The Case for Insincerity

John M Kang, St. Thomas University
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By John M. Kang*

Introduction

Much of the philosophical debate between religionists and secularists has focused on whether to permit people to invoke publicly religious arguments to justify their position on laws and policies. Prominent liberals like Robert Audi, Kent Greenawalt and John Rawls argue that in some instances, people should abstain from both invoking religious arguments in the public square and from consulting religious sources alone in arriving at judgment,¹ while religionists like Michael Perry, Nicholas Wolterstorff and Stephen Carter assert that religionists be permitted greater freedom in both areas.²

There is a question related to this debate whose answer is often regarded by both liberals and religionists as intuitive and straightforward. The question is this: May religionists offer secular justifications in the public square to support or oppose laws and policies without sincerely accepting such reasons as consistent with their respective religion? Some religionists and especially some liberals tend to answer in the negative, disdaining the thought of embracing an alternative that seems duplicitous. Liberals have leveled sustained criticism against the thought of such insincerity by religionists in public discourse. Kent Greenawalt labels such insincerity “deceitful” and “dishonest” (Greenawalt, 1995, p. 163); Robert Audi derides it as “manipulative” and its propensity “a moral defect” (Audi, 2000, pp. 110, 128); and John Rawls

* Doctoral Candidate, Political Science, University of Michigan, Ann Arbor. B.A., University of California, Berkeley; J.D., UCLA; M.A., University of Michigan, Ann Arbor. Many thanks to David Backer, Mark Brandon, Don Herzog, Arlene Saxonhouse, Kim Smith, Hans von Rautenfeld, and the anonymous referee. Thanks also to the responsive audience at the Western Political Science Association meeting which heard a version of this article on March 22, 2002 in Long Beach, California.

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rebukes it as “hypocritical” (Rawls, 1996, p. 215). These liberals’ critical responses find systematic expression in formal objections stemming from “consequence” and from “fairness”\(^3\). The former asserts that insincerity by religionists leads to negative results like alienation or civil strife, while the latter holds that it violates a principle of equal respect which insists that people be entitled to rational justifications for coercive laws or policies.

In this essay, I respond to these liberals’ objections from the perspective of liberalism itself and not from some other political ideology. In doing so, I will not challenge the purposes animating the fairness and consequence objections which I regard as consistent with the broad aspirations of liberalism. While specific conceptions of the fairness and consequence objections are debatable, I think it apparent that the concerns driving both are reasonable in the abstract, and that what’s generally at issue in fair-minded people isn’t their intrinsic value, but the scope and depth of their meaning and application. Indeed, it’s telling that even regimes or groups that undermine equal respect or civic harmony often justify their actions to the public in terms of such values. So instead of critiquing the premises of either objection, I argue that sincerity is at best irrelevant and at worse harmful in achieving either good consequences or fairness between religionists and secularists.

As for my method, it derives from a response to highly idealized accounts by some liberals about the duty for sincerity. Their arguments, I show, are insufficiently attentive to political context. They derive a duty for sincerity from vague notions of fairness, unrealistic expectations for civic virtue, or from some hypothetically idealized condition. I juxtapose these approaches to politics as practiced to show that the objections to insincerity rest on impractical premises that fail to generate workable standards. By this, I do not mean to suggest that I plan to marshal hard empirical evidence; rather, I seek to write from the perspective that political

\(^3\) I borrow the terms from Kent Greenawalt. Greenawalt, 1995, p. 24.
differences often are not amenable to open discussion, for the worldviews from which they derive are sometimes incompatible and mutually resistant.

The essay is organized as follows. In I first argue for a particular kind of insincerity that is political in nature, and specifically, one at the heart of liberalism. Such insincerity, I show, permits the conditions for mutual coexistence that have come to be read into the Constitution, especially through the Equal Protection and Due Process Clauses of the Fourteenth Amendment when interpreted in conjunction. I then flesh out the details of a liberal conception of insincerity in terms of the discursive practices associated with what I call a judicial paradigm. I argue that the discursive practices of judges routinely reflect what I call an economy of sincerity by deliberately repressing various background information that would thwart the enterprise of impartial adjudication. For a culturally diverse landscape like ours and hence one filled with potentially incompatible worldviews and opinions, such a judicial approach is a better model of discourse for those in civil society than the sort of openly sincere dialogue urged by theorists like Jürgen Habermas which have in recent years gained wide support. After providing the details of my argument, I then defend my judicial based model of insincerity against the arguments of John Rawls, specifically in his discussion of deliberation regarding various constitutional and legal issues. I focus on Rawls because he is universally recognized as the most influential liberal theorist of his generation and thus his arguments against insincerity deserve some sustained analysis. Finally, I offer concluding remarks in the last part.

I. Insincerity Defined

As evinced in their sometimes bland homilies against its practice, liberals who criticize insincerity by religionists tend to operate from a familiar social contempt for insincerity as an unsavory attempt to hoodwink an innocent audience. But a study of the nature and effects of
insincerity requires a more nuanced appraisal of its complexity. We know that insincerity, at a minimum, means delivering reasons that one believes personally unpersuasive or irrelevant. As evaluation, it can mean offering opinions that don’t reflect one’s true feelings.\(^4\) Within these broad definitional parameters, insincerity can don assorted guises and perform different functions depending on the context. Yet I will argue that insincerity should be distinguished from lying. While insincerity intends to mislead the audience into making wrong inferences about the speaker’s true disposition about his reasons, lying involves deliberately misrepresenting the factual content of the reasons themselves. While it is hard to argue that lying, thus conceived, is categorically worse than insincerity in terms of ethics or politics, there is a legitimate argument that lying fundamentally threatens the stability of promises and agreements in ways that insincerity does not.\(^5\) American courts seem to hold something of that opinion since there are obvious causes of action (fraud and libel, for example) for damages resulting from lying as I have defined it. But it is much harder to identify a cause of action that corresponds to the damages that are said to result from insincerity as I have defined it.\(^6\) Indeed, the law specifically protects against misrepresentation advertisers who indulge in insincerity through exaggeration or what lawyers call “puffing”.\(^7\) The chief rationale for this distinction is that the average consumer knows that the puffing probably is not true and thus does not rely on it, and even if some do actually rely on the statements, it is unfair to hold advertisers accountable

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\(^4\) This definition is consistent with Lionel Trilling’s observation that the modern understanding of sincerity “refers primarily to a congruence between avowal and actual feeling.” Trilling, 1972, p. 2.

\(^5\) For example, while Kant does not condone either insincerity or lying, as I have defined them, his case against the latter partly rests on a concern that “truthfulness is a duty that must be regarded as the basis of all duties founded on contract, and the laws of such duties would be rendered uncertain and useless if even the slightest exception to them were admitted.” Kant, 1993, p. 65.

\(^6\) It is true though that libel as a cause of action needn’t require intent and that negligence and recklessness may suffice in some cases.

\(^7\) "Puffing" is usually defined as "an exaggeration or overstatement expressed in broad, vague and commendatory language." Castrol, Inc. v. Pennzoil Co., 987 F.2d 939, 945 (3rd Cir.) (1993). Section 43(a)(1)(B) of the Lanham Act permits companies to sue each other for false advertising that misrepresents and thus hurts competitors. Under the Act, a company enjoys a complete defense if it can show that the part of the advertisement in question contains no factual assertion, but is, for example, an opinion or puffing. See Burns, 1999, p. 868.
for claims that are theoretically unverifiable (Burns, 1999, p. 868). Or stated otherwise, the distinction seems to be that facts adhere to the empirically testable essence of the merchandise but puffing or opinion derive from an individual’s particular and thus potentially subjective experience with it. This distinction in turn seems to suggest that insincerity, more so than lying, involves ideas of pleasure and preference along with those of disgust and dislike which collectively imply a potentially unique set of normative commitments and assumptions on the part of the individual.

I will offer what I perceive as broadly two kinds of insincerity: instrumental insincerity and liberal insincerity. The former is a socially familiar idea and the one that some liberals have in mind when they condemn insincerity; the latter is a distinctly political idea that I will argue casts insincerity in a different and more attractive light.

A. Instrumental Insincerity

The sort of insincerity by religionists that is most commonly rebuked by liberals is one that is easily recognizable to most people, and I shall call it instrumental insincerity. Insincerity here is regarded as ethically ambivalent, regardless of its justification, because for purposes of attaining some good, it employs means that are inherently deceitful; most of us usually conceive such ends in terms of financial gain, professional advantage, political power, or the like. Embedded in every criticism of instrumental insincerity by liberals against religionists is an assumption that the audience is being denied access to authenticity, to a “true self” with its constituent preferences and dislikes. There is a corollary assumption that were this true self revealed, the audience would probably evaluate the speaker’s meaning differently, and specifically, that an audience is likely to feel offended at, and given sufficient reliance, betrayed by announcements revealed to be insincere.

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8 See the related discussion in Trilling, 1972, pp. 9-11.
Robert Audi’s theory of public justification in liberal society appears to have adopted this instrumental understanding of insincerity. He criticizes insincerity by religionists as leading to negative consequences because it threatens the attainment of what I call two social goods and one personal good. First, Audi suggests that it threatens a social good in mutual well-being by causing feelings of “resentment”. According to Audi, secularists may deeply resent being forced to comply with religiously motivated practices even if the religionists offer persuasive secular reasons (Audi, 2000, p. 165). Second, if such resentment becomes intense and wide enough, it can threaten another social good in civic harmony by causing societal unrest (Audi, 2000, p. 111). Third, insincerity can directly harm a personal good by eroding the speaker’s reputation as trustful and predictable (Audi, 2000, p. 111).

One immediate problem with Audi’s understanding of sincerity is that it misses the ways in which its own internal logic undermines its necessity. Audi obviously values sincerity largely in instrumentalist terms--it is useful for garnering a good reputation, for preventing resentment, for staving off social unrest. But if the purpose of sincerity is a means to these other goods, then the difference between sincerity and insincerity silently vanishes. That is because instrumentally, the point of sincerity becomes not to be sincere, but ironically, just to appear so. And the desire to be simply perceived as sincere may actually motivate a person to conceal his true feelings and pretend false ones that are more likely, under given circumstances, to be received as sincere. Hence the very logic of instrumental sincerity paradoxically vindicates the motives of that which it ostensibly resists, instrumental insincerity.

But what are the potential virtues of instrumental insincerity for dialogue between religionists and secularists? I can attempt an answer by way of again responding to Audi.

*He does not explain why precisely this is so.*
with his one about instrumental sincerity, Audi argues later that “rational” people generally are unlikely to deceive others, not because of a potential payoff as his account of instrumental sincerity suggests, but for its own sake:

... imagine the speaker thinking a reason for a position to be good, yet not having that as a reason for holding the position or even pulling the speaker in the direction of holding it. This is extremely rare in rational persons, especially if they hold the position, which normally one will if one is sincerely trying to persuade others of it (Audi, 2000, p. 110).

And even when they do deceive, Audi suggests that concealment is not always possible: “if, as a mature moral agent with a normal range of human experience, you have a thorough knowledge of my personality, views, and motives conceived non-morally, you are in an excellent position to discern my moral character” (Audi, 2000, p. 128).

Here, Audi confuses two very different worlds: The world of friendship with the world of politics. Politics, unlike friendship, generally fails to provide conditions for people to acquire “thorough knowledge” of each other’s moral character. Ruth Grant in an insightful reading of Machiavelli has observed that politics is a world that is in between friendship and open hostility. For Machiavelli, according to Grant, we would not want to be insincere to our friends, on whom we rely heavily, and we would not have to be insincere to our open enemies, on whom we rely not at all; insincerity is most appropriate for those in the middle, those on whom we partly depend (Grant, 1997, pp. 20-21, 23). It is to them that we deliver the false niceties, the feigned flattery and the artificial deference in hopes of receiving the relevant rewards. Yet instrumental insincerity is not a mere tool of self-interest to be exploited at others’ expense; often, it serves the mutual needs of two partly dependent parties who will have occasion to need different things at different times from each other. Insincerity may be the best if not the only effective means for two partly dependent parties who share only formal mutual commitments to satisfy their respective interests and needs. Politics is generally permeated by such relationships (Grant,
Politics as practiced thus rewards and perhaps even requires a level of instrumental insincerity. A given group of religionists and secularists may not comprehend or at times even respect each other in private but public displays of respect and flattery, artfully employed in person or formally institutionalized in legislative or judicial decorum, can preempt conflict, smooth over differences, and promote efficiency (Matthews, 1959, pp. 1069-71). But we can do more than discuss the potential values of insincerity as an abstract and largely apolitical practice, as do the liberals who summarily chide it; we can explore the characteristics and habits of insincerity as a distinctly political matter by situating its practice in political ideology.

**B. Liberal Insincerity**

Despite the protests by contemporary liberals like Audi, liberalism sought historically to reinterpret the socially despised tactic of insincerity as a remedy for needless political violence. A primary objective of liberalism was to end the bloody religious conflicts ravaging Western Europe in the 16th and 17th centuries (Rawls, 1996, p. xxvi). Such conflicts were partly reflected in and provoked by the forcible and public assertion of one’s sincere religious beliefs to the exclusion of others (Herzog, 1989, pp. 157-60). Another principal cause was the paranoid obsession by some political leaders to ferret out and usually destroy suspected hypocrites who pretended to belong to the state-sanctioned church but secretly belonged to another (Herzog, 1989, pp. 157-60). To end what they perceived as needless and cruel violence, liberals from Locke to Rawls argue the merits of relocating religious arguments from the public stage to the private; liberals argued that men may believe as they wish in their private churches and meetings but they should not be permitted to justify publicly government laws and policies on the basis of
Dichotomizing a previously unified self into a private religious one and a nonsectarian public one was seen as a means to mitigate the threat of civil war.

But that was not the only aim of liberalism. The distinction between private and public spheres permitted people in contexts outside of religion to be one thing in one place, another thing in another place. Whereas Rousseau argues that bourgeois men possess a coherent but delusional identity (1964, pp. 148-49, 155-56)\(^{11}\) and Melville describes men who tend to lack a coherent interiority altogether (1990), classical sociologists like Georg Simmel (1964, Part II) and Emile Durkheim (1984) and especially more recent ones like Niklas Luhmann (1982) argue that modern society is composed of social contexts that are divided and multiple in complex ways; these contexts are occupied by socially differentiated individuals who assume multiple and even mutually conflicting roles depending on the context. So a person can be a devout Catholic, an impersonally harsh district attorney, a loving father, and a jocose member of a softball team. He may counsel his children to be fair and kind to others at school while he himself unabashedly manipulates rules and bullies witnesses as a district attorney; he may joke during softball practice while contemplating austerely during Sunday Mass. For modern socially differentiated individuals, there is an issue of context that logically precedes the question of whether a particular public justification for laws properly stems from religion or secular motivations. A person can see himself primarily as either a religionist or not depending on the context. And the idea of context is further complicated by the fact that even within a given context, there are still smaller contexts that may undergird it, as for example, in a church, clerics may have to assume various contextually defined goals including serving at different times as fiscal administrators,

\(^{10}\) Of course, Locke and Rawls have very different specific recommendations for how the private and public spheres should be delineated for purposes of projecting religious beliefs onto government practices.
\(^{11}\) See also the very useful explication in Grant, 1997, p. 87.
biblical interpreters, social counselors and fund raisers. In this socially differentiated sense, insincerity and hypocrisy are not defined primarily in terms of the person but in terms of the person understood within a given context. Don Herzog argues that liberalism urged the merits of viewing one’s self in terms of such role differentiation for purposes of toleration, and thus sought to replace what liberalism portrayed as an outdated premodern view of an organically unified self inhabiting social situations that were porous and only occasional (Herzog, 1989, Chpt. 5; Shklar, 1984, pp. 75-78).

The commitment to differentiating social contexts and their attendant criteria for acceptable conduct inform the Constitution’s Fourteenth Amendment. The Fourteenth Amendment Equal Protection Clause provides that the state will not consider potentially irrelevant aspects of one’s identity in a person’s dealings with the government. In this abstract sense, familiar arguments both for and against race-based affirmative action are entirely consistent in that both appeal to the same abstract principle of color-blindness although in very different versions. The proponents argue that certain racial minorities are entitled to affirmative action not as a matter of special privilege but as a temporary remedial measure to overcome the effects of past discrimination, as a race-conscious measure intended to produce a race-blind society. Similarly, those who oppose race-based affirmative action argue that race is irrelevant in how the government should treat its citizens (Eastland, 1996). The principal difference between the two perspectives is one regarding an interpretation of historical and contemporary discrimination; there is usually no disagreement over the principle that no one should be favored over others simply by virtue of having been born into a particular racial group. But if the Equal Protection Clause stands for the proposition that racial or gender identity is irrelevant, the Due

Process Clause would seem to stand for the idea that people have the right to discriminate freely on the basis of such identifying traits. The Due Process Clause, as interpreted by the Supreme Court, seeks to protect zones of partial autonomy where people in civil society may make conscious and explicit personal choices based on nothing other than group affiliation along racial, gender or sexual orientation lines. So for example, the Due Process Clause permits us to declare openly our choice not to marry a person based solely on his race, or for adoptive parents to openly prefer girls over boys, or for parents to teach their children to embrace gays and lesbians as potential friends and neighbors or fear them as threats to traditional values. The two clauses permit an understanding based on an assumption of socially differentiated individuals: People may believe that race is an invidious distinction in law and politics but openly consult it as a relevant criterion for purposes of forming friendships and marriages.

But even if some people still retain what a group of sociologists consider a premodern notion of a strongly coherent self, liberalism nonetheless expects them to act in ways that are potentially inconsistent with their normative commitments. Liberalism, then, does not simply want people to adopt different social roles as the context may require but, where appropriate, to suppress some authentic part of themselves and insincerely don more socially acceptable masks. Or stated differently, liberalism may require that if we cannot “lose ourselves in the moment” that we nonetheless pretend to have done so in order to make possible the countless instances of social cooperation by individuals who sincerely distrust and often despise each other. So the liberal theorist Judith Shklar explains:

The democracy of everyday life, which is rightly admired by egalitarian visitors to America, does not arise from sincerity. It is based on the pretense that we must speak to each other as if social standings were a matter of indifference in our views of each other. That is, of course, not true. Not all of us are even convinced that all men are entitled to a certain minimum respect. Only some of us think so. But most of us always act as if we really did believe it, and that is what counts (Shklar, 1984, p. 77).

For suggestive discussion see Brandon, 1999, pp. 1227-34.
Shklar argues that we “expect to behave better as citizens and public officials than as actors in the private sphere” (Shklar, 1984, p. 78). As examples, she explains that it is no longer acceptable in the United States to make racist and anti-Semitic remarks in public; yet in private conversation racism and anti-Semitism are expressed freely and frequently. . . . Would any egalitarian prefer more public frankness? Should our public conduct really mirror our private, inner selves? (Shklar, 1984, p. 78).

According to Shklar, then, honesty expressed as public disclosures about one’s true self can be dangerous for liberalism and its ethos of political fairness, understood as disregarding essential aspects of social identity for purposes of political and social equality. Inasmuch as many of us may find Rousseau’s sycophantic bourgeoisie distasteful and frustrating, neither would many of us want a Conrad’s genocidal Kurtz to reveal his authentic self to the world. Such a political attitude sometimes seems lost among advocates of identity politics. For example, critical race theorists who call for personal narratives assume that a sincere presentation of one’s lived struggle demands recognition and redress partly by virtue of its honesty.14 That normative assumption however leads to awkward situations when the same advocates of identity politics are confronted by the narratives of Nazis, the Klan and others of their breed who in their own perverse psychology pride themselves on a perception of lived struggle, a perception delivered and probably regarded by such enemies of liberalism as equally heartfelt and sincere as do the proponents of identity politics with regard to their narratives.15 Patricia Williams in her fascinating book implies a recognition of this tension when she juxtaposes her richly candid diary entries as an African American law professor with her starkly formal insistence on contractual relationships as opposed to friendship in negotiating apartment leases (Williams,

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14 On critical race theory, see Bell, 1987; Chon, 1995; Delgado, 1989; Matsuda, 1989; Williams, 1989.
15 While the proponents of narrative often allude to the work of Martin Luther King, they tend to forget the other side of narrative, the darker side. See e.g., Hitler, 1943.
Legal rights, for all their insincerity in compelling the intolerant to tolerate, nonetheless are for black Americans “the marker of [their] citizenship, [their] relation to others” (Williams, 1991, p. 164). The same may be said for marginalized religious groups and other historically excluded people. For all the insincerity they may evoke, formal rights are a better protection than sincere narratives against those whose intolerance is partly defined by their very resistance to such narratives.

Such a liberal commitment to formal equality permits a different reading of the Fourteenth Amendment from the one I provided earlier with regard to role differentiation. Under the former, the Equal Protection and Due Process Clauses are not meant to accommodate socially differentiated individuals but to structure deliberately socially differentiated contexts and their respective expectations for proper behavior. Together, the clauses seem to assume that a measured public insincerity may prove a better alternative than a call to reveal one’s true feelings.

I have thus far presented theoretical sketches of the liberal and instrumental arguments for insincerity. In the next section, I flesh out the virtues of insincerity with greater precision.

II. An Economy of Sincerity:

As part of his widely celebrated theory of discourse ethics, Jürgen Habermas has argued that people should aspire to an “ideal speech situation” in which speakers treat each other as moral equals for purposes of a dialogic process aimed at arriving at truth. That enterprise tends to assume that in political argument more information or at least access to more information between and about speakers is better than less. Yet in actual practice and broadly speaking, the
opposite is true. As a general matter, it is often better to limit inquiries or disclosures about a speaker’s sincerity.

Habermas assumes that a Kantian ethics of equal respect is integral to his ideal speech situation, and like Kant, almost categorically dismisses deception as unjustifiable (Habermas, 1983, pp. 21, 41, 99-100). What is missing in this theory is the thought that an insistence on an economy of sincerity can serve as an enabling constraint for discourse.\(^{18}\) That is, by constraining certain kinds of arguments based on their content, we enable the conditions by which other arguments make themselves available. Enabling constraints can help parties engaged in argument arrive at certain provisional truths that may not be otherwise accessible in a dialogue where sincerity is left to roam and assert itself unconditionally. An economy of sincerity, understood as an enabling constraint, can be seen in the paradigmatic example of the American judiciary, which expects such economy in terms of both scope and depth.

**A. Economy’s Scope**

I can develop the argument with regard to scope by challenging Robert Audi’s recommendation that we abjure insincerity for the virtues of revealing who we are in political discourse. Audi explains that a lawyer before a court simply makes the sort of arguments where his “personal view does not matter” and that the audience does not know “who he is” (Audi, 2000, pp. 99, 111). But:

> This is not generally a good way to relate to fellow citizens. . . . It tends to conceal much of my perspective and so may well fail to promote understanding of me or my view; and it tends to arouse suspicion and so is likely either to undermine my efforts at persuasion or to make me seem an unknown quantity whose future conduct may be unpredictable (Audi, 2000, p. 111).

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Audi distinguishes the court and the political forum based on the likelihood of engendering “suspicion” and coming across as “unpredictable.” In doing so, he implies that the political sphere benefits from a significantly wider scope from that of the legal sphere of what counts as a relevant and sincere disclosure about identity.

But this distinction is questionable. While there are major differences between a political debate and a legal case, one of them needn’t turn on sincerity. There is a crucial reason which Audi ignores for why we do not want to widen the scope of what counts as permissible sincerity by allowing lawyers to tell the court their “personal views”. These things are often irrelevant, and worse, might unduly influence the audience either for or against the lawyer and his client. For example, we do not want a lawyer to tell a jury about his wife’s race, whom he voted for President, or his opinions on gay marriage, even if he handles a case that clearly relates to such background details. These things tell the audience “who I am” (Audi, 2000, p. 111), but they also threaten to remove attention from the argument’s merits to considerations that can corrupt the court’s integrity. There is also a more explicitly principled objection that such disclosures threaten to undermine a basic liberal commitment to ignoring potentially invidious aspects of a person’s social identity for purposes of safeguarding her legal equality.

Furthermore, widening the scope of sincere disclosures that are politically relevant can harm both of Audi’s social goods: if decisions are rendered on the basis of such background information, people may feel “imposed upon”; and if this continues persistently, as it does in many countries now, civil unrest no longer seems implausible. Such disclosures may also harm Audi’s personal good since instead of engendering trust, people may come to distrust personal testimonials as mere tactics.
And discouraging such personal disclosures needn’t be limited to the court setting as required by specific rules of evidence or a broad distinction between law and politics. For the same reasons I have stated, we should not necessarily focus in the political sphere on “who I am” but more on the argument’s merits.\textsuperscript{19} Religionists, while finding a reason unpersuasive, may nonetheless offer it to secularists as an attractive incentive for supporting the former’s cause. Such reasons may produce mutually beneficial results; Audi’s arguments notwithstanding, secularists may be more interested in good reasons than good motives. I can illustrate that point with two examples: one from civil society where actors negotiate the distribution of financial resources, the second from the state where officials negotiate the distribution of political power.

In the first example, a Catholic high school wants matching contributions from secular philanthropists (or, leaving aside Establishment Clause issues, the local school board) to help fund scholarships for inner-city youth who cannot afford to attend the school. The school may cite the fact that it has a strong record, unmatched by any other local school, of graduating seniors who attend first-class secular universities. Suppose further that this is not a case of what Audi calls “leveraging,”\textsuperscript{20} and that the school actually wants to support the scholarships to further a religious faith sorely missing in the neighborhood’s nihilistic surroundings. We can imagine the insincerity taking one of two forms: First, this can be a case of what I call mild insincerity if the school feels indifferent about its success in graduating students who attend

\textsuperscript{19} To be sure, powerful arguments can come from disclosing personal and ostensibly sincere experience as politically relevant; two ideologically contrasting examples are Martin Luther King and Adolph Hitler. King, 1992; Hitler, 1943. I make no comment about the value or implications of such arguments. My only intent is to criticize the requirement that one \textit{should} disclose such personal information or else be subject to suspicion.

\textsuperscript{20} Leveraging means that one “is not arguing \textit{from} those [proffered] reasons but presenting them as considerations acceptable to one’s audience and supporting a position that (typically but not necessarily) one \textit{does} take to be sound.” Audi, 2000, p. 109. Audi distinguishes leveraging from insincerity, limiting the former to where one “point[s] out reasons the audience \textit{already has} that support the policy, whether one thinks they are good reasons or not.” Audi, 2000, p. 110 (emphasis added).
secular colleges. Second, this can be a stronger form of insincerity if the school feels that sending students to such places may help to spread Catholicism.

Even if discovered, either motive might very well prove irrelevant to many secularist parents who, because of the school’s arguments, see a great opportunity for their kids to receive a solid education enabling them to escape the bleak surroundings of their poverty-stricken, crime-ridden neighborhood. Furthermore, some nonreligious parents may feel that their children will be impervious to any religious indoctrination; others may find solace in the possibility that the Catholic emphasis on discipline or faith may translate into secular virtues. As long as the interests of the Catholic school and the secularist parents do not substantially conflict, one wonders why sincerity, in terms of the consequence objection, should play a significant role.

Withholding or mischaracterizing one’s true motives can transcend local examples in civil society to institutional politics directly involving the state. We can look at the nation’s most significant act of political deliberation—the Constitutional Convention. There, in trying to establish a just government, the delegates were not hampered by Rawls’ “veil of ignorance” (Rawls, 1971, pp. 12, 19, Sec. 24); they knew who they were and where their interests lay.21 Yet like Rawls’ original position, the delegates were cautious: They deliberately withheld, or even actively misrepresented, their true motives for supporting or opposing certain provisions (Finkelman, 1996, p. 470), thus tending to question strong originalist assumptions that the Constitution possesses discernible intended meanings.22 But such insincerity was necessary given the diversity of interests and worldviews, including those pertaining to religion, represented in the Convention. Widening the scope of permissible sincerity would have

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21 It is true though that the delegates, like Rawls’ hypothetical characters, drew a physical veil around them, momentarily shielding them from the pressures of society.
22 See Antonin Scalia’s distinction between the strong and weak versions of originalism. Scalia, 1989.
deepened preexisting hostilities and mutual differences, perhaps to the point of preventing a practically viable Constitution.

**B. Economy’s Depth**

An economy of sincerity requires a restriction not just in terms of scope but depth. I present my argument by way of responding to Kent Greenawalt. Greenawalt argues that judges, more than anyone else, are required to rely on secular reasons in both judgment and justification. Society, Greenawalt argues, expects it of them (Greenawalt, 1995, p. 140). He derives this expectation from the “traditional view” of judges as being among public officials “the most carefully disciplined in restraining their frame of reference,” usually in the form of laws and statutes (Greenawalt, 1995, p. 149). Thus, “[a]sking them to decide exclusively, or nearly exclusively, on the basis of authoritative materials and publicly accessible reasons is not too great an imposition” (Greenawalt, 1995, p. 149).

It is easy to show that Greenawalt’s constraints for judges rest on questionable empirical premises. Even Greenawalt himself tends to belie his own arguments by paradoxically calling his “traditional model” of adjudication an “aspiration” (Greenawalt, 1995, p. 142). Nonetheless, simply offering a normative argument that bears little resemblance to empirical reality is no

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23 There would seem to be a societal expectation having existed as long as judges themselves that on some level they do indeed indulge their comprehensive views. We can look to the vast and often devastating critiques leveled by legal realism, legal behaviorism, feminist jurisprudence, and many others. For skeptical views that judges can “find” law, see Llewellyn, 1960, pp. 64-69; Llewellyn, 1930, pp. 431-65. For skeptical views that judges can “find” the relevant facts, see Frank, 1970, Part I. For radical feminist critiques, see MacKinnon, 1987, Chpts. 2, 8, 13, 14. For cultural feminist critiques, see Bender, 1988, pp. 3-37. An early and now famous precursor to this line of legal realist argument is Justice Holmes’ dissent in *Lochner*. *Lochner v. New York*, 198 U.S. 45, 547 (1905). Another valuable pre-realist criticism is by Pound, 1909, pp. 454-58, 460-70. These groups offer enough counter evidence to question whether Greenawalt’s “traditional” model of adjudication is outdated, if it ever existed at all. Doubts about what Greenawalt calls the traditional model of adjudication are also reflected more mundanely in the habits of trial and appellate lawyers who routinely tailor their arguments to suit the judge’s reputed comprehensive views or when they seek out or avoid certain judges based on such views. Such professional practice tends to question the precise meaning of Greenawalt’s observation that the traditional model of legal interpretation “continues to enjoy very wide acceptance among judges and lawyers.” Greenawalt, 1995, p. 142. Even Rawls, who idealizes judges as exemplars of “public reason,” nonetheless realizes that they’ve “often failed badly” to restrain their personal preferences. Rawls, 1996, p. 233, fn. 18.
reason to conclude that the argument is necessarily flawed. Therefore, my criticism of Greenawalt is itself normative. I argue, contrary to Greenawalt, that judges are under no obligation to ignore their religious beliefs, for these are the means--just as secular humanism may be the means--by which we come to terms with morally complicated social and political issues. That is, the situation may not be one where the judge is forced to choose between his best reading of the law and his religious beliefs, but rather, one where the former is constituted in part by the latter. Under such circumstances, to deny that judges have a right to consult their religious beliefs is to deny that they have a right to consult those sources which help them make sense of the law. But there is an undeniable expectation that judges be able to justify their opinions in secular language that largely appeals to authoritative secular sources regardless of whatever religious motivations may have moved them. This expectation is not simply “aspirational” as is Greenawalt’s “traditional model” of adjudication. Rather the social expectation for judges to use secular reason is embodied in institutional practice. It is reflected in a constitutional structure of appellate courts that review lower court decisions for, among other things, whether a judge publicly restrains himself from consulting religious sources in his opinion. And courts expect something similar from parties who are required to state their causes of action and related arguments by reference to secular sources in constitutions, statutes and cases.

These institutional practices tend to reflect, or at least seem consistent with, the liberal principle of equal respect endorsed by most liberals. The practices are justifiable not because of an expectation stemming from the judges’ perceived training as Greenawalt suggests, but because judges exercise political power over profoundly diverse people who deserve comprehensible reasons that are subject to scrutiny by the losing party, appellate courts and
interested audiences. This approach can promote equal respect: the religionist offers secular reasons acknowledging that others do not share and should not be made to share his epistemological standards while the secular audience respectfully acknowledges the same by refusing to interrogate the religionist’s motives.\footnote{I might be seen as implying here that only religionists should offer insincere justifications and that secularists needn’t do so. That suggestion might be seen as asserting a point that is potentially inconsistent with the previous example regarding the hypothetical Catholic school. In that hypothetical, both religionists and secularists offer insincere justifications. I believe that this potential inconsistency can be resolved in the abstract by recognizing the general view that the need for insincerity is derived through practical political considerations for mutual advantage, less so from substantive philosophical injunctions. What counts as practical political considerations depends crucially on the circumstances but, generally speaking, an overriding factor would be the likelihood of persuading those whose cooperation one seeks. In the Catholic school hypothetical, neither the secular parents nor the school officials could openly express their true desires, for that would undermine their realization. On the other hand, where secularist norms tend to be accepted more pervasively and strongly than religious ones, the religionist, unlike the secularist, might be more inclined to offer justifications that are insincere.} Rawls and especially Audi may bemoan this as only the thinnest of consensus but such tolerant restraint, as Michael Walzer reminds us, is not the least that profoundly diverse people can owe one another, but sometimes the most (Walzer, 1997, p. xi). Greenawalt argues that citizens are generally not required, as are judges, to consult primarily secular law since they’re not expected to, and thus they have greater freedom to invoke religious reasons in public discourse (Greenawalt, 1995, pp. 159-60). But that seems misconceived. For reasons similar to those that I’ve identified with judges, citizens should also be prepared to offer secular reasons when they advocate or oppose the exercise of political power.

**III. Rawls’ Challenge**

The endorsement of insincerity that I have offered may run counter to Rawls’ objections. Because of Rawls’ unequivocal stature as the most influential liberal philosopher of the twentieth century, I need to address those objections. Unlike Audi or Greenawalt, Rawls largely eschews empirical questions about whether people would feel alienated; he instead makes the question of fairness turn on inviolable principles. He argues that if a political issue falls under
“constitutional essentials” or “basic issues of justice,” a person might have to offer a sincere justification based on “liberal political values,” not religious faith. Rawls’ definitions for these terms are lengthy, but for my purposes, can be stated briefly. Constitutional essentials include two major components: “fundamental principles that specify the general structure of government and the political process” and “equal basic rights and liberties of citizenship that legislative majorities are to respect” (Rawls, 1996, p. 227). Basic issues of justice include two principles from his earlier Theory of Justice: the principle of “fair equality of opportunity” and the “difference principle” (Rawls, 1996, p. 228-29; Rawls, 1971, p. 72). Liberal political values can include those derived from Rawls’ earlier principle of justice as fairness, again from A Theory of Justice: “values of equal political and civil liberty; fair equality of opportunity; the values of economic reciprocity; the social bases of mutual respect between citizens” (Rawls, 1996, p. 139).

When someone publicly advocates a law or policy that involves a constitutional essential or an issue of basic justice, he, according to Rawls, should rely on public reason alone for both private judgment and public justification. A reliance on public reason means broadly two things. First, it means balancing the various liberal political values, even though people will inevitably balance them differently, thus arriving at different and potentially conflicting judgments (Rawls, 1996, p. 243). Second, it also means “appeal[ing] only to presently accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not controversial” (Rawls, 1996, p. 224). Rawls intends both points to mean that public reason does not derive directly from religion, although we can imagine how his intended meaning is not logically necessitated by either of his points (Rawls, 1996, p. 243).

Rawls sometimes seems unclear about whether people need to consult public reason only for their public justifications or also for their private judgment. At first glance, he seems to
permit a degree of insincerity. He says that public reason, even with constitutional essentials and
issues of basic justice, does not apply to “our personal deliberations and reflections about
political questions, or to the reasoning about them by members of associations such as churches.
. . .” (Rawls, 1996, p. 215). He then qualifies this liberty by saying that voting, whether by
citizens or governmental officials, on issues of constitutional essentials or basic justice must be
runs the risks of being hypocritical: citizens talk before one another one way and vote another”
(Rawls, 1996, p. 215). And likewise: “. . . if the question [touching an issue of constitutional
essentials or basic justice] is debated by appeal to political values and citizens vote their sincere
opinion, the ideal [of public reason] is sustained” (Rawls, 1996, p. 241).

But clearly many people do not talk to anyone about their votes, let alone debate them.
So how could they be “hypocritical” or “insincere” if they were to cast their votes about an issue
of constitutional essentials or basic justice without relying on public reason, and instead relying
on their religious beliefs? Far from being insincere, the votes would honestly reflect their
motives. Does Rawls condone such a practice?

His awkward phrasing, read too narrowly, would seem to do so. But that is doubtful.
Regardless of whether people talk about their political choices before voting, Rawls seems to
want them to adhere to public reason in both private judgment and public justification in matters
of constitutional essentials and basic issues of justice. He seems to imply this requirement in
comparing public reason with other modes of deliberation:

On fundamental political questions the idea of public reason rejects common views of voting as a
private and even personal matter. One view is that people may properly vote their preferences
and interests, social and economic,. . . [Another view] is that people may vote what they see as
right and true as their comprehensive convictions direct without taking into account secular
reasons. Yet both views are similar in that neither. . .respects the limits of public reason in voting
on matters of constitutional essentials and questions of basic justice (Rawls, 1996, p. 219).
Here, Rawls seems to believe that voting on issues of constitutional essentials and basic justice is governed by public reason, regardless of whether one has announced one’s position prior to voting.

While Rawls’ thick formulation of the fairness objection may thus avoid the problems attendant to the thin version, it suffers from problems of its own. I categorize these problems in terms of conceptual coherence and practical application.

**A. Coherence**

In terms of conceptual coherence, there is something of an inconsistency in Rawls’ theory. On the one hand, he acknowledges that religionists, should they accept the “overlapping consensus,” do so because the values embedded in it are consistent with the religionists’ comprehensive views. But in terms of specific laws and policies that implicate issues of constitutional essentials and basic justice, he requires people to consult public reason alone for both private judgment and public justification. That means that Rawls permits religionists to discuss within their respective faith communities the reasons for accepting an overlapping consensus but does not permit them to do so for matters of constitutional essentials and basic justice when the religionists seek to project their feelings onto institutional practices. Religionists are permitted to consult their faiths for the foundational principles of Rawls’ liberal society but not for the conceptually smaller issue of some policy or law. Rawls seems to at once recognize that many religionists cannot forego their faith with regard to major political choices and also seems to insist that they must.

**B. Application**

Even if Rawls could explain away the seeming inconsistency, the practical implications of his theory seem difficult to accept. There are at least three objections.
First, there is an objection from expectations. It seems entirely unrealistic, say, for a group of Catholics in a Bible study group to forego any reference to their religion in considering whether to endorse a Senate candidate with a strong pro-life position. To insist that they must seems arguably unfair and certainly unrealistic.

But Rawls’ theory may be unable to make such an insistence, anyway, since it fails to delineate clearly the parameters of constitutional essentials and issues of basic justice; hence there’s an objection from scope. Rawls argues that religionists, if they plan to engage in public advocacy about matters of constitutional essentials and basic justice, must consult public reason in their private judgment. But he seems to ignore how the initial step of determining what counts as an issue of constitutional essentials and basic justice–terms that are operationally vague–often can’t be determined without first consulting one’s religion. That is because abortion, for example, seldom manifests itself in politics as an abstract concept but as specific laws or policies about how much state funding to provide, the degree to which a girl must obtain parental consent, and what counts as public space in the demonstration of clinics; religionists may or may not regard such detailed administrative matters as an issue of constitutional essentials or basic justice. Thus, even if religionists rely on public reason for the relevant issues, the decision about what counts as a relevant issue could limit the applicative scope of public reason in ways unsatisfactory to Rawls.

Leaving aside this difficulty, there is another objection from trust: How can people actually know whether religionists consult public reason in their decision making? Whereas a plausible argument can be made that the expression of public reason for constitutional essentials and issues of basic justice generates a reciprocal moral duty for others regarding like issues, no such argument is available for a reliance on public reason in private judgment.
The account of insincerity that I’ve offered overcomes the problems that I’ve identified with Rawls. First, it avoids the problem of conceptual coherence, the inconsistency of at once permitting religionists to consult their faith in deciding to accept the overlapping consensus but refusing them to do so for specific polices or laws that involve matters of constitutional essentials and basic justice. My approach permits religionists to consult their faith on both matters but also permits them to make available justifications subject to rational secular examination by those outside the faith.

Second, my approach overcomes the three objections to Rawls from practical application. It overcomes the objection from expectations by permitting religionists to consult their faith for crucial subjects like abortion or euthanasia. It avoids the objection from scope by permitting religionists to consult their faiths on any issue, without taking for granted what counts as constitutional essentials and issues of basic justice. And finally, my approach overcomes the objection from reciprocity by focusing exclusively on public justification, not the inward silence of private judgment.

IV. Conclusion

To briefly summarize, I have tried to argue against the insistence by some prominent liberals that religionists should sometimes offer or be able to offer arguments that are sincerely held. I argued that insincerity, unlike lying, is not a misrepresentation of objective facts but a misrepresentation of one’s feelings. And therefore, insincerity, under certain circumstances is enormously useful for diffusing tense and volatile situations where parties are wont to express their sincere contempt for each other. Liberalism, I have argued, has capitalized on this aspect of insincerity and deployed it in familiar legal doctrines like the Fourteenth Amendment’s Equal Protection and Due Process Clauses. Liberalism’s insincerity also permeates, I have shown, the
discursive practices in a judicial paradigm whereby judges are expected to restrict their sincerity in terms of both scope and depth, a model for discourse that I have commended for lay persons in civil society. In a radically diverse country like ours, the potential for incompatible worldviews to clash violently with each other is sufficient to cause us to consider insincerity and its correlate gestures of courtesy as potential contributions to coexistence and cooperation.

REFERENCES


**Cases**