contributions in Public Deliberation," San Diego L. Rev. 30 (1993): 817 (1993)). None of these are at odds with the republican theory of freedom from religion insofar as they do not turn for their existence and potency on the divine.

The proposed conception cannot, of course, produce the needed motivation for acting in this or that way; instead, it purports to give people reasons for being motivated to act as participants in democratic politics ought to do. In other words, the conception in question seeks to provide motivational guidance in (very roughly speaking) the sense reminiscent of Scott Shapiro's distinction between motivational and epistemic guidance. See Scott J. Shapiro, "On Hart's Way Out," Legal Theory 4 (1998): 469, 490.

Metaphorically speaking, the principle of freedom from religion insists that state officials must face their constituents rather than turn their backs on them.

In his recent writings on the subject, Jürgen Habermas draws a different conclusion with respect to the ethical obligations of citizens in connection with the use of public reason. According to Habermas, the non-religious citizens are required to bear the burden of translating political arguments grounded in religious reasons into non-religious ones. See Jürgen Habermas, Religion in the Public Sphere. It seems to me, however, that there must be limits to the possibility of thus translating. For this reason, Habermas’s conclusion cannot overcome the concerns identified in the main text above—involving the ultimate religious reason during public deliberations might offend against the freedom from religion of others.
brown shoes on election day) is flatly inconsistent with the demands of the ethics of citizenship. In spite of this, no reasonable state would subject its voters to legal sanction for arbitrary voting. More generally, no reasonable state would interfere with citizens’ privacy and liberty by enacting the ethics of citizenship into the law.\footnote{To this extent, legal enforcement of the ethics of citizenship raises similar concerns as does the legal enforcement of the ethics of trust or of apology. Note that I do not argue that legal enforcement of some duties that form part of the ethics of citizenship (or trust or apology) is necessarily wrong. I insist, however, that these duties can be properly enforced in law only because, and only insofar as, there are additional reasons (i.e., not reducible to the ethics of citizenship) for deploying the law.}

To this extent, the legal enforcement of the ethical requirement to open oneself up to the critical judgment of others, which is partly the requirement to respect the freedom from religion of others, is an instance of this more general difficulty of coercing ethical behavior through law. Furthermore, the requirement in question may raise an additional difficulty. Indeed, a duty against invoking the ultimate religious reason amounts to a restriction on freedom of political speech, and a content-based at that. It, therefore, exerts pressure toward conflict with one of republicanism’s most important values.

Against this backdrop, it is not clear (to say the least) whether the republican conception of freedom from religion can give rise to legal obligations that capture political engagements among private citizens, rather than public officials exercising their legal powers.\footnote{To be sure, even the legal enforcement of freedom from religion in the case of public officials can give rise to skepticism about the desirability of thus enforcing. The worry pertains to the potential creation of incentives toward insincerity and bad-faith on the part of officials. While I do not deny this possibility, I do reject skepticism about the ability of the public as well as the courts to identify instances of insincerity. However, it is beyond the scope of this paper to discuss the legal doctrines that specifically address the problem of administrative and legislative insincerity.} To be sure, the argument is not that freedom from religion must never be legally enforced against private citizens, but rather that the republican conception of this freedom does not entail this conclusion and that additional reasons are needed to render legal enforcement of this matter plausible.

IV. Freedom From Religion and the Argument from Public Reason

Certainly, the argument I have developed so far draws on the idea of public reason, namely, the thought that the exercise of legitimate political power depends on the existence of justifications that reasonable persons could share. Although it is most famously associated these days with the work of John Rawls, it is important to recall that the idea of public reason is not peculiar to Rawls or even to modern Kantianism, more broadly.\footnote{See, especially, Jeremy Bentham, An Introduction to the Principles of Morals and Legislation (Oxford: Clarendon Press, 1823), ch. II, § XII, XIV, XIV n.9.} Rather, some version of this idea is shared, and must be shared, by anyone who takes democratic politics to be more than a practice of aggregating...
personal preferences. It would therefore be apt to identify, but not pursue, the particular version of public reason onto which the republican conception of freedom from religion maps. I shall do that by emphasizing two aspects where my account diverges from certain familiar accounts of public reason, especially the one developed by Rawls: First, the place of comprehensive doctrines in determining what counts as a nonpublic reason; second, the value of public reason.

A. Nonpublic Reasons: The Distinctiveness of the Ultimate Religious Reason

Any theory of public reason must provide a baseline against which to assess whether or not a particular reason is ‘public’. Some modern advocates of public reason articulate this baseline by reference to the normative source of the reason in question. They ask whether this reason arises from, or turns on, what Rawls calls a comprehensive doctrine. A comprehensive doctrine reflects an organized set of “views of the world and of our life with one another, severally or collectively, as a whole.” And since a comprehensive doctrine appeals to “the whole truth” or to "the constitution of the whole of beings," reasons derived from such a doctrine present the paradigmatic case of nonpublic reasons. The appeal to the whole true, the argument goes, renders the doctrine unable to address those who do not share its claim for the truth. On the Rawlsian approach to the idea of public reason, ultimate religious reasons are paradigmatically nonpublic reasons but so do reasons that stem from non-religious comprehensive doctrines such as philosophical doctrines (e.g., deontological and utilitarian moralities).

48 More generally, some version of the idea of public reason must be acknowledged by anyone who takes seriously the distinction between an argument and a sentiment (or opinion). On the crucial role of expert knowledge for deliberative democracy, see Robert C. Post, Democracy, Expertise, and Academic Freedom: A First Amendment jurisprudence for the Modern State (New Haven: Yale University Press, 2012).

49 Since the purpose of the discussion that follows is not that of defending Rawls’s or a Rawlsian conception of public reason, I shall not seek to address the numerous books and articles criticizing virtually every aspect of Rawls’s conception of public reason. For leading critical works on Rawls’s public reason, see, e.g., Michael Perry, Religion in Politics (Oxford and New York: Oxford University Press, 1997); Christopher J. Eberle, Religious Conviction in Liberal Politics (Cambridge: Cambridge University Press, 2002); John Finnis, Collected Essays: Religion & Public Reasons, vol. V (Oxford and New York: Oxford University Press, 2011), 16-126. Note, however, that oftentimes participants in the debate concerning the moral permissibility of invoking religious reasons in democratic politics tend to blur the critical distinction that I have made, namely, between religious reasons and what I call ultimate religious reasons. This shortcoming is unfortunate since it obscures our understanding of the principle of freedom from religion (and, plausibly, freedom of religion as well).

50 Since the publication of Political Liberalism in 1993, Rawls has revised the theory of public reason twice: the first revision is presented in the introduction to the paperback edition of 1996 (pp. I-lii). A much more dramatic revision of this theory is found in Rawls, “The Idea of Public Reason Revisited,” reprinted in The Law of Peoples (Cambridge, Mass.: Harvard University Press, 1999), 131-180. It now seems that Rawls allows far more space for reasons that are shaped by comprehensive doctrines. It is not clear, however, whether this latest account of public reason abandons the concept of comprehensive doctrine for the purpose of determining what makes a given reason a nonpublic one.


52 Rawls, Political Liberalism, 218, 243.

53 Habermas, “Religion in the Public Sphere,” 16.
On the republican conception of freedom from religion, by contrast, the central place of the concept of comprehensive doctrine in the idea of public reason loses momentum. Appealing to the whole truth or to ideas stemming from a comprehensive doctrine need not render a particular reason nonpublic. Rather, the reason that should count as ‘nonpublic’ is the ultimate religious reason (or any other reason that takes this form, on which more below). In particular, reasons are ‘nonpublic’ only because, and only insofar as, those who give them can defend their validity not by addressing the points of view of other citizens, but rather by appealing to convictions that transcend the critical judgment of the latter. This is just another way to say that an ultimate religious reason is nonpublic in the sense that it cannot sustain political engagement due to the two distinctive features identified above—that the merits of an argument grounded in the ultimate religious reason are inaccessible to critical inquiry and that making such an argument forces one to beat a retreat from a reflective attitude of being ready to submit one’s own argument to the critical judgments of others.

To clarify the republican conception’s view of public reason, consider the case of non-religious reasons, including, in particular, those arising from comprehensive doctrines. Many among those who oppose to excluding religious reasons from political deliberation on public-reason grounds claim that non-religious reasons are no less inaccessible. These opponents’ stock example is that of political arguments grounded in concern for animal rights. Suppose that one of the arguments against public buses on the Sabbath has to do with the harm inflicted by these buses upon pets. More concretely, the argument is that anecdotal and impressionistic observations by pets’ owners suggest that noisy buses significantly increase the stress level on the part of these animals. Opponents of public reason point to reasons of this sort to show that the distinction between religious and non-religious reasons cannot be cast in terms of the distinction between non-public and public reasons. I suspect that this is so because people often perceive the arguments made by animal rights advocates as ones which are either irrational pure and simple or reminiscent of religious arguments.

In response, I shall argue that the distinction between religious and non-religious reasons need not cut across the distinction between public and nonpublic reasons—that arguments from animal rights can be qualitatively different from the ultimate religious reason and that the difference in question tracks the two features that, on my account, renders religious reasons in particular nonpublic.\(^{54}\) Indeed, the person who makes the argument that noisy buses are harmful to pets presupposes the prima facie validity of certain empirical and moral propositions, namely, the fact and the normativity of harm in connection with pets, respectively. And, unlike the ultimate

\(^{54}\) The two features, to repeat, are the reason’s inaccessibility to common human judgment and the want of reflective attitude on the part of the reason giver.
religious reason discussed above, these presuppositions force any one in that person’s shoes to open oneself up to the critical inquiry of one’s fellow citizens. To this extent, they force one to accept a certain way of being with others in this world—that which involves engaging others in the mode of justification that addresses these others as co-rulers.

What if support for the argument from animal rights persists even when its underlying presuppositions turn out to be either empirically or morally false? This would mean that support of this argument rests solely on an article of faith asserted in complete disregard of practical or theoretical forms of reasoning available to human inquiry. But must this case challenge my argument that non-public reasons are characteristically political arguments grounded in an ultimate religious reason? I think not. The animal rights argument under discussion may not emanate from an established religion but it, nonetheless, takes the form of an appeal to the ultimate religious reason. In other words, those who advance this argument are not officially affiliated with a religious creed in the colloquial sense of this term, but their invocation of reasons that self-consciously give up the possibility of critical human inquiry render them no less religious in the appropriate—viz., Weberian—sense.55

B. What is the Point of Public Reason: Forging Agreement Versus Forging Community

The preceding discussion shows that, unlike the Rawlsian account of public reason, the republican conception of freedom from religion is far less troubled by the inclusion of reasons that appeal to “the whole truth.”56 The source of this difference is the respective role designated to the public use of reason in the democratic process. On the Rawlsian account, the constraints imposed on the content of justifications of political power by the idea of public reason are meant to ensure that political life will be guided by reasons that “all might reasonably be expected to endorse.”57 And these reasons are articulated against the backdrop of a political conception of justice around which reasonable citizens holding incompatible comprehensive doctrines can nonetheless form an overlapping consensus.58 Public reason, one might conclude, supports the attempt of Rawls’s political theory to justify a principled agreement on substantive questions of justice between reasonable persons by bracketing off

55 See note 35 above.
56 Moreover, the republican conception of freedom from religion is far more generous with respect to the inclusion of expert knowledge (in matters of both practical and theoretical reason) that far exceed the actual knowledge and sophistication of many private citizens. It, therefore, views civil society and other formally private institutions as fully operating within the public sphere.
58 While Rawls does not claim truth for his political conception of justice, he does argue that it is the “most reasonable [conception] for us”; that is, a conception that “we regard—here and now—as fair and supported by the best reasons.” Rawls, Political Liberalism, 28, 26, respectively.
potential sources of conflict (including, in particular, disagreements arising from the existence of incompatible belief systems or comprehensive doctrines).\footnote{Richard Arneson confines the Rawlsian notion of public reason to “secular reasons that are sufficiently uncontroversial that no one, whatever his comprehensive beliefs, could reasonably reject.” Richard Arneson, "Political Liberalism, Religious Liberty, and Religious Establishment," [this volume], p. 10. In my view, however, this cannot be right neither as a matter of reconstructing Rawls’s notion of public reason nor as a successful competitor to my preferred notion (on which more below). The reason is that Arneson’s definition of public reason seems to obscure the important difference between political and moral debate by reducing the former into the latter.}

The idea of public reason underlying the republican conception of freedom from religion, by contrast, has far less ambitious aspirations. It has, in fact, an altogether different point. It does not purport to resolve substantive disagreements by way of offering a political conception of justice around which reasonable citizens may unite. Nor does it seek to create a political space of reasons, as it were, within which a reasonable society could come to a principled agreement on basic questions of justice and legitimation.\footnote{The metaphor of the "space of reasons" is elaborated in Joshua Cohen, "Establishment, Exclusion, and Democracy's Public Reason," in Reasons and Recognition: Essays in the Philosophy of T. M. Scanlon, ed. R. Jay Wallace, Rahul Kumar, and Samuel Freeman (Oxford and New York: Oxford University Press, 2011), 256.} Rather, the point of excluding nonpublic reasons from the democratic process is to sustain a political community in which members stand in the relation of co-rulers to one another. On the proposed account, using ‘public’ reasons is necessary to facilitate political engagements that not only go beyond preference aggregation of isolated individuals, but also form the basis against which citizens can hold themselves answerable to their compatriots and, to this extent, respect the latter as full members in the ruling class. Thus, although participation in a practice of giving public reasons need not—indeed, will likely not—solve substantive disagreements, it can nonetheless help to sustain the legitimacy of political power in spite of such (persisting) disagreements.\footnote{The value of sustaining a democratic political community which underwrites the republican conception of freedom from religion might be challenged for exerting pressure toward exclusion and segregation. The suspicion is that it might influence the religiously-motivated citizen to opt out of democratic politics whenever her best (or sole) argument is grounded in the ultimate religious reason. Addressing this challenge carefully is beyond the scope of the present argument. Instead, I shall seek to sketch an outline of my response, which comes in three different counts. First, the argument from segregation is speculative, since it draws on a causal claim that the devotee in question will prefer to opt out of politics, as opposed to reconstruct her argument in ways that can engage her fellow citizens (rather than merely the divine) and so pass the bar of freedom from religion. For more on the “empirical questions” that surround the debate over the desirability of public reason, see Eduardo M. Peñalver, “Is Public Reason Counterproductive?,” W. Va. L. Rev. 110 (2007): 515, 532. Second, the proposed account of freedom from religion is not at all hostile to integration and toleration. To the contrary, it seeks to establish the basic threshold below which integration becomes superficial. On my account, an ideal of creating integration through political participation requires that participants could engage one another by exchanging reasons, and thus opening themselves up to each other's point of view. This is precisely the point of the principle of freedom from religion developed in these pages. Third, a more comprehensive assessment of the integrationist/segregationist consequences of freedom from religion must take into consideration the offsetting effects of freedom from religion's non-identical twin, namely, the principle of freedom of religion. I say a little bit more on the latter principle in the Conclusion.}
Conclusion
The argument developed in these pages emphasizes that the principle of freedom from religion protects citizens from being governed by public laws that are, nonetheless, grounded in purely religious beliefs. In a previous article I have argued that freedom of religion is best explained by reference to a republican ideal of political legitimation. In the present paper, I have sought to show that freedom from religion, too, reflects concerns for upholding the same ideal in the face of the familiar practice of grounding political arguments in ultimate religious reasons.

It makes sense, therefore, to take a brief look at the manner in which the two freedoms (of and from religion) may hang together under the unifying theme of political legitimation. Begin with freedom from religion. On my account, this freedom excludes arguments grounded in an ultimate religious reason. It seeks to curb political initiatives to compel conformity to, though not necessarily compliance with, religious dictates (such as the one underlying certain Sunday closing laws). In other words, freedom from religion insures against the illegitimate practice of state imposition of religious orthodoxy within the public sphere. Freedom of religion, on the other hand, seeks to compensate for the exclusionary effects brought about by the principle of freedom from religion. It grants religious adherents, and religious adherents only, exemptions from otherwise acceptable laws of general application that are, nonetheless, particularly burdensome for these adherents. Indeed, to the extent that they are restricted by the principle of freedom from religion from advancing their religious beliefs through the democratic process, these adherents are entitled, on account of the principle of freedom of religion, to some measure of exemption from the adverse implications of this process's outcome on their exercise of religion.

This way of putting together freedom from and of religion has the important advantage of accounting for what may seem to be the greatest challenge of explaining the otherwise mysterious treatment of religion by many democratic states: religion is usually being singled out for two opposing effects. The principle of freedom of religion does the singling out by providing religious adherents with an especially favorable treatment; whereas, freedom from religion singles out religion in ways that especially burden the religious adherents. As I have sought to show in these pages, the key to explaining this seemingly schizophrenic approach to religion is the connection between certain religious reasons and the ideal of democratic legitimation.

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62 Dorfman, "Freedom of Religion."
63 This account of freedom of religion addresses the skepticism voiced by lawyers and philosophers concerning the moral permissibility of signaling out religion for the purpose of protecting the free exercise of this form of belief, as opposed to all other such forms, especially the non-religion ones. See, e.g., the skepticism raised in Arneson, "Political Liberalism, Religious Liberty, and Religious Establishment," pp. 3-4.
64 These opposing tendencies are most famously exemplified by the (religious-favoring) Free Exercise Clause and the (religious-disfavoring) Establishment Clause of the U.S. Constitution’s First Amendment.