**What’s Wrong with Establishment?**

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This paper examines what objections we might have to moderate religious establishment as found in a number of contemporary liberal democracies. This form of establishment respects citizen’s rights and liberties, so it is not immediately clear what if anything is troubling about it. One view is that moderate establishment is alienating for non-believers but I suggest this is either untrue or rests on contestable premises. Another view is that moderate establishment communicates an unacceptable message to those

outside the faith. However, I argue that there is no clear expresive harm involved. In the final section of the paper I defend an ideal of public reason which is exclusivist, since citizens must abjure from controversial religious premises in public political debate, but also (contrary to common assumptions about public reason) applies to the sorts of non-coercive measures moderate establishment often involves. I argue that under such a public reason framework, moderate establishment measures are often

illegitimate, though not invariably so

**What is Establishment?**

Not only the leaders of the Christian church believe in religious establishment; leaders of minority faiths such as the former chief rabbi Jonathan Sacks (1991) have also defended it, as have prominent advocates of multiculturalism such as Tariq Modood (2007). For writers such as Sacks and Modood, the Church of England can play a central role in the public narrative that helps bind together diverse societies such as the UK. In recent years a number of liberal political theorists without overt religious sympathies have explored whether moderate establishment might be compatible with liberal democratic principles (Brudney, 2005; May, 2009, 2012; Laborde, 2013a; Laegaard, forthcoming). At the same time, though, the orthodox liberal view – the view of the US Constitution, the Federalists and John Rawls – is anti-establishment.[[1]](#endnote-1) While most liberal democracies across the world are non-established, the UK, Denmark, Norway, Finland and Greece have established churches and some other states have some sort of official recognition for one or more churches.

In light of this debate, the aim of this paper is to clarify the normative considerations which count against establishment, or at least some forms of establishment. There is disagreement within the literature over how precisely to draw the distinction between illiberal and moderate establishment, the latter being our interest here (Brudney, 2005; Laegaard, forthcoming; Laborde 2013a; Taylor and MacLure, 2011; Ahdar and Leigh, 2005; Bonotti, 2012). However, it will suffice for our purposes to say simply that moderate establishment is compatible with liberal justice and democracy. A further complication is that establishment itself can be interpreted as a plural ideal that encompasses not just Christianity, but minority faiths too which are, in various ways, formally incorporated into the state (Modood, 2010; Laborde, 2013a: 72-3). From the point of view of inclusion and diversity, multi-faith establishment seems preferable to mono-faith establishment, but my aim is to investigate the normative issues involved in the state sponsoring religion as such, and my argument against establishment applies also its plural variety.

An established state can roughly be defined as one where there are (a) institutional connections between church and state, such that (b) the state advances religious interests in some way, though also often (c) exercising some official involvement in church affairs such as the appointment of senior clergy With regard to (c), non-establishment is sometimes said to prevent state interference in church affairs, thereby maintaining the church’s autonomy, but I shall not consider that here (Ahdar and Leigh, 2005: 81; Cohen, 2011: 259; Koppelman, 2013: Ch. 2). The distinction between (a) and (b) marks the difference between endorsement ((b) alone), and establishment proper, but again I shall not focus on that here since there are cases of endorsement which are relevant to our question.

Here are some of the main measures that moderate establishment – or more generally, endorsement - can involve (whether of the mono-faith or multi-faith model):

* Church representation in legislative assemblies such as the 26 senior bishops in the British House of Lords;
* State funding for religious associations that provide non-religious public goods, for example schools, hospitals, adoption agencies, homeless shelters, drug treatment centres, and so on;
* Church involvement in state functions such as state funerals, and coronations in monarchies;
* Tax advantages for religious organisations;
* Taxes paid to the church, even if citizens can opt out of them;
* Legal powers devolved to the church, for example the clergy’s right to conduct marriages in the UK;
* Religious instructions in schools, including bible reading and creationist accounts of evolution; and a religious ethos in schools more generally;
* Schools permitted to select children based on religious criteria, and prefer those criteria in hiring teachers;
* Chapels in public institutions such as hospitals or universities; and chaplaincies in the armed forces and prisons;
* Laws that favour the dominant religion, such as public holidays, days of rest, and dress codes;
* Public (and publicly-funded) religious displays; and other religious symbolism such as the references to Christianity in constitutions, and the ‘In God We Trust’ motto on US currency;
* Public religious statements made by politicians and public officials.

This is a long and capacious list which involves diverse principles, values and other normative considerations and there are two ways we might treat it. One is to consider them all of a piece and to search for one over-arching concept that explains establishment’s alleged normative wrongness. Such intellectual parsimony risks being tendentious. The other is to examine them one by one, and analysing the principles and values involved in each case. [[2]](#endnote-2) That approach, though, risks losing the larger issue; there would not be anything which was problematic about establishment as such, unless we happened to find a common denominator between them. In what follows I adopt a moderate version of the former strategy. In the penultimate Section, I set out a public reason framework for analysing establishment as such which explains why it is illegitimate in a great many cases. Before that, the next two Sections consider two alternative frameworks which are, in my view, less successful.

**Alienation**

A number of writers have suggested that establishment is prima facie wrong because it alienates citizens who are not members of the established religion, or indeed any religion (Ahdar and Leigh, 2005: 138-40; Brudney, 2005: 819-22; Laborde, 2013a: 84; Laegaard, forthcoming). Brudney writes that:

Most citizens would feel significantly demeaned and excluded if they believed that state institutions were expressing a disdainful view of their religion, were holding it to be less worthy than some other doctrine. And if citizens see themselves as demeaned and excluded by state institutions, they might psychically withdraw from such institutions, come to feel *alienated* from such institutions (2005: 819. Emphasis original).

The basic idea of alienation seems to be that some or all types establishment send a symbolic message to some citizens that their doctrine (religious or secular) is less publicly worthy than the doctrine of the established church, and that as a result they feel marginalised or disparaged by state institutions. Alienation thus involves alienated citizens suffering a normatively problematic relationship with political institutions, at odds with the basic liberal axiom that all citizens should be treated as equals by the state. For example, if a school or local council meeting began its day with official prayers, then those outside the faith might feel alienated by having to participate, or by having to take a stand to opt out.

On one account of alienation, it is a purely psychological phenomenon; as a result of the symbolic message sent by state institutions, citizens outside the established faith feel alienated by those institutions. The wrong of alienation is the psychic harm it inflicts (Brudney, 2005: 819). This may come in different forms. Brudney writes of citizens feeling ‘demeaned and excluded by establishment’ while Laborde worries that alienated citizens will experience difficulty in identifying with their political institutions since they are outsiders to the established church (Laborde, 2013a: 84).

Some degree of alienation is a ubiquitous part of our social lives. To be sure, alienation produced by state institutions is especially normatively troubling since legal and political arrangements which sponsor an established church have a certain symbolic authority, and the collective imprimatur of citizens insofar as the state speaks in our name. Still, the claim that citizens suffer psychic harm on account of moderate establishment measures, to a degree that would render those measures unjust, seems a little hyperbolic. Even if some citizens do experience such harms, that will not suffice. If establishment is wrong, on this interpretation of the alienation argument, then that judgement needs to be robust across variations in individuals’ personal sensibilities. If it isn’t, then the account is hostage to the contingencies in different citizens’ different psychological makeup, and the variations involved therein (Laegaard, forthcoming). A second problem with the psychological account is that it would seem to apply equally to the feelings of citizens of faith under wholly secular political arrangements (Ahdar and Leigh, 2005: 144; Laegaard, forthcoming; Bonotti, 2012: 346).

On what I shall call the moderately moralised view of alienation, establishment measures send a message that does not honour a basic interest of some citizens, and as a result those citizens have *reason* to feel alienated by those measures. Citizens who have reason to feel alienated by established political arrangements will generally do so, but not necessarily; there may also be some peculiarly robust citizens who don’t experience it that way. On the moderately moralised view, alienation is still a person-affecting harm. Citizens experience alienation because they (invariably if not universally) endorse certain moral interests, and they see that those interests are set back by state establishment.

The relevant interest which establishment offends must be a general and non-controversial one. It must be an interest which it is not reasonable for citizens to reject. At the same time, though, this interest has to some normative work; it has to be one which establishment very clearly sets back. The difficult is in specifying an interest which clearly tells against establishment but which at the same time has wide appeal. Daniel Brudney for example postulates that establishment is alienating for citizens who have a strong attachment to their polity (2005: 812-4). An individual has a strong attachment if she identifies deeply with her polity and its institutions, and she is very motivationally committed to maintaining them in a healthy state. The character of the polity plays a substantial role in her good. Such a citizen is indeed likely to experience alienation if there is a substantial degree of establishment in her state; she will feel that the state with which she identifies has been usurped by institutions and practices she does not endorse. However, as Brudney makes clear, we cannot reasonably assume that every citizen is strongly attached to their state (2005: 830). Some citizens are highly civically engaged and keen to participate in political life, but others are not. While permissible to hold, it is also reasonable to reject a doctrine of deep political involvement. Citizens with a weaker but non-trivial sense of identification display all the motivational commitment that is needed for liberal justice to maintain itself.

On the other hand, we can adopt a weaker construal of the relevant interest. We might claim that individuals have an interest in charting the course of their own lives free from religious interference. That is a much more plausible interest to assert, but it is also not clear how moderate establishment sets it back. The kinds of measures listed earlier do not on the whole impede individuals from pursuing their good. Having a chapel in a hospital or university, for example, does not does not make those who do not wish to use it any less self-determining.

Even supposing we could delineate the interest at work in the moderately moralised view in the right way, there remains the issue of whether establishment really sets it back (May, 2009: 152-4). Moderate establishment protects citizens’ rights and liberties; it is fairly limited and parsimonious. This matters because of the very close connection alienation has with one’s moral experience. Alienation is something which one directly suffers, it impinges on how one inhabits the world. Yet the moderate establishment measures we listed do not on the whole substantially impinge upon the lives of secular citizens and those who follow non-established faiths. Citizens may notice the occasional religious display, they may register the fact that church-based charities receive public funding and that faith schools are available. But even supposing all the measures above were in place in a state this hardly makes establishment systematic enough that it pervades the social experience of citizens outside the dominant faith. After all, moderate establishment is perfectly compatible with religious pluralism where some citizens will be deeply committed to their own religious practices and institutions. Moderate establishment does not seep into the moral experience of citizens outside the established faith. By contrast, in intuitive cases of citizens in contemporary societies who are alienated this is exactly what happens. Think about the young black man who is regularly stopped and searched by the police, eyed with suspicion by other citizens, and subject to discrimination at work. His interest, that he be treated as a civic equal, is not controversial and yet it is not recognised in his social world. He has reason to feel alienated in a way that the atheist citizen in a moderately established state does not.

**Expressivism**

Another way of construing the wrongness of establishment focuses not on the interests affected by establishment but on the message it conveys. This is the expressive argument which says that establishment involves the state expressing morally wrongful attitudes towards non-members of the established religion. Establishment disrespects them, or illegitimately casts them as outsiders. The most cited legal deployment of the expressivist point of view is Justice Sandra Day O’Connor’s opinion in Lynch v. Donnelly (1984) which concerned a nativity display in the city of Pawtucket, Rhode Island (Koppelman, 2013: 46-8, p.86; May, 2012: 224-5; Eisgruber and Sager, 2010: 122-3). For O’Connor the display clearly amounted to an endorsement of the Christian religion, contrary to the Supreme Court’s Lemon test which inter alia requires that government actions must have a secular purpose. The problem with endorsement, according to O’Connor, is that it ‘sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favoured members of the political community’ (Lynch v. Donnelly 1984: para 688; cf. Cohen, 2011: 260-1). Legal and political theorists too have employed the expressivist argument. For Eisgruber and Sager, the problem with symbolic endorsement is that carries a social meaning about the nature of the political community; the community is constituted as a Christian one which denigrates or disparages non-Christians in a way inconsistent with the principle of equal regard (Eisgruber and Sager, 2010: 121-30). Similarly, Nussbaum claims that endorsement violates the principle of equality by ranking members of religious minorities below members of the dominant religion, ‘not as citizens of equal worth in their own right’ (Nussbaum, 2008: 226-7).

Though some its adherents talk of ‘expressive harms’ (eg Anderson and Pildes, 2000: 1527-31), the core of the expressivist theory is that people may be treated according to principles which express wrongful attitudes towards them, something separate from the causal effects of their treatment at others’ hands. As norms are imbricated in our shared social life, so they are replete with expressive messages, some of them wrongful. If your neighbour parks her car in front of your driveway, she expresses disregard for your interests, a wrong separate from the burden you now face in finding an alternative place to park. Governments too express attitudes towards citizens not just through their explicit communications, but also in their laws, policies and even institutional design. In a democratic state, laws and policies are authorised by the citizen collective; elected governments act in our name, thus augmenting the weight of the potential wrongs inflicted on some citizens. Determining the expressive message, however, involves interpreting the rationale for a law as well as the social and political context in which messages are sent. Thus Jim Crow laws in the US which enforced racial segregation in education, housing, transport and so on were morally charged in part because of the history of slavery and other racial injustice in the US. Laws that require segregated public facilities for different groups of citizens have an expressive meaning wherever they’re in force, but what that meaning is will be dependent to some degree on the social context in which they’re introduced (Anderson and Pildes, 2000: 1525).

Expressive messages are wrongful when they violate well-founded moral principles, but what are those principles? Here I follow May (2012) in distinguishing between the equal respect and the equal standing interpretations of the expressivist argument, though I make different use of these two ideas than he does.

On the equal respect interpretation, establishment conveys a message of disrespect to citizens outside the established faith, contrary to the duty of equal respect which the state owes its citizens. Established political arrangements communicate a message which demeans non-established citizens. This need not be experienced by them as harmful, though of course depending on the nature and magnitude of the disrespect, it may do. But establishment is unjust, on this view, because of what it conveys about the beliefs and identities of those outside the faith. This message is at odds with the moral principle of equal respect which should be at the core of the state-citizen relation.

State action clearly can convey a message of disrespect, as the case of segregation in the US shows, but for it to do so, I suggest, at least one of two conditions has to be in place. First, states can express disrespect by failing to extend rights and liberties systematically to one group of citizens, of by failing to ensure that the rights and liberties which that group formally enjoys are substantively available to them – as with black Americans during the segregationist era. This expresses disrespect by picking out one group of citizens as not worthy of enjoying the same basic entitlements as others. Second, states can express disrespect towards one group of citizens by denigrating their identity, denying their social contribution, and encouraging negative stereotypes of them to circulate. This expresses disrespect by communicating the message that members of this group are not proper citizens. It may be accompanied by a failure to extend rights and liberties. However, neither of these modes of disrespect is at work in moderate establishment. Under moderate establishment religious minorities’ rights are *ex hypothesi* secure. There is no fundamental justice-relative sense in which they are treated differently to other citizens. Nor are they subject to ongoing, pervasive vilification. There are groups who are sometimes disrespected in this way, even in liberal democracies, such as irregular migrants and welfare beneficiaries, but there is no parallel sense in which outsiders to the official church experience a message of disrespect.

The other interpretation of the expressive argument centres on the related idea of equal standing. Here established political arrangements are said to communicate the message that citizens of other faiths (or of no faith) are ‘outsiders, not full members of the political community’, as Sandra Day O’Connor puts it. This is a denial of their status as citizens; the message is that the political community is constituted in part by its shared subscription to the established religion, so those outside the established faith do not really belong.

To assess this argument, let’s consider an example of alleged outsiderhood. In their depiction of the imaginary multi-faith community of ‘Fineville’, Eisgruber and Sager consider what message would be sent if the city council erected a large sign on the highway leading into town that said ‘Welcome to Fineville – A Christian community’ (Eisgruber and Sager, 2010: 124-5). The sign advertises the community as a Christian one, a construction at odds with its actual empirical description as a community of many faiths. This disjunction between official inclusion and social reality denies the membership claims of non-Christians in Fineville, according to Eisgruber and Sager.

This conclusion seems to me less obvious than Eisgruber and Sager believe. For one thing, much depends on context. Suppose, for example that, analogous to the treatment received by black Americans, there had been a long history of religious discrimination against non-Christians in Fineville. Fineville’s Christian majority routinely harassed and abused non-Christian fellow Finevillians and treated them as second class citizens. In that context, erecting sign that declares Fineville to be a Christian community looks like a deliberate provocation and a moral wrong. But suppose by contrast that Fineville was a tolerant and harmonious town where citizens of all faiths and none treated each other respectfully and in which the Christian population did not seek to gain extra privileges on account of their majority status. It just so happens that the Christian majority on the town council decides to advertise Fineville’s historical religious character on a billboard on the road into Fineville. Is that a moral wrong? That seems to me less clear, provided the non-Christians minority continue to enjoy substantively equal treatment. Suppose that, sensitive to the offence which a declaration of its Christian identity might cause, the town council amends the sign so that it reads: ‘‘Welcome to Fineville – a Christian community that respects people of all faiths’. The charge of unequal standing seems harder to maintain in the context of an overt message of equal respect.

Further, the Fineville example is clear and unambiguous, in contrast to Lynch versus Donnelly and the moderate establishment measures we are considering where there is a much longer interpretive journey to make from the law or policy to the message it conveys. For example, granting tax advantages to the established religion do not overtly *declare* that that religion is peculiarly favoured. True, tax breaks *enact* a kind of favouritism, and in doing so give the established religion a higher status than other religions. But to say that members of those religions, or citizens of no faith, are second class citizens is a further claim which seems unwarranted just by this policy, or indeed moderate establishment policies more generally.

Expressive arguments claim that certain groups are disparaged or demeaned or humiliated by public messages but moderate establishment does none of those things. What it does is valorise the beliefs and values of a certain religious identity which it makes the official one. But to valorise certain beliefs is not to demean others or to claim that they are valueless. To give one religion a favoured status is not to claim that others have nothing to offer at all. If atheists and followers of non-Christian religions were really publicly disparaged then the expressive argument would have force, but that is not what moderate establishment involves

**Public Reason**

We have so far been considering the ‘outputs’ of moderate establishment, the harms or injustices it is said to inflict on citizens outside the faith. But I think the best reason for objecting to establishment concerns its ‘inputs’, the kinds of arguments that can be used to justify establishment policies. This concerns a moderately established state’s legitimacy; its moral right to implement establishment laws and policies in the first place (cf. May, 2009: 137-8, 148; 2012: 220-2). A legitimate political procedure authorises the state to make collectively binding decisions, given enduring conflict in politics, not least over the appropriate role of religion. Disagreement over religion in a democracy is especially deep and profound, reflecting the way religion is bound up with people’s identities and its claim to speak on matters of ultimate concern. I shall suggest that under one compelling procedure, establishment measures are only sometimes legitimate.

One reason for objecting to establishment that we have not considered so far is that it is non-neutral; it favours one view of the good at the expense of others. The most common way of interpreting the ideal of neutrality is as a justificatory ideal. Non-neutral political arrangements are ones which cannot can be justified interlocutors in political argument on terms that they can reasonably accept. Public reason is a procedure which adds to neutrality the idea that laws and policies must be proposed by co-deliberants to each other, through the use of reasons which eschew appeal to controversial bases, if the state which implements them is to be legitimate. Non-controversial reasons are those grounded in public political values that enjoy wide acceptance such as freedom, equality and respect for persons. By explaining how the measures they propose can be grounded in such values, individuals respect the diversity of each other’s beliefs and avoid seeking to implement policies which can only be defended in sectarian terms (a failure of justificatory neutrality).

At the core of public reason is an ideal of fair reciprocity: individuals mutually accept the burden of limiting themselves to public reason, given others’ willingness to do the same. Given everyone’s mutual willingness to employ only public reasons, accepting that burden oneself is reasonable. Reciprocity is a moral norm and not simply a pragmatic imperative because those engaged in public debate accept the ideal which underlies it, that political arrangements should be acceptable to all, something especially important under conditions of reasonable pluralism. They are acceptable because, if defensible in terms of public reason, then citizens can at least appreciate the arguments for those arrangements, even if they disagree with the specific measures which are implemented.[[3]](#endnote-3) In accepting reciprocity as a regulative ideal governing the sorts of reasons which may be introduced in public political debate, citizens show each other mutual respect; they avoid foisting on their fellow citizens laws and policies with which they not only disagree but which, because they fail the test of public reason, they are without the terms to argue against.

In Rawls’s account of public reason, citizens accept a duty of civility when discussing political questions in the public domain; they have a moral but a non-legal duty to explain to each other how the positions they favour can be defended in terms of public reason, at least when it comes to constitutional essentials and matters of basic justice (Rawls, 2005: 217). By contrast, in non-political fora – in churches, clubs, universities and so on, when political power is not at stake – citizens are free to draw on their moral, philosophical and religious views in discussing political questions. The difference between when restricting oneself to public reasons is and is not a moral requirement concerns therefore the role which one occupies at any one time. Public reason imposes stringent duties on elected representatives, candidates for public office and members of the judiciary since in their role as public officials they inhabit the political forum, (cf. Audi, 2011: 92; Laborde, 2013b). Likewise, in public political meetings such as election hustings, ordinary citizens should couch their arguments in terms of public reasons to avoid excluding those who do not share their more particular reasons. But of course such individuals are also private citizens with their own associational commitments and deep attachments to particular comprehensive doctrines.

Some writers defend a broader, less restrictive conception of public reason which, so it is argued, is more amenable to citizens with deeply held religious convictions. The ‘inclusivist’ view of public reason sees the duty to appeal only to widely shared political values as too restrictive and says instead that citizens may be able to enter their own comprehensive doctrines into public debate, provided certain conditions are met. The inclusivist view is still a form of public reason in the widest sense as it refers to citizens’ reasoning in public and because citizens aim to reach agreement on questions of justice and other disputed political matters, but it dispenses with the central idea of the orthodox, consensus view that citizens accept a democratic duty of restraint. Different writers who endorse inclusive public reason have construed the idea in different ways. Christopher Eberle (2002) endorses what he calls an ideal of conscientious engagement according to which religious individuals have an obligation, grounded in a duty of respect for their compatriots, to seek to find a non-religious rationale for the policies they actually favour for religious reasons. For example, an individual who wanted to defend faith schools on the grounds that children should receive instruction in the true faith, might argue instead that faith schools instil in children a secure sense of their own identity. Religious adherents must search for a non-religious rationale for their position sincerely and conscientiously, but if in the end they can’t find one they do not violate any duty owed to their fellow citizens. Religious citizens show respect by merely *trying* to find a publicly shareable basis for the religious policies they recommend. By contrast, Kevin Vallier (2014) dispenses with any such duty on the part of citizens in his convergence view of public reason. Coercive laws are justified, on Vallier’s view, just when each citizen has a sufficient reason to endorse them, where such reasons refer to citizens’ actual motivational sets. Political reasons do not have to be accessible to all citizens, or shared by them; it is enough that individuals’ reasons are mutually intelligible, in the sense of understandable, in order to provide a basis for public justification. On the convergence view, we can reach agreement for our own reasons, so a policy might have both religious and secular rationales. According to Vallier, the alternative, consensus view of public reason violates religious individuals’ integrity, because it requires them to propose reasons in public debate with which they may fundamentally disagree, and as a result it imposes an inequitable burden on citizens of faith, treating them as second class citizens. Paul Billingham likewise suggests that the consensus view of public reason will fail to respect some persons as it offers them reasons for state action which they cannot accept, given their beliefs and values (Billingham, 2016: 142).

Nothing in consensus public reason which offends religious citizens’ freedom of conscience, nor their right to manifest their religious beliefs within the confines of the law, or even to enjoy on occasion accommodation from otherwise uniform laws on grounds of their integrity. Nor are religious citizens barred from expressing their religious views, and explaining how they support or oppose a policy or piece of legislation. They can draw on traditions of religious thought and doctrine and explain how they support shared political values, they can use religious rhetoric and imagery and draw on religious traditions as a source of wisdom and moral insight (March, 2013). Exclusivist public reason is not a movement to secularise the public sphere; it does not imply that religious reasons are not good reasons, so in this and other ways it seems to respect religious citizens. Exclusive public reason bars them only from relying on religious premises from a sacred text or divine command, in support of a position they commend for public adoption, however deeply felt their convictions. This is a burden but it is one shared by non-religious comprehensive doctrines such as utilitarianism and secular humanism insofar as these rest on controversial premises.

The inclusivist ideal of public reason faces a dilemma. Suppose in the end that the process of seeking to find reasons to justify state action in terms that all can accept from within their particular worldviews is not successful. Then on Eberle’s view at least, religious individuals have the right to impose political arrangements on their fellow citizens on the basis of arguments they cannot share or support, provided only that they have made a good faith effort at public justification (cf. Bird, 2013: .20-1). On Eberle’s view, this does not violate any requirement of respect (Eberle, 2002: 109-51). After all, we are assuming a situation where citizens or their representatives faithfully adhere to democratic procedures and deliberate in good faith. The end result, though, will still be one which some citizens not only disagree with, but cannot in principle accept, if it is based on controversial religious (or non-religious) premises. Public justification, on the inclusivist position, can announce a law or policy as the political community’s official view, even when the foundations of that view are alien and incomprehensible to some large segment of the political community. It is this which violate the norm of mutual respect. Inclusivists furthermore assume that public reason can converge on certain laws and policies, absent any shared basis of justification for doing so. This seems over-optimistic, given the endemic disagreement and deeply opposed starting positions which pervade democratic life. Exclusivism avoids these difficulties. How far it is really disrespectful rests on a judgement about the burdensomeness of stepping outside of one’s worldview in order to entertain shared basic political values with one’s fellow citizens for (and only for) the special purpose of public justification.

It is commonly accepted among proponents of public reason that its rationale is bound up with the coercive nature of the law.[[4]](#endnote-4) The general idea is that the presumption against coercion can only be over-ridden if those who are coerced are offered a reason which they can accept. Moderate establishment, however, is not necessarily coercive. True, some measures such as public holidays and tax-funded faith activities do involve some coercion, but symbolic forms of religious endorsement do not. Moderate establishment, by definition, preserves substantial individual liberty. We need to ask therefore whether public reason is apt for laws and policies which are non-coercive or at least not significantly coercive. This question has, perhaps surprisingly, not been much discussed among public reason theorists who have retained the liberal assumption that it is coercion which requires special justification. That may be so, but our question is whether the rationale for public reason is only applicable in cases of coercion.

The outcome of public reason announces the political community’s view on some public issue; it says that while a variety of positions are possible (supported by reasons) this is our collective view, one which public officials may enforce in the name of all (Cohen, 2011: 268). While citizens whose views do not carry the day will not agree to the view, they need at least to acquiesce, to it as the common position of the community of which they are members (Bird, 2013). That acquiescence is manifest in citizens agreeing to live by laws with which they nonetheless continue to disagree. Having to obey laws which you reject is inevitable in a democracy, but public reasons offers three considerations in support of that obligation which are not present under aggregative conceptions of democracy. First, it gives citizens the opportunity to put their views and concerns to their fellow citizens in the public political fora in terms which their interlocutors can understand, and have some duty to consider. It offers a shared basis for citizens to enter into and participate in public debate. Second, it subjects political combatants to a mutual requirement to engage with the arguments advanced and considerations highlighted by their opponents. Participants in public debate violate a duty owed to other participants if they pre-emptorily dismiss or wilfully ignore their views. Third, exclusivist public reason puts its participants under a robust obligation to offer dissenters a reasonable justification for the policies they intend to pursue where such justification is actual, not hypothetical, and is of course conducted in the shared language of public debate. We can capture these three considerations through the idea that participants enjoy a certain securely established *standing* in public debate. That standing is publicly affirmed by other participants’ recognition that they have the right to propose and argue for their view, by their acknowledgement of a duty to listen to and respond to others’ views and in their willingness to offer a public justification for the view they favour. Citizens’ equal standing is a normative ideal that is grounded in the value of fair reciprocity. The latter is respected through each citizen’s acknowledgement that others’ views must be considered and engaged with, and cannot be ignored even if they are in a minority. It is not simply citizens’ moral worth which is recognised here, but their status as public interlocutors, people whose views must be reckoned with (provided they proceed from the shared moral terrain of public reason values).

The idea of equal standing shows that the requirements of public reason hold even in cases where coercive laws are not at issue because citizens whose views are silenced, ignored and who are not offered a justification when their view does not prevail have their standing denied regardless of the nature of the law at issue. It is enough, for any law or policy that is put forward for discussion, that some citizens can have a reasonable objection to it, that is, an objection that may be formulated in public reason terms (rather than being based on wilful self-interest). Even in the case of measures which are not coercive or do not affect citizens’ central interests, they have an interest in being able to debate and discuss them in the public political forum.

With this interpretation of public reason to hand, we can now return to establishment. My claim is not that public reason strikes down every moderate establishment measure, but that it offers a framework for assessment which shows why many (though not all) instances of moderate establishment are illegitimate. The reason is that establishment policies, as political measures, announce the community’s stance on particular issues, and citizens outside the established faith cannot accept the reasoning on which that stance is founded if that reasoning is based on religious foundations. Absent a convincing public reason defence of establishment policies, citizens outside the faith cannot acquiesce to them. Introducing laws or policies based on religious premises denies the democratic standing of citizens outside the faith. To see this concretely, let’s return to the Fineville example we considered earlier. I said there that a sign which declared Fineville to be a Christian community was not necessarily an expressive harm; much depended on the context in which this announcement is made. Now our question is whether a sign which makes a public declaration of a town’s religious character may be defended in public reason terms, and it is difficult to see how it can be. Even though it is a piece of symbolism, the Fineville sign is a partisan one, at odds with Fineville’s demographic as a multi-faith community. The non-Christian community of Fineville cannot accept the sign (unless it can somehow be defended on non-religious terms).

The fact that the Fineville example is symbolic is important because it shows that the public reason argument may be marshalled against other symbolic measures even though that these may appear the most defensible of establishment measures. Cécile Laborde for example argues that public reason is indeterminate (or silent) about religious symbolism since religious symbols may be entrenched consistent with treating citizen as free and equal (Laborde, 2013a: 80-2, cf. 2013b: 181-2). But citizens can have a reasonable objection to symbolic measures even where their freedom and equality is respected. They can say for example that a chapel in a public hospital where there are no equivalent facilities for citizens of other faiths is discriminatory, or that posting the Ten Commandments outside a public building violates a civic norm of inclusion. Non-discrimination and inclusion are values consistent with public reason.

The same point about reasonable acceptance goes for other establishment measures such as church taxes, church representation in legislatures, faith based schools, religious instruction in schools and chaplaincies in prisons and the army where other religions are not provided for. Speeches by public officials which rest on religiously controversial premises are also obviously excluded. These measures all seek to advantage the established faith at the expense of the others – or in the case of multi-faith establishment they advantage the established faith*s* at the expense of citizens with no faith - and citizens can therefore reasonably object to them. It is difficult to see how they can be given a public reason defence, though I do want to rule out that they might be. Absent that defence, a state which implemented them would violate the democratic standing of citizens outside the faith in the three ways we detailed. First, though citizens outside the faith have the freedom to submit their contrary views in public debate, their fellow citizens’ consideration of them will be coloured by their prior adherence to religiously-based commitments. Second, citizens of the faith will not wholeheartedly engage with the views of citizens outside the faith shared terms; their engagement will be marred by the introduction of a religious vocabulary whose nature is alien to those without religious commitments. Third, and in consequence, the justificatory reasons offered to those on the losing side will not be ones that gain a foothold in that side’s normative commitments. For example, church taxes might be justified through promoting the church’s role in ministering to the spiritual welfare of the populace, but this justification cannot reasonably be offered to those outside it. Church representation in the legislature might be justified by appeal to a state’s religious heritage, but whether that heritage ought to carry any weight in public political argument is a further question.

There are, however, some establishment policies which might be defensible in public reason, especially where, in non-ideal circumstances, certain pragmatic reasons are admitted. Suppose, for example, a church organisation administers welfare to citizens in a fair and effective way, and does so on an entirely non-discriminatory basis to citizens of different faiths and identities. There is no overt proselytism involved. Perhaps the church is one of a variety of welfare providers, some religious, others not. In a case such as this neutral considerations such as citizens’ welfare needs, public finances, the benefits of pluralism and the church’s tangible experience with clients might mean that church welfare could receive a public reason defence (cf. Laborde 2013b: 178-81).

In sum, public reason offers a framework to evaluate establishment policies; one that insists that for any such policies to be justified they must pass through the justificatory filter of reasonable political values. It is not surprising that most cases of establishment cannot be defended through such values; the rationale of establishment is to entrench the position of a comprehensive doctrine. Only in a small number of cases can the measures that doctrine supports be defended in terms of values that all citizens can share.

**Conclusion**

The first task in assessing establishment is to disaggregate it to see what it actually involves. Though there are particular objections to many establishment policies, few of them cause alienation or are expressive harms. On the more plausible moderately moralised view of alienation it is difficult to identify a noncontroversial interest on account of which citizens are alienated. Given that under moderate establishment citizens’ rights and liberties are secure, there no establishment measures which impose a clear expressive harm on either the equal respect or the equal standing interpretation of the argument. Yet I have argued that, absent a compelling public reason defence, democratic citizens can have reasonable objections to establishment measures. Of course, the ideal of public reason is not universally accepted. But if we do endorse public reason, it supplies a powerful case against many establishment measures.[[5]](#endnote-5)

1. **Notes**

   Laborde (2013a) suggests that Rawls’s political liberalism may be compatible with moderate establishment. See the reply by Bonotti (2012). [↑](#endnote-ref-1)
2. This approach is taken by Greenawalt (2008). [↑](#endnote-ref-2)
3. Exactly what ‘appreciate’ means is a contested among public reason theorists. It could mean ‘accept’, or more weakly ‘acknowledge’ or ‘access’, but I leave that issue aside since my aim is only to set out a generic account of public reason in this Section. [↑](#endnote-ref-3)
4. For a typical example with religion in mind, see Audi (2011: 63-72). [↑](#endnote-ref-4)
5. I am grateful to Paul Billingham, Matteo Bonotti and Simon Căbulea May for helpful written comments on an earlier version of this paper, and also to audiences at UCL and Belfast for helpful questions.

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