

CAN THERE BE A RELIGION OF REASONS? A
RESPONSE TO LEITER'S CIRCULAR CONCEPTION OF
RELIGIOUS BELIEF

*Jeffrey M. Lipshaw**

This is a comment on a definition of religion recently proffered by Brian Leiter. It first appeared in a paper arguing that there is no principled reason for the Constitution to single out religion, as one of many forms of conscience, for special tolerance. Martha Nussbaum has since suggested that we owe something more than mere tolerance for religious belief; in our efforts to make sense of the world, we owe "a special respect for the faculty in human beings in which they search for life's ultimate meaning."¹ In a draft paper posted on SSRN, Leiter uses the same definition of religion to support an argument to the effect that Nussbaum is wrong.² My argument can be expressed positively: if Nussbaum is right, she is also right in considering the concept of religious belief (as opposed to particular conceptions or instantiations of it) as much as entitled to respect as any other kind of belief, because once we are talking about any kind of belief it is difficult to draw a principled line. Stated negatively, Leiter's attack is ultimately circular: the problem with religion is that it is not science. Exposing the circularity requires identifying the trick, which is that Leiter employs an appeal to common sense to distinguish religion and science. Nevertheless, the very belief in common sense here is the same as the religion Leiter attacks: it is categorical and insulated from further reasons.

* Associate Professor, Suffolk University Law School; A.B., University of Michigan; J.D., Stanford University.

¹ MARTHA S. NUSSBAUM, *LIBERTY OF CONSCIENCE: IN DEFENSE OF AMERICA'S TRADITION OF RELIGIOUS EQUALITY* (Basic Books, 2008), at 19.

² I understand that Leiter's SSRN paper, is a draft, and that he has requested that it not be quoted or cited without permission. I will respect that request. (Indeed, I much appreciate his comments on an earlier draft of this essay, which included our discussion of how to treat the draft.) The only point really incident to this essay from the second paper is the idea that religious belief, as Leiter defines it, is not entitled to respect (versus tolerance) as a matter of morality apart from law. I do not think Leiter's generalization of religious belief is correct, and think his arguments, at least on respect, would be far more effective if he were able to offer convincing reasons why my far more reasoned religious beliefs and practices are either not religion, or somehow different in material respect from other non-religious articulations of conscience. The critique of the present definition still stands (or falls!) on that which is final and published, and I hope he considers these thoughts in deciding whether he wants to revise his position.

In the first paper, Leiter's question was why give religion, as opposed to other forms of conscience, its particular status of protected exercise under the American and Canadian constitutions.³ The argument is in two primary steps. Step One is to clarify conceptually what makes religious belief different from those of other kinds of beliefs. There are two necessary elements. The first is categoricity of demands on action.

(1) Religious belief issues in categorical demands on action, that is, demands that must be satisfied, no matter what an individual's antecedent desires and no matter what incentives or disincentives the world offers up.⁴

There is seemingly a little more to this condition, because there are some non-religious moral beliefs (like Kant's categorical imperatives) that have an aspect of categoricity. There seems to be an additional aspect of religious categoricity, namely, that "religion is one of the few systems of belief that *gives effect* to this categoricity."⁵

The other element is insulation from reasons and evidence.

(2) Religious beliefs do not answer ultimately (or at the limit) to evidence and reasons, as evidence and reasons are understood in other domains concerned with knowledge of the world. Religious beliefs, in virtue of being based on "faith," are insulated from ordinary standards of evidence

³ Brian Leiter, *Why Tolerate Religion?*, 25 CONST. COMMENT. 1 (2008).

⁴ *Id.*, at 15 (footnote omitted).

⁵ *Id.*, at 17. It is not entirely clear what "giving effect" is, but I read Leiter's claim as being that religion does something more than mere morality by imposing something more than mere moral culpability. Beyond that, I am not sure what he means, but it might be an other-worldly incentive:

The claim is not that all beliefs commonly denominated "religious" issue in such commands, but that it is characteristic of religion that at least some of the commands in which it issues are categorical in character. It may be more accurate, though, to say that religious belief issues in as-if categorical demands on action, since it is familiar enough that religions can impose other-worldly incentives to produce action in this world that seems "as if" it were a response to a categorical reason, when it is really a response to an instrumental reason for achieving an other-worldly objective. . . . Indeed, as I note later on, to the extent that a metaphysics of ultimate reality is also a distinguishing feature of religion, it may supply believers with instrumental reasons for acting insofar as acting in the right kinds of way enables believers to stand in the right kind of relationship to that ultimate reality.

Id., at 15, n. 37.

and rational justification, the ones we employ in both common-sense and in science.⁶

By "standards of evidence and reasons," Leiter means those "that have been vindicated a posteriori since the scientific revolution."⁷

Step Two of the argument is that, while there might be reason to give religion protected status as a subset of liberty of conscience, there is no principled reason why beliefs marked by the two elements, categoricity of demands, and insulation from reasons and evidence, should get special consideration above other forms of exercises of conscience.⁸

The primary problem with Leiter's conception is that it falls prey to the way intellectuals often think of modern religion: the fundamentalist extremes that make the news.⁹ Nussbaum addressed a concept: that we ought to have "a special respect for the faculty in human beings in which they search for life's ultimate meaning." But Nussbaum did not ask for respect for particular conceptions of religiosity. I do not accord respect (in the sense of giving substantive credit, as for example, the respect I have for Leiter's expertise in Nietzsche) to a belief that in all the universe God happened to be embodied in a single human being who lived for about thirty-five years on one planet circling one small star on the fringe of only one of countless galaxies, and that such belief is the only means of eternal salvation for my soul. I tolerate that belief, and think it is entitled to legal protection against government interference.

Critical to my critique of Leiter's definition is the relationship between his two elements of categoricity and insularity. It is not just that a belief is categorical that makes it religious in Leiter's account; it is that *nothing* could ever change that view. Given that Leiter only require a minimum of reason-resistant "central" categorical beliefs to make a entire set of related

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*, at 23.

⁹ The public intellectual presently speaking for a far more benign concept of religious sentiment and practice is the historian Karen Armstrong. As Lisa Miller suggested in a Newsweek article, "[w]hat the Greeks called logos and mythos define two different aspects of the world and our experience in it: the knowable and the unknowable. You can believe in both." It seems to me Miller has captured the thrust of the argument as follows: "the new atheists are, in effect, buying into one particular modern, Western fundamentalist notion of God in order to make God look ridiculous and knock him (or her or it) down." Lisa Miller, *Out, Out, Damned Atheists: Karen Armstrong Weighs in on God*, NEWSWEEK (Sept. 21, 2009), at 29.

beliefs qualify as a religion,¹⁰ his argument would be significantly more effective were he to make it in the context of the most reasoned statement of religious sentiment and practice, that is, one in which we have reduced the categorical demands to the bare minimum. How fully we find our choices of action dictated by categorical demands is a matter of degree, and the line blurs between those categorical demands that are religious, and those that are not. It is possible to conceive of a religion in which the only categorical demand is to grapple with, and reach reflective equilibrium with respect to any internal voice of conscience that purports to be issuing categorical demands.¹¹

Call that a religion of methodology. It is not clear to me how that religion is less worthy of respect than a secular methodological orientation to action holding as its only categorical demand that we respond only to evidence and reasons. In other words, we have exposed the circularity of the concept. This is Leiter's core belief:

(1) All beliefs must be revisable in light of evidence and reasons.

Is it Leiter's position that (1) could be revised in light of evidence and reasons? I think not. Any exercise in conceptual thinking requires some foundational belief that is both categorical and insulated, for all practical purposes, from evidence and reasons. That is why it is foundational. And while, in order to avoid the circularity, we might adopt a holism that puts aside foundational concepts when talking about physical science, it seems to

¹⁰ I take this from the way in which Leiter distinguishes religion from Marxism. Even though Marxism seemed like a religion, Marx conceived of it as a science, and therefore presumably would have revised it in the face of reasons and evidence. Not so a religion: "all countenance at least some central beliefs which are not ultimately answerable to evidence and reasons as these are understood elsewhere (e.g., in common sense, and in science)." *Id.*, at 17.

¹¹ This goes back to whatever it is that Leiter means by "giving effect" to the categoricity. See *supra* note 5. I think what he means is that there is some kind of external reward or punishment for failure to live up to the categorical demand. If the giving effect is entirely internal, then that is a matter merely of conscience or guilt, i.e., internal moral culpability, and at that point, we are back to no distinction at all between religion and other moral systems. While external reward may indeed be critical to some religions, it is not even close to being true universally as an empirical matter. There are some religions that could be fairly characterized as nothing more than Kant's categorical imperative with some poetry and music thrown in (think of Unitarianism, versions of modern Judaism, or a number of Eastern religions). One of the reasons I think Kant is appealing to Jewish philosophers is the idea that duty based on the expectation of reward (whether in this life or another one) undercuts the essence of duty, which is the product of pure practical reason. See Schwarzschild and Seeskin, *infra* note 19.

me to be far less satisfying, even as a matter of common sense, when we are arguing about only the concepts themselves.

Let me proceed to unpack this a little.

1. The argument based on receptiveness to reasons and evidence itself arbitrarily picks and chooses reasons and evidence.

If I understand correctly scientific naturalism from Quine forward, it has little patience for theoretical or metaphysical considerations of the justification of knowledge. Quine's pragmatic move was to disdain the primacy of any concept (i.e. reasons developed by virtue of meaning and not empirical fact). Nothing that is the product of reason is foundational. It is fruitless to keep searching for the dispositive test against which we can test whether our thoughts (expressed in language) are meaningful statements about the world as it really is. As I read Quine, from whom Leiter derives much of his position, there is no more foundational bedrock for physical objects than for Homer's gods; common sense simply tells us that the myth of physical objects is a better one to believe, because it carries more explanatory water "as a device for working a manageable structure into the flux of experience."¹²

Leiter's argument, on the other hand, skates over this distinction, apparently the key to Quine's naturalism, between reason and experience. Instead, as a matter of brute assertion, he deploys particular reasons (not evidence) to suggest that there is a conceptual difference between religious and other manners of thought (primarily science and common sense) in how answerable they are, not only to evidence, but reasons. Whereas to Quine, no concept, including analyticity, was beyond revision in the light of experience, I read Leiter to be something less than a pure empiricist, holding some concepts as *a priori* inviolate, namely, that no concept can ever be accepted if it does not respond to evidence or competing concepts. That is, concepts are to be judged by their coherence.¹³

What is particularly troublesome in light of this conceptual circularity is

¹² W.V. Quine, *Two Dogmas of Empiricism*, in MARTIN CURD & J.A. COVER, *PHILOSOPHY OF SCIENCE: THE CENTRAL ISSUES* (Norton, 1998), 280, 298.

¹³ I further assume that Leiter would view debate over concepts that have no application to the real world to be arid or sterile; that is, the concepts, like the Kabbalah, might be coherent, but who cares? That strikes me as a wholly empirical question, or one to be determined by practice. As discussed below, if Kabbalahists can cash out their coherent concepts in the practice of their lives, then that is all the justification they need.

his recruitment of the concept of common sense. Leiter argues that one of the key distinguishing hallmarks of *all* religions is that, unlike common sense and science, they countenance at least some beliefs that are not answerable to evidence and reasons. This is a questionable conceptual move in light of the historical evidence. When the early Enlightenment philosophers took up epistemology, it was largely to free science from the fallacies of common sense, most often reflected in religious belief. Common sense might lead one to the conclusion that God sends earthquakes to punish non-pious and licentious cities.¹⁴ Science tells us otherwise. Leiter now aligns common sense on the side of science against religious belief. If Quine's agnosticism on foundational knowledge extended so far as to think belief in physical objects and gods differed only in degree and not kind,¹⁵ then I think it is also reasonable to let common sense remain moderately agnostic as between faith, evidence, and reason. Indeed, I am willing to use common sense in the selection of the kind of religious orientation a better argument than Leiter's would use for rejecting the worthiness of our respect versus tolerance.

Finally, we should use the hardest issues in the overlap of religion, philosophy, and science to test the interplay of reasons and evidence. As I understand the thrust of naturalism, philosophy's mental constructs and linguistic constructions as sources of truth have fallen away as science has taken their place. The reason is that scientific practices have shown themselves, as matter of experience (not concept or reason), to work in explaining the world, in a way that philosophy (and religion) have not. Nevertheless, one area in which the scientific discipline is only nascent is cognitive science, and particularly scientific explanations, if any, of consciousness. On anyone's account, the concepts of philosophy and the empirics of science seem yet to vie equally regarding our own experience of consciousness, that is, our grappling with the empirical reality of conscious minds and freedom of action (whether real or imagined) in an otherwise physically deterministic world. Even the ferocious debates among philosophers of mind have a second-order faith propelling them. Do you believe that science will ultimately explain the internal experience of consciousness? It has not yet. Either you believe there will be science, or

¹⁴ Hume and Kant shared a distrust of "common sense" as a means of explaining worldly events, because common sense is just the ordinary exercise of reason, and may or may not actually explain things. Common sense and reason might result in a Ptolemaic view of the workings of the heavens. As Kant observed, finding laws of nature is a difficult task; the oft-misconceived metaphysics of "common sense," like dogmatism, however, are easy, and "float to the top." IMMANUEL KANT, PROLEGOMENA TO ANY FUTURE METAPHYSICS, ed. Paul Carus (Open Court, 1949) at 6, 21-24

¹⁵ Quine, *supra* note 12.

you do not. The discussion quickly turns from actual evidence to competing binary conceptions on the possibility of *a priori* knowledge.

2. *It is possible to posit a religion whose categorical demands on action and requirements of foundational bedrock are minimal.*

I wish to posit an alternative conception of religious sentiment and practice, and one that I think is at least as responsive to the evidence of religious belief and practice as Leiter's. The most sensible characterization of what Nussbaum wants to respect is neither extreme of unshakeable atheism nor evangelical fundamentalism. It is instead the reasonable person who does not take Biblical miracles literally, who desires to grapple either intellectually or emotionally with the fact of consciousness and the reality of conflicting demands on action, seemingly categorical, relative, or defeasible, depending on the context, to be able to make judgments about those demands, and to have institutions and practices that support those intellectual or emotional efforts. I have in mind someone like Francis Collins, the director of the Human Genome Project, whose belief in a personal God is far more developed than mine, but who nevertheless insists that science is the only reliable way to understand the natural world.¹⁶

In my conception of religion, there are very few categorical demands. The reason is that I refuse to treat any human statement or construct or liturgy or categoricity as divine. My empirical observation is that the physical universe my mind and body inhabit is replete with paradox, polarity, asymptotes, limits, and infinite regress (and the seemingly unanswerable question how the universe came into being, if at all), not the least of which is that neither science nor philosophy has yet come up with decisive explanation how our minds and bodies interact.¹⁷ Indeed, what I find difficult about religious ritual and practice is the reification of the sense of awe, wonder, and mystery of life, being, and consciousness into a set of rules. My ideal religion of minimum categoricity would recognize that ritual is a means to an end. As one of our rabbis once put it, it is unlikely that God really cares if we eat shrimp. Nevertheless, therein lies another paradox, which is that at least religious ritual and practice is a place where one can contemplate, and indeed is usually encouraged to contemplate, awe, wonder, the mystery of life, being, and consciousness. I find that to be a more compelling reason to respect ritual than merely to tolerate it based on

¹⁶ FRANCIS S. COLLINS, *THE LANGUAGE OF GOD: A SCIENTIST PRESENTS EVIDENCE FOR BELIEF* (Simon & Schuster, 2006), at 6.

¹⁷ None of the candidates – from the substance dualism of Descartes to functionalism – are wholly satisfactory.

a brute assertion, like Leiter's, that it is mindless and habitual.

Let us take one of the most famous stories of faith and common sense, one so troubling that it is the Torah text that starts the Jewish New Year, and which provoked Kierkegaard into considering the leap of faith. This is a story that makes just about every reasonable person squirm, because it is the ultimate in questioning one's foundational bedrock, or what is the demand on action when faith conflicts with common sense. Abraham hears God telling him to take the son he loves and offer him up as a sacrifice. Abraham obeys, and is poised over the boy with a knife, when an angel stops him, apparently satisfied merely that Abraham was willing to go through with it. Abraham sacrifices a ram instead, and the angel tells him that he and his descendants are to be rewarded for his willingness to take God's command blindly.¹⁸

If you are inclined to fundamentalism, all this says is that you will be rewarded for blind faith. Why then, empirically speaking, have human beings worked so hard to reconcile this story with their common sense? I am no fundamentalist, and am willing to think that the biblical authors were themselves grappling with the question of foundational bedrock, when, in the most extreme case, what purports to be your foundational bedrock seems to be telling you to do something that your common sense, which must also somehow arise from the foundational bedrock, tells you is evil. I prefer to think that this story says that there is no categoricity all the way down. The punch line is that Abraham did not do the evil deed, and the biblical authors had not yet come up with sufficient abstractions for the infinite regress or the ultimate paradox that this represents. So they sent an angel.

3. Religion uses reason (in the sense of concepts apart from evidence) to grapple with the source of our bedrock beliefs. It differs from other such grappling only in degree and not kind of thought; once we accept the role of concept (or reason) in such work, religious or secular, we necessarily must accord bedrock status (or categoricity) to at least one concept (like (1) above).

In the most reasoned of religions, then, what we do is to grapple with our bedrock beliefs. It is no surprise to me that a religion Hermann Cohen, the neo-Kantian philosopher, sees as a source of a "religion of reason"¹⁹ is

¹⁸ Genesis 22:1-19 (Jewish Pub. Soc'y, 1955).

¹⁹ Cohen "held that there can be only one rational religion, which would have to be as universal and necessary as pure reason itself, and that consequently all human beings, at

one in which not only humans argue with God, giving reasons why God is wrong, but God revels in being out-argued by the children.²⁰ Where is categoricity in that religion? It is an elusive one at best, since it both acknowledges the sense of bedrock belief, but is willing to remain skeptical about human articulations of it. Nevertheless, common sense tells us that this is religion.

Just as we can posit a religion that calls for foundational bedrock, yet questions it, we can observe secular philosophies that question whether there is any objective truth, yet nevertheless reveal they have a shred of categoricity, albeit in methodology rather than substance. In the case of Derrida's post-modernism, for example, the categorical demand has to do with the relationship between law and justice. It is, to me, surprisingly grounded, sensible, and moderate. To summarize John Caputo's account, law and philosophy are both about the *arche*, the structure, the polity, the rules, but justice is something else, *an-arche*, related to a singularity, unreachable, and subject to reification as soon as the sense of justice is embedded in a rule, because rules are not singular but universal.²¹ We cannot deal with complete anarchy - law is necessary, but equity (in Derrida's terms) deconstructs it. Caputo calls this Derrida's "scandal," in

least regulatively speaking, would subscribe to it." Steven S. Schwarzschild, *The Title of Hermann Cohen's "Religion of Reason out of the Sources of Judaism"*, in HERMANN COHEN, RELIGION OF REASON OUT OF THE SOURCES OF JUDAISM, trans. Simon Kaplan (Scholars Press, 1995) ("COHEN"), at 8. Compare Leiter's methodology to Kenneth Seeskin's description of Cohen's:

"The history of religion," as Cohen points out near the beginning of the book (p. 20), "has no means whatever of securing the legitimacy of religion." To accomplish the latter, one must approach the sources in a critical way and defend the ideas contained in them. The goal, then, is to be instructed by the sources rather than simply guided by their authority (p. 4).

Kenneth Seeskin, *How to Read Religion of Reason*, in COHEN, at 21.

²⁰ For a comparison to whatever lesson derives from Abraham's apparent blind faith in the binding of Isaac, see the extended treatment of the debate (consisting of what appear to be reasons and evidence) between Abraham and God over God's planned destruction of Sodom and Gomorrah in SUSAN NEIMAN, MORAL CLARITY (Harcourt, 2008). The Talmud contains a story in which the rabbis are debating a particular interpretation of the law. One of the rabbis calls on a series of supernatural events to prove he is right, the last of which is God's voice booming from the heavens. Even this is insufficient to seal the argument, however, on the theory that God spoke once at Sinai, and after that, these matters were decided by the majority. According to the prophet Elijah, God's reaction to that argument, which denied His own authority, was to laugh and say, "my children have defeated me, my children have defeated me." *Bava Mezia* 59b.

²¹ JOHN D. CAPUTO, DEMYTHOLOGIZING HEIDEGGER (Indiana Univ. Press, 1993), at 189.

that Derrida reveals he is not wholly without foundational anchor. There is indeed something that is not capable of deconstruction, and that is justice. Of course, if it cannot be deconstructed, then is it an ageless and universal truth? Well, no, and there is the paradox. Law is a construct and we can deconstruct it. But "deconstruction is possible insofar as justice is undeconstructible, for justice is what deconstruction aims at, what it is about, what it *is*."²²

Consider again the binding of Isaac. It speaks to us because all of us will confront, at some point, perhaps not so drastically, the knife-edge of impossible judgment, caught between conformity to what purports to be authority and what Derrida (through Caputo) describes as "fresh judgment." Consider the hardest decision you have ever had to make, particularly when the right answer seems to fly in the face of all the authorities you have never yet questioned – judges, bosses, parents, presidents, or clerics. "What is to be done cannot simply be calculated - it must be judged. Furthermore, a just decision, which is never a merely programmed, calculated application of a rule, is always made in the element of undecidability, must always pass 'through the ordeal of the undecidable,' in which our respect for the universal trembles before 'the unique singularity of the unsubsumable example.'"²³ That is the leap of faith in judgment, that instant of decision that Kierkegaard refers to as the instant of madness.

If we are to make decisions, and not just talk about making decisions, and we are going to allow *any* resort to concepts (or reasons), then we are going to have to hold ourselves first to a meta-principle of coherence. What count as coherent reasons, particularly when we are no longer justifying our statements about the physical world, but about questions of action and value? At the end of the day, Leiter has little more to support his conception of coherent reasons than the brute assertion of what counts as coherent, or the argument from authority to the effect that a particular argument has left the community of philosophers unimpressed. We cannot test whether a coherent argument "works" in the same way that natural science "works," except by pre-supposing what it means to "work." Indeed, Leiter's only proffered meta-principle is "common sense," with the implicit notion that the common sense of professional philosophers trumps the common sense of ordinary people, even those who adhere to some kind of mainstream religious outlook and practice. It is possible that none of the reasons I have put forward here "works" or "wins" in the community of

²² Id., at 193.

²³ CAPUTO, at 196, quoting Derrida, "Force of Law: The 'Mystical Foundation of Authority'", 11 Cardozo L. Rev. 919, 961-67 (1990).

philosophers. As I understand the issue posed, however, the question is not whether analytic philosophers respect religion, but whether analytic philosophers can put forward an argument based on reasons why nobody, lay person and philosopher alike, should find any religious belief and practice to be worthy of respect.

Let us further suppose that we are not arguing about the justification for decision-making as between religious and secular, but actually trying to decide, with real consequences facing us, which of several possible demands on action to follow. This is where we need to cash out those concepts in the hard reality of the world. We are not talking now about the justification of knowledge, but the justification of action. As to the justification of knowledge, it may well be that what makes sense is a pragmatic, naturalistic, common sense (and no doubt long-term) recourse to the whole of experience in determining which of our myths deserves respect. When I decide among demands on action, I do not have that luxury of unlimited time and reflection to see what "works." My client will have an advantage in a non-critical but non-de minimis way if I work tonight and miss my son's first middle school football game. I can list seven or eight reasons for choosing either course, but between now and 6:30 p.m., I have to decide, and neither choice is more pragmatic than the other. I think Leiter would equally not respect a methodology of choice in which I meditated so as to receive God's will, or, on the other hand, used the completely non-religious method of flipping a coin. In short, his one categorical demand is that I not resort to a categorical demand. Or alternatively, my moral decision, like the justification of knowledge, needs to be based on reasons and evidence, and neither method satisfies some foundational standard of sufficiency. Or perhaps the rules of pragmatism say this is a decision that is incapable of resolution by evidence and reasons, so an argument of evidence and reasons says to ignore evidence and reasons in this case and use the arbitrary method of flipping a coin.

Indeed, one philosophical naturalist, Allen Gibbard, has come to the conclusion that demands on action by way of ethical judgment may not be brute truths or transcendently foundational (say, as a Kantian categorical imperative), but neither are they reducible to natural phenomenon.²⁴ Ethical judgment can express a state of mind about the action, or an emotional reaction to the action, or it can reflect on the action. What ethical judgment is not, according to Gibbard, is a description of the natural world. Descriptive knowledge that Leiter sees as the demarcation of religion (in

²⁴ ALLAN GIBBARD, *THINKING HOW TO LIVE* (2003).

Gibbard's words, "conceptual coherence and a critical responsiveness to evidence") might put us, as in science, in a better position to make choices in our actions.²⁵ It does not, however, give us any purchase in considering ethical reflection of the "ought." The only meaningful way to deal with ethical judgment is in terms of actual choices what to do; that is, to separate facts of the world from concepts about the world. In Gibbard's philosophy, the question "what ought I to do?" is the same as the question "what to do?"

If we have neither divine voices nor random chance as our practice, but instead a coherent set of concepts in religion or philosophy that cashes out in choosing among conflicting demands for action, why is it any less worthy of respect that one coherent set comes from religion and the other from science or common sense? My point is simply that the infinite regress or the irreducibility of practical and ethical judgment is itself a reality, whether Leiter wants to deal with it or not, as long as he is willing to call on the power of philosophical method in the sorting of concepts as well as a resort to evidence. His bedrock conceptual foundation is methodological; reasons and evidence have to prevail over brute assertion. That itself is a brute assertion, albeit an understandable one. Leiter himself has to resort to some intuition of coherence that is beyond reasons and evidence by which he (or anyone) can set the standard for coherence, if by nothing else deciding what it means for any of them to hold water.

4. There would be a troubling real world implication if we were to accept Leiter's conception in the context of "respect."

The world does not divide neatly into the class of academic philosophers and the class of all others, being blind adherents to wacko religions. It may be safe, in the comfortable confines of some philosophy department faculty lounge, to take bold positions and vanquish intellectual opponents (such as those who traffic in metaphysical speculation, secular or religious) as unworthy of respect. It may also work. Academic careers depend on the taking of edgy positions because those positions generate responses, responses are citations, and citations are the fuel of advancement. I am, however, concerned with the real-world implication of influential voice in legal academia simply writing off Nussbaum's concept (as opposed to Leiter's conception of it) as unworthy of respect, and instead entitled to mere tolerance. As I said, I am as willing as Leiter (apparently) merely to tolerate the belief of my neighbor that a Christian prayer should start the school day.

²⁵ *Id.*, at 284-87.

Failing to respect, however, that impulse in the human mind that searches for ultimate meaning in secular or religious concepts, however, seems to be to come close to failing to respect personhood itself. As long as we are conscious beings capable of questioning the source of our consciousness, we need to be particularly careful about ruling out any avenue toward truth, even if it is not the one we employ. It would be one thing to be right if one of us knew we were right conclusively. It seems to me, however, that close on the heels of respect for others' search for ultimate meaning (over mere tolerance) come other values, namely humility and civility, less apparent in Leiter's appeal to evidence and reasons, but which contribute to human flourishing.