

Kitzmiller, the Public Sphere, and the Necessity of Epistemic Attitude

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ABSTRACT

The challenge for any democratic regime is to maintain solidarity between citizens who may possess dramatically different conceptions of justice and the good life. This tension becomes especially pronounced when individuals take starkly opposing positions towards legislation or jurisprudence based on their respective ethical or religious beliefs. Through examining the dispute between advocates for evolution and intelligent design in *Kitzmiller v. Dover Area School District*, I will consider how members of the public sphere might seek to overcome intrinsic differences in comprehensive doctrines in order to maintain democratic stability. This argument will draw most extensively from the work of John Rawls and Jurgen Habermas. Ultimately, I will argue that Habermas' notion that the process by which one translates their religious and ethical positions into the public sphere, what he calls epistemic humility, is essential for resolving such heated disputes in the public sphere. I will then expand Habermas' notion of posture utilizing the work of Cornel West and Judith Butler.

Keywords: public sphere, public reason, Rawls, Habermas, Butler, West, epistemic humility, intelligent design, evolution, Kitzmiller, education

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INTRODUCTION

In a pluralistic democracy, there is a natural challenge to foster solidarity amongst groups who hold radically different conceptions of justice, ethics, and religion. How do we maintain a space where religious and nonreligious citizens are equally able to speak and hear one another, and what do we do when such conversations begin to break down? To develop a response to this question, I will provide a brief overview of *Kitzmiller v. Dover Area School District* and the controversy surrounding the teaching of intelligent design in public schools. Subsequently, I will argue that this case illustrates an example of a breakdown of public discourse that arises when a group of citizens attempt to translate religiously substantive legislation into public discourse without the proper epistemic attitude. To elucidate this problem, I will lay out Rawls' and Habermas' respective conceptions of translation in the public sphere. This comparison will give rise to the argument that Habermas differs from Rawls in regards to his emphasis on attitude, or cognitive preconditions, within the conversation. While Rawls' focus is on *what reasons are given*, Habermas also addresses *how reasons are given*. The central argument of this paper will be that this latter aspect—the posture by which justification is given—is critical to the process of translation. The work of Judith Butler and Cornel West will be used to support this contention.

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KITZMILLER V. DOVER AREA SCHOOL DISTRICT AND THE ID CONTROVERSY

In 2004, the Dover School Board passed a measure requiring that “students . . . be made aware of gaps/problems in Darwin’s theory and of other theories of evolution, including but not limited to intelligent design.”² This new measure specifically mandated the reading of an intelligent design statement in ninth grade biology class, which pointed to the holes in evolution as a theory rather than fact, and offered Intelligent Design (ID) as a viable alternative explanation to the origin of life.³ Soon after the Dover School Board passed this measure, a lawsuit was filed alleging that the requirement violated the Establishment Clause of the First Amendment. The case was brought before Judge John E. Jones III in the Fall of 2005, and he issued his extended opinion invalidating the Board’s measure on December 20, 2005.⁴

The judge utilized two metrics to come to his decision. The first was the “endorsement test,” which evaluated whether the ID policy “in fact conveys a message of endorsement or disapproval of religion.”⁵ The conclusion was that the policy did, in fact, endorse religion based on its context within the larger anti-evolutionist education agenda. The policy’s stated intent to point out gaps in evolutionary theory was a successor of the Creationist attempt to utilize holes in evolutionary theory as evidence for a creative force, and many leaders within the ID movement had made statements supporting creationism as a theory. The judge specifically referenced “The Wedge Document,” a five-year plan to replace the “destructive moral, cultural and political legacies” of scientific materialism

² Kevin Trowel, “Divided by Design: *Kitzmiller v. Dover Area School District*, Intelligent Design, and Civic Education,” *The Georgetown Law Journal* 95 (2007): 859.

³ *Ibid*, 860.

⁴ *Kitzmiller v. Dover School Board*, 400 F.Supp.2d 707, 709 (Dist. Court, M.D. Pennsylvania, 2005).

⁵ *Ibid*, 17.

with “theistic and Christian science.” Given ID’s location within the larger Creationist agenda and its explicitly religious goal, the Judge declared that it endorsed Christianity.⁶

The second metric was the “Lemon Test.” According to this test, a message violates the Establishment Clause if: “(1) it does not have a secular purpose; (2) its principal or primary effect advances or inhibits religion; or (3) it creates an excessive entanglement of the government with religion.” The judge confirmed violations of both the first and second clause. Based on “the endorsement test” and “Lemon Test,” the ID policy was declared unconstitutional.⁷

Regarding our discussion of the public sphere, there are two aspects of this case that warrant analysis. The first is how the attempt to introduce ID policy into a space that is governed by public reason relates to our initial question regarding translation. Given the Establishment Clause, the government is prohibited from making any law that will establish or endorse a religious orientation or tradition. Therefore, the public education system bears resemblance to the public sphere as a systematically neutral space in respect to religion. Furthermore, if we accept the judge’s conclusion that ID policy is a substantively religious piece of legislation, then this case offers an example of a legislative effort to mandate religious discussion in a space that is supposed to be free of any sort of religious inclination or bias. In other words, we have a case of tension arising from the introduction of religiously substantive dialogue into public reason.

Second, the first metric of the Lemon Test, which considers “the secular purpose” of a given policy, implies a requirement closely resembling that

⁶ Ibid, 28-29.

⁷ Ibid, 90.

of Habermasian translation. The Lemon Test does not assert that religiously substantive policy or discourse creates a *de facto* violation of the Establishment Clause. Rather, these types of policy become constitutionally problematic when they are introduced without any sort of secular justification. The public sphere is open to religious input, as long as the religious input can be supported by external reasons. The ID policy's failure of the "secular purpose" clause partially resulted from a failure to provide such reasons. But, moreover, the ID controversy is an example of an instance when public discourse *breaks down* as a result of a debate between groups holding different conceptions of constitutional essentials. In a world where religious and ethical pluralism seems to be the indefinite reality, how can our approach to the public reason-giving accommodate the voices of passionate pluralities, while also maintaining the requirement for translation and neutrality?

PLURALISTIC TENSIONS: RAWLS AND HABERMAS

For both Habermas and Rawls, ethical and religious pluralism present a very real dilemma for democratic societies. In Rawls' words, "How is it possible—or is it—for those of faith, as well as the nonreligious (secular) to endorse a constitutional regime even when their comprehensive doctrines may not prosper under it, and indeed may decline?"⁸ A similar question hangs at the back of Habermas' discussion with Joseph Ratzinger in *The Dialectics of Secularization*—namely, how do we maintain democratic solidarity in the midst of the rapid secularization of society?⁹ In response to the natural tension between solidarity and pluralism, Rawls and Habermas present similar conceptions of a public sphere governed by rationality.

⁸ John Rawls. "The Idea of Public Reason Revisited (1997)" in *The Idea of the Public Sphere: A Reader*, ed. Jostein Gripsrud and Martin Eide (Lanham, MD: Lexington, 2010): 214.

⁹ Jürgen Habermas, Joseph Ratzinger, and Florian Schuller, *Dialectics of Secularization: On Reason and Religion* (San Francisco: Ignatius, 2006).

In Rawls' view, citizens engage in public reason when they deliberate regarding their respective political conceptions of justice. A political conception of justice comprises a view of the basic principles and values of justice and cooperation that (1) applies to basic political and social institutions, (2) can be presented independently of any sort of comprehensive doctrine, and (3) can be determined from the fundamental ideas operative in a given constitutional regime, such as ideas of freedom and equality.¹⁰ A political conception of justice exists in contrast to citizens' respective religious, ethical, and metaphysical orientations, which Rawls calls comprehensive doctrines. Habermas agrees with this reason-first methodology; rationality must precede the expression of comprehensive doctrines so that citizens will be able to communicate intelligibly.¹¹

Rawls introduces the criterion of reciprocity to draw a line between public reason and citizens' comprehensive doctrines. The criterion of reciprocity requires that when certain terms are proposed as the most reasonable terms of fair cooperation, those proposing them must also think it is at least reasonable for other citizens of differing comprehensive doctrines to accept the terms without social or political coercion.¹² This requirement ensures that religious citizens cannot present religious terms on the basis of purely religious reasons. Habermas concurs with this process of public justification, which he calls *translation*. In order to achieve solidarity, those holding comprehensive doctrines, must translate their conception of the good or just, into a language that is universally intelligible.¹³ Both thinkers assert that the requirement of translation is not intended to restrict the expression of comprehensive doctrines in the public sphere. In

¹⁰ Rawls, "The Idea of Public Reason Revisited (1997)," 210.

¹¹ Jürgen Habermas, "The Public Sphere: An Encyclopedia Article," in *The Idea of the Public Sphere: A Reader* edited by Gripsrud, Jostein, and Martin Eide (Lanham, MD: Lexington, 2010): 119.

¹² Rawls, "The Idea of Public Reason Revisited (1997)," 208.

¹³ Habermas, Ratzinger, and Schuller, *Dialectics of Secularization*, 51-52.

the proviso, Rawls explains that comprehensive doctrines can, and should, be expressed in public reason as long as they are supported by reasons justifiable to all. Given they satisfy the requirement of reciprocity, religious expressions can be done *freely*.¹⁴

The requirement of translation does, however, pose a number of exclusive challenges to religious citizens. First, Rawls notes that to participate in public reason, religious citizens must give precedence to rationality.¹⁵ Second, and more importantly, the requirement of translation is applicable only to those who hold religious comprehensive doctrines; secular citizens do not face such a requirement because public discourse is already in their *natural language*. The exclusivity of these challenges has left Rawls' conception of the public sphere open to criticism of anti-religious asymmetries. Charles Taylor has gone so far as to suggest that Rawls' conception of public reason should be entirely reconceived given these inherent asymmetries existent within his formulation of democratic liberalism.¹⁶

Though he does not go as far as Taylor, Habermas does acknowledge a similar concern related to Rawls' conception of the public sphere. Specifically, he suggests that Rawls' public sphere places three burdens exclusively on religious citizens. First, it requires religious citizens to develop an epistemic stance toward other religions and the distinction between secular and sacred knowledge. In other words, to engage in public discourse, religious citizens must acknowledge that the public reasons generated by other comprehensive doctrines hold equal weight to their own comprehensive doctrine. Religious citizens must also develop an

¹⁴ Rawls, "The Idea of Public Reason Revisited (1997)," 216.

¹⁵ *Ibid*, 221.

¹⁶ Charles Taylor, "Why We Need a Radical Redefinition of The Public Sphere," in *The Power of Religion in the Public Sphere*, ed. Eduardo Mendieta and Jonathan VanAntwerpen (New York: Columbia University Press, 2011).

epistemic stance toward the primacy of secular reasons in the public sphere.¹⁷

Given the challenges applying exclusively to religious citizens, Habermas holds that simple reason-giving is not enough to maintain solidarity within public discourse. In addition, certain “cognitive preconditions” are required for the continued use of public reason.¹⁸ By cognitive preconditions, Habermas means an epistemic attitude or stance involving a degree of reflexive criticism regarding one’s own comprehensive doctrine.¹⁹ In other words, Habermas is suggesting that citizens must, for the sake of continued solidarity, participate in the process of translation with a willingness to consider the faults and implications of their beliefs. If this attitude is not collectively maintained amongst individuals in a society, then there is a threat that public discourse will unravel. Habermas notes that, unlike motives, the attitudes requisite for effective engagement in public reason cannot be developed via normative mandates. He argues, “the normative expectations of an ethics of citizenship have absolutely no impact unless a required change in mentality has been forthcoming first, indeed, they then serve only to kindle resentment on the part of those who feel misunderstood and their capacities over-taxed.”²⁰

At this point, let us return to the discussion of *Kitzmiller v. Dover School Board*. This legal case and the overall controversy surrounding ID policy in public schools is an example of the unraveling anticipated by Habermas. In the judge’s opinion, there is unwillingness for self-reflective critique by the advocates of ID policy. As noted above, the leading these advocates created the measure to counteract the “evil” of scientific materialism.²¹

¹⁷ Jürgen Habermas, “Religion in the Public Sphere (2006),” in *The Idea of the Public Sphere: A Reader*, ed. Gripsrud, Jostein, and Martin Eide (Lanham, MD: Lexington, 2010), 302.

¹⁸ *Ibid*, 302.

¹⁹ *Ibid*, 308.

²⁰ *Ibid*, 302.

²¹ *Kitzmiller*, 400 F.Supp.2d at 737.

Furthermore, discussions amongst ID leaders revealed their intent to use the policy as a step to reintroducing creationism back into public education. Both of these facts point to a lack of the cognitive preconditions that Habermas sees as requisite for successful public reason giving. If a religious citizen enters into the public sphere already assuming that the other side is intrinsically evil and takes measures to implement a policy with duplicitous motives, then the process of translation will naturally break down. To clarify, my intent is not to critique ID proponents regarding the substance of their worldview or their method of policymaking; rather, I am simply assessing their translation efforts and motives relative to Habermas' assertion that an epistemic attitude of humility is necessary for these sorts of translation efforts to be successful.

In the ID controversy, the advocates of ID policy were not the only group lacking the cognitive preconditions necessary for effective public reason-giving. Habermas asserts that secular citizens must transcend a secularist self-understanding of Modernity if they want the liberal public sphere to remain functional.²² For Habermas, a secular citizen cannot simply reject religion as archaic or irrational, for doing so would delegitimize a central aspect of the religious citizen's identity. The secular citizen, therefore, has a duty to not only hear the public justification of a given religious comprehensive doctrine, but also to actively aid the religious citizen in the process of translation from her point of view. However, the secular citizens participating in the debate take a far more antagonistic tone. In a PBS documentary regarding the ID policy debate, Kenneth R. Miller, a cell biologist who served as the leading expert witness for the plaintiff in the *Kitzmiller* case, is quoted saying, "Intelligent design makes people stupid."²³ His statement is an example of the anti-ID camp's generally dismissive and critical tone toward those who ascribe to the theory. In the

²² Habermas, "Religion in the Public Sphere (2006)," 303.

²³ Jonathan Sahula, "Judgment Day: Intelligent Design on Trial," in *NOVA*, PBS: broadcast November 13, 2007.

public sphere, if no “fellowship ethos” exists, then the religious citizen will be unwilling to provide a gracious translation of her ideas, and the secular citizen will be unwilling to actively engage with the ideas that are translated.²⁴ The root of the breakdown in the ID controversy lies in an attitude problem.

TOWARD AN ETHICS OF RECONCILIATION: BUTLER AND WEST

If Habermas is right, and the stability of the public sphere relies on a certain epistemic attitude, then how can we move towards a posture of reciprocity? In other words, how can we promote a solidarity that is holistic to the human experience rather than a required element in a construction necessary for the continuation of democracy? To address these questions, I will briefly discuss the ideas of Judith Butler and Cornel West presented in *The Power of Religion in the Public Sphere*.

Butler argues for a reframing of public discourse grounded in an ethic of cohabitation. By acknowledging the reality of cohabitation, we accept the fact that we do not have the power to choose who inhabits the earth alongside of us. Furthermore, no one should possess the power to determine who our neighbor is. Instead, we should accept the person who lives in proximity to us as *given to us*.²⁵ Since, our neighbors are given to us, and we are given to our neighbors, we have an obligation to preserve each other’s lives, even if we belong to pluralities that are radically divergent. Butler goes so far as to attempt a deconstruction of the ‘plurality’ within pluralism altogether, drawing on Arendt to suggest that a plurality is necessarily exclusionary, for we must appeal to the *outsider* to

²⁴ Habermas, Ratzinger, and Schuller, *Dialectics of Secularization: On Reason and Religion*, 49.

²⁵ Judith Butler, “Is Judaism Zionism?” in *The Power of Religion in the Public Sphere*, ed. Eduardo Mendieta and Jonathan VanAntwerpen (New York: Columbia University Press, 2011): 83.

establish the *insider*.²⁶ Therefore, we are bound to the stranger, and “to destroy the other is to destroy my life.”²⁷

Butler suggests a “practice of remembrance” in order to foster this attitude of belonging. In order to engage with the outsider, we must remember our moments of alterity. West expands on the practice of belonging through his concept of prophetic religion. West’s prophet is one who calls attention to suffering, who does not shy away from communicating the ramifications of injustice and catastrophe.²⁸ In essence, the prophet is a continual practitioner of remembrance, and that which she recalls is not selective. She does not allow historical amnesia to draw a comforting naïveté over the genocide, the oppression, and the many other deplorable events that mark human history. Through this practice, the prophet calls for justice. Yet the prophet does not take a posture of self-righteousness. On the contrary, she seeks to deepen her imagination, to open her mind to different discourses and arguments.²⁹ Put simply, the prophet is one who, via the practice of remembrance, cultivates a potent distaste for injustice and a sweeping empathy that leads toward loving action.

CONCLUSION

Through a discussion of *Kitzmilller v. Dover School Board*, we have related the ID controversy to tensions within the public sphere. Habermas’ primary critique of Rawls’ conception of democratic liberalism was that it lacked an acknowledgment of the necessary attitudes, or cognitive preconditions, amongst citizens in the public sphere. Accordingly, I have drawn a parallel between Habermas’ concern and the resentful and

²⁶ Ibid, 84.

²⁷ Ibid, 88.

²⁸ Cornel West, “Prophetic Religion and The Future of Capitalist Civilization,” in *The Power of Religion in the Public Sphere*, ed. Eduardo Mendieta and Jonathan VanAntwerpen (New York: Columbia University Press, 2011): 97.

²⁹ Ibid, 98.

dismissive tone evident between the contested parties in the ID controversy. Subsequently, we examined input from Butler and West advocating for an attitude of citizenship rooted in remembrance. To conclude, I leave an open question for the reader. If advocates and opponents of the ID policy held cognitive preconditions grounded in the practice of remembrance, how would the debate have changed? My hunch is that, in the very least, collective epistemic humility would have empowered both parties to avoid mutual resentment and move together towards democratic solidarity.

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