

Religious Liberty in America
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SESSION 2

Religious Argument and Public Reason

Rawls, John. "The Idea of Public Reason Revisited." *The University of Chicago Law Review* 64, no. 3 (1997): 765-807. **67**

Rawls, John. "Commonweal Interview with John Rawls." In *Collected Papers*, 616-622. Cambridge: Harvard University Press, 1999. **89**

Neuhaus, Richard John. *The Naked Public Square: Religion and Democracy in America*. 2nd Edition. Grand Rapids: W.B. Eerdmans Publishing, 1986. **93**

- Chapter 2, "Public Religion and Public Reason," 20-37.
- Chapter 16, "Law and the Experiment Renewed," 248-264.

plurality of conflicting reasonable comprehensive doctrines,² religious, philosophical, and moral, is the normal result of its culture of free institutions.³ Citizens realize that they cannot reach agreement or even approach mutual understanding on the basis of their irreconcilable comprehensive doctrines. In view of this, they need to consider what kinds of reasons they may reasonably give one another when fundamental political questions are at stake. I propose that in public reason comprehensive doctrines of truth or right be replaced by an idea of the politically reasonable addressed to citizens as citizens.⁴

Central to the idea of public reason is that it neither criticizes nor attacks any comprehensive doctrine, religious or non-religious, except insofar as that doctrine is incompatible with the essentials of public reason and a democratic polity. The basic requirement is that a reasonable doctrine accepts a constitutional democratic regime and its companion idea of legitimate law. While democratic societies will differ in the specific doctrines that are influential and active within them—as they differ in the western democracies of Europe and the United States, Israel, and India—finding a suitable idea of public reason is a concern that faces them all.

§ 1: THE IDEA OF PUBLIC REASON

1. The idea of public reason specifies at the deepest level the basic moral and political values that are to determine a constitutional democratic government's relation to its citizens and their relation to one another. In short, it concerns how the political relation is to be understood. Those who reject constitutional democracy with its criterion of reciprocity⁵ will of course reject the very idea of public reason. For them the political relation may be that of friend or foe, to those of a particular religious or secular community or those who are not; or it may be a relentless struggle to win the world for the whole truth. Political liberalism does

¹ I shall use the term *doctrine* for comprehensive views of all kinds and the term *conception* for a political conception and its component parts, such as the conception of the person as citizen. The term *idea* is used as a general term and may refer to either as the context determines.

² Of course, every society also contains numerous unreasonable doctrines. Yet in this essay I am concerned with an ideal normative conception of democratic government, that is, with the conduct of its reasonable citizens and the principles they follow, assuming them to be dominant and controlling. How far unreasonable doctrines are active and tolerated is to be determined by the principles of justice and the kinds of actions they permit. See § 7.2.

³ See § 6.2.

⁴ See § 1.2.

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The Idea of Public Reason Revisited

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INTRODUCTION

The idea of public reason, as I understand it,¹ belongs to a conception of a well ordered constitutional democratic society. The form and content of this reason—the way it is understood by citizens and how it interprets their political relationship—is part of the idea of democracy itself. This is because a basic feature of democracy is the fact of reasonable pluralism—the fact that a

† Emeritus Professor of Philosophy, Harvard University. This essay is a revision of a lecture given at The University of Chicago Law School in November 1993. I should like to thank Joshua Cohen, Erin Kelly, Percy Lehmann, Michael Perry, Margaret Rawls, and T.M. Scanlon for their great help and advice in writing this paper. Throughout they have given me numerous suggestions, which I have gladly accepted. Above all, to Burton Dreben I am especially indebted: as so often before, he has been generous beyond measure in his efforts; in every section he has helped me reorganize and reshape the text, giving it a clarity and simplicity it would not otherwise have had. Without their constant advice and encouragement, and that of others mentioned below, I never could have completed the revisions of my original lecture.

¹ See John Rawls, *Political Liberalism*, lectures VI, § 8.5 (Columbia paperback ed. 1996). References to *Political Liberalism* are given by lecture and section; page numbers are also provided unless the reference refers to an entire lecture, section, or subsection. Note that the 1996 paperback edition of *Political Liberalism* contains a new second introduction which, among other things, tries to make clearer certain aspects of political liberalism. Section 5 of this introduction, id. at 1:lvii, discusses the idea of public reason and sketches several changes I now make in affirming this idea. These are all followed and elaborated in what is presented here and are important to a complete understanding of the argument. Note also that the pagination of the paperback edition is the same as the original.

not engage those who think this way. The zeal to embody the whole truth in politics is incompatible with an idea of public reason that belongs with democratic citizenship.

The idea of public reason has a definite structure, and if one or more of its aspects are ignored it can seem implausible, as it does when applied to the background culture.⁶ It has five different aspects: (1) the fundamental political questions to which it applies; (2) the persons to whom it applies (government officials and candidates for public office); (3) its content as given by a family of reasonable political conceptions of justice; (4) the application of these conceptions in discussions of coercive norms to be enacted in the form of legitimate law for a democratic people; and (5) citizens' checking that the principles derived from their conceptions of justice satisfy the criterion of reciprocity.

Moreover, such reason is public in three ways: as the reason of free and equal citizens, it is the reason of the public; its subject is the public good concerning questions of fundamental political justice, which questions are of two kinds, constitutional essentials and matters of basic justice;⁷ and its nature and content are public, being expressed in public reasoning by a family of reasonable conceptions of political justice reasonably thought to satisfy the criterion of reciprocity.

It is imperative to realize that the idea of public reason does not apply to all political discussions of fundamental questions, but only to discussions of those questions in what I refer to as the public political forum.⁸ This forum may be divided into three parts: the discourse of judges in their decisions, and especially of the judges of a supreme court; the discourse of government officials, especially chief executives and legislators; and finally, the discourse of candidates for public office and their campaign managers, especially in their public oratory, party platforms, and political statements.⁹ We need this three-part division because, as I note later, the idea of public reason does not apply in the same

⁶ See text accompanying notes 12-15.

⁷ These questions are described in Rawls, *Political Liberalism*, lecture VI, § 5 at 227-30 (cited in note 1). Constitutional essentials concern questions about what political rights and liberties, say, may reasonably be included in a written constitution, when assuming the constitution may be interpreted by a supreme court, or some similar body. Matters of basic justice relate to the basic structure of society and so would concern questions of basic economic and social justice and other things not covered by a constitution.

⁸ There is no settled meaning of this term. The one I use is not I think peculiar. ⁹ Here we face the question of where to draw the line between candidates and those who manage their campaigns and other politically engaged citizens generally. We settle this matter by making candidates and those who run their campaigns responsible for what is said and done on the candidates' behalf.

way in these three cases and elsewhere.¹⁰ In discussing what I call the wide view of public political culture,¹¹ we shall see that the idea of public reason applies more strictly to judges than to others, but that the requirements of public justification for that reason are always the same.

Distinct and separate from this three-part public political forum is what I call the background culture.¹² This is the culture of civil society. In a democracy, this culture is not, of course, guided by any one central idea or principle, whether political or religious. Its many and diverse agencies and associations with their internal life reside within a framework of law that ensures the familiar liberties of thought and speech, and the right of free association.¹³ The idea of public reason does not apply to the background culture with its many forms of nonpublic reason nor to media of any kind.¹⁴ Sometimes those who appear to reject the idea of public reason actually mean to assert the need for full and open discussion in the background culture.¹⁵ With this political liberalism fully agrees.

Finally, distinct from the idea of public reason, as set out by the five features above, is the *ideal* of public reason. This ideal is realized, or satisfied, whenever judges, legislators, chief execu-

¹⁰ Often writers on this topic use terms that do not distinguish the parts of public discussion, for example, such terms as "the public square," "the public forum," and the like. I follow Kent Greenawalt in thinking a finer division is necessary. See Kent Greenawalt, *Religious Convictions and Political Choice* 226-27 (Oxford 1989) (describing, for example, the differences between a religious leader's preaching or promoting a pro-life organization and leading a major political movement or running for political office).

¹¹ See § 4.

¹² Rawls, *Political Liberalism*, lecture I, § 2.3 at 14 (cited in note 1).

¹³ The background culture includes, then, the culture of churches and associations of all kinds, and institutions of learning at all levels, especially universities and professional schools, scientific and other societies. In addition, the nonpublic political culture mediates between the public political culture and the background culture. This comprises media—properly so named—of all kinds: newspapers, reviews and magazines, TV and radio, and much else. Compare these divisions with Habermas's account of the public sphere. See Rawls, *Political Liberalism*, lecture IX, § 1.3 at 382 n 13 (cited in note 1).

¹⁴ See id. lecture VI, § 3 at 220-22.

¹⁵ See David Hollenbach, S.J., *Civil Society: Beyond the Public-Private Dichotomy*, 5 *The Responsive Community* 15 (Winter 1994/95). For example, he says:

Conversation and argument about the common good will not occur initially in the legislature or in the political sphere (narrowly conceived as the domain in which interests and power are adjudicated). Rather it will develop freely in those components of civil society that are the primary bearers of cultural meaning and value—universities, religious communities, the world of the arts, and serious journalism. It can occur wherever thoughtful men and women bring their beliefs on the meaning of the good life into intelligent and critical encounter with understandings of this good held by other peoples with other traditions. In short, it occurs wherever education about and serious inquiry into the meaning of the good life takes place.

Id. at 22.

tives, and other government officials, as well as candidates for public office, act from and follow the idea of public reason and explain to other citizens their reasons for supporting fundamental political positions in terms of the political conception of justice they regard as the most reasonable. In this way they fulfill what I shall call their duty of civility to one another and to other citizens. Hence, whether judges, legislators, and chief executives act from and follow public reason is continually shown in their speech and conduct on a daily basis.

How though is the ideal of public reason realized by citizens who are not government officials? In a representative government citizens vote for representatives—chief executives, legislators, and the like—and not for particular laws (except at a state or local level when they may vote directly on referenda questions, which are rarely fundamental questions). To answer this question, we say that ideally citizens are to think of themselves as if they were legislators and ask themselves what statutes, supported by what reasons satisfying the criterion of reciprocity, they would think it most reasonable to enact.¹⁵ When firm and widespread, the disposition of citizens to view themselves as ideal legislators, and to repudiate government officials and candidates for public office who violate public reason, is one of the political and social roots of democracy, and is vital to its enduring strength and vigor.¹⁷ Thus citizens fulfill their duty of civility and support the idea of public reason by doing what they can to hold government officials to it. This duty, like other political rights and duties, is an intrinsically moral duty. I emphasize that it is not a legal duty, for in that case it would be incompatible with freedom of speech.

2. I now turn to a discussion of what I have labeled the third, fourth, and fifth aspects of public reason. The idea of public reason arises from a conception of democratic citizenship in a constitutional democracy. This fundamental political relation of citizenship has two special features: first, it is a relation of citizens within the basic structure of society, a structure we enter only by birth and exit only by death;¹⁸ and second, it is a relation of free

¹⁵ There is some resemblance between this criterion and Kant's principle of the original contract. See Immanuel Kant, *The Metaphysics of Morals: Metaphysical First Principles of the Doctrine of Right* §§ 47-49 at 92-95 (AK 6:315-18) (Cambridge 1996) (Mary Gregor, trans and ed); Immanuel Kant, *On the Common Saying: "Thus May be True in Theory, but it does not Apply in Practice"*, Part II, in Kant: *Political Writings* 73-87 (AK 6: 289-306) (Cambridge 2d ed 1991) (Hans Reiss, ed. H.E. Nisbet, trans.).

¹⁷ See also § 4.2.

¹⁸ Rawls, *Political Liberalism*, lecture I, § 2.1 at 12 (cited in note 1). For concerns about existing only by death, see *id.*, lecture IV, § 1.2 at 136 n. 4.

and equal citizens who exercise ultimate political power as a collective body. These two features immediately give rise to the question of how, when constitutional essentials and matters of basic justice are at stake, citizens so related can be bound to honor the structure of their constitutional democratic regime and abide by the statutes and laws enacted under it. The fact of reasonable pluralism raises this question all the more sharply, since it means that the differences between citizens arising from their comprehensive doctrines, religious and nonreligious, may be irreconcilable. By what ideals and principles, then, are citizens who share equally in ultimate political power to exercise that power so that each can reasonably justify his or her political decisions to everyone?

To answer this question we say: Citizens are reasonable when, viewing one another as free and equal in a system of social cooperation over generations, they are prepared to offer one another fair terms of cooperation according to what they consider the most reasonable conception of political justice; and when they agree to act on those terms, even at the cost of their own interests in particular situations, provided that other citizens also accept those terms. The criterion of reciprocity requires that when those terms are proposed as the most reasonable terms of fair cooperation, those proposing them must also think it at least reasonable for others to accept them, as free and equal citizens, and not as dominated or manipulated, or under the pressure of an inferior political or social position.¹⁹ Citizens will of course differ as to which conceptions of political justice they think the most reasonable, but they will agree that all are reasonable, even if barely

so. Thus when, on a constitutional essential or matter of basic justice, all appropriate government officials act from and follow public reason, and when all reasonable citizens think of themselves ideally as if they were legislators following public reason, the legal enactment expressing the opinion of the majority is legitimate law. It may not be thought the most reasonable, or the most appropriate, by each, but it is politically (morally) binding on him or her as a citizen and is to be accepted as such. Each thinks that all have spoken and voted at least reasonably, and

¹⁹ The idea of reciprocity has an important place in Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* chs 1, 2 and passim (Belknap 1996). However, the meaning and setting of our views are not the same. Public reason in political liberalism is purely political, although political values are intrinsically moral, whereas Gutmann and Thompson's account is more general and seems to work from a comprehensive doctrine.

therefore all have followed public reason and honored their duty of civility.

Hence the idea of political legitimacy based on the criterion of reciprocity says: Our exercise of political power is proper only when we sincerely believe that the reasons we would offer for our political actions—were we to state them as government officials—are sufficient, and we also reasonably think that other citizens might also reasonably accept those reasons. This criterion applies on two levels: one is to the constitutional structure itself, the other is to particular statutes and laws enacted in accordance with that structure. To be reasonable, political conceptions must justify only constitutions that satisfy this principle.

To make more explicit the role of the criterion of reciprocity as expressed in public reason, note that its role is to specify the nature of the political relation in a constitutional democratic regime as one of civic friendship. For this criterion, when government officers act from it in their public reasoning and other citizens support it, shapes the form of their fundamental institutions. For example—I cite an easy case—if we argue that the religious liberty of some citizens is to be denied, we must give them reasons they can not only understand—as Servetus could understand why Calvin wanted to burn him at the stake—but reasons we might reasonably expect that they, as free and equal citizens, might reasonably also accept. The criterion of reciprocity is normally violated whenever basic liberties are denied. For what reasons can both satisfy the criterion of reciprocity and justify denying to some persons religious liberty, holding others as slaves, imposing a property qualification on the right to vote, or denying the right of suffrage to women?

Since the idea of public reason specifies at the deepest level the basic political values and specifies how the political relation is to be understood, those who believe that fundamental political questions should be decided by what they regard as the best reasons according to their own idea of the whole truth—including their religious or secular comprehensive doctrine—and not by reasons that might be shared by all citizens as free and equal, will of course reject the idea of public reason. Political liberalism views this insistence on the whole truth in politics as incompatible with democratic citizenship and the idea of legitimate law.

3. Democracy has a long history, from its beginning in classical Greece down to the present day, and there are many different ideas of democracy.²⁰ Here I am concerned only with a well or-

²⁰ For a useful historical survey see David Held, *Models of Democracy* (Stanford 2d ed

dered constitutional democracy—a term I used at the outset—understood also as a deliberative democracy. The definitive idea for deliberative democracy is the idea of deliberation itself. When citizens deliberate, they exchange views and debate their supporting reasons concerning public political questions. They suppose that their political opinions may be revised by discussion with other citizens; and therefore these opinions are not simply a fixed outcome of their existing private or nonpolitical interests. It is at this point that public reason is crucial, for it characterizes such citizens' reasoning concerning constitutional essentials and matters of basic justice. While I cannot fully discuss the nature of deliberative democracy here, I note a few key points to indicate the wider place and role of public reason.

There are three essential elements of deliberative democracy. One is an idea of public reason,²¹ although not all such ideas are the same. A second is a framework of constitutional democratic institutions that specifies the setting for deliberative legislative bodies. The third is the knowledge and desire on the part of citizens generally to follow public reason and to realize its ideal in their political conduct. Immediate implications of these essentials are the public financing of elections, and the providing for public occasions of orderly and serious discussion of fundamental questions and issues of public policy. Public deliberation must be made possible, recognized as a basic feature of democracy, and set free from the curse of money.²² Otherwise politics is dominated by corporate and other organized interests who

1997). Held's numerous models cover the period from the ancient polis to the present time and he concludes by asking what democracy should mean today. In between he considers the several forms of classical republicanism and classical liberalism, as well as Schumpeter's conception of competitive elite democracy. Some figures discussed include Plato and Aristotle; Marcellus of Padua and Machiavelli; Hobbes and Madison; Bentham, James Mill and J. S. Mill; Marx with socialism and communism. These are paired with schematized models of the characteristic institutions and their roles.

²¹ Deliberative democracy limits the reasons citizens may give in supporting their political opinions to reasons consistent with their seeing other citizens as equals. See Joshua Cohen, *Deliberation and Democratic Legitimacy*, in Alan Hamlin and Philip Pettit, eds., *The Good Polity: Normative Analysis of the State* 17, 21, 24 (Basil Blackwell 1989); *Review Symposium on Democracy and Its Critics*, 53 J. Pol. 215, 223-24 (1991) (comments of Joshua Cohen); Joshua Cohen, *Democracy and Liberty* 13-17 (manuscript on file with U Chi L. Rev.), in Jon Elster, ed., *Deliberative Democracy* (forthcoming 1997).

²² Ronald Dworkin, *The Curse of American Politics*, NY Rev Books 19 (Oct 17, 1996) (describing why "money is the biggest threat to the democratic process"). Dworkin also argues forcefully against the grave error of the Supreme Court in *Buckley v. Valeo*, 424 US 1 (1976). Dworkin, NY Rev Books at 21-24. See also Rawls, *Political Liberalism*, lecture VIII, § 12 at 359-63 (cited in note 1) (*Buckley* is "dismaying" and raises the risk of "repeating the mistake of the Lochner era.").

through large contributions to campaigns distort if not preclude public discussion and deliberation.

Deliberative democracy also recognizes that without widespread education in the basic aspects of constitutional democratic government for all citizens, and without a public informed about pressing problems, crucial political and social decisions simply cannot be made. Even should farsighted political leaders wish to make sound changes and reforms, they cannot convince a misinformed and cynical public to accept and follow them. For example, there are sensible proposals for what should be done regarding the alleged coming crisis in Social Security: slow down the growth of benefits levels, gradually raise the retirement age, impose limits on expensive terminal medical care that prolongs life for only a few weeks or days, and finally, raise taxes now, rather than face large increases later.³³ But as things are, those who follow the "great game of politics" know that none of these sensible proposals will be accepted. The same story can be told about the importance of support for international institutions (such as the United Nations), foreign aid properly spent, and concern for human rights at home and abroad. In constant pursuit of money to finance campaigns, the political system is simply unable to function. Its deliberative powers are paralyzed.

§ 2: THE CONTENT OF PUBLIC REASON

1. A citizen engages in public reason, then, when he or she deliberates within a framework of what he or she sincerely regards as the most reasonable political conception of justice, a conception that expresses political values that others, as free and equal citizens might also reasonably be expected reasonably to endorse. Each of us must have principles and guidelines to which we appeal in such a way that this criterion is satisfied. I have proposed that one way to identify those political principles and guidelines is to show that they would be agreed to in what in *Political Liberalism* is called the original position.³⁴ Others will think that different ways to identify these principles are more reasonable.

Thus, the content of public reason is given by a family of political conceptions of justice, and not by a single one. There are

³³ Paul Krugman, *Demographics and Destiny*, NY Times Book Rev 12 (Oct 20, 1996), reviewing and describing proposals in Peter G. Peterson, *Will America Grow Up Before It Grows Old? How the Coming Social Security Crisis Threatens You, Your Family, and Your Country* (Random House 1996), and Charles R. Morris, *The AARP: America's Most Powerful Lobby and the Clash of Generations* (Times Books 1996).

³⁴ Rawls, *Political Liberalism*, lecture I, § 4 at 22-23 (cited in note 1).

many liberalisms and related views, and therefore many forms of public reason specified by a family of reasonable political conceptions. Of these, justice as fairness, whatever its merits, is but one. The limiting feature of these forms is the criterion of reciprocity, viewed as applied between free and equal citizens, themselves seen as reasonable and rational. Three main features characterize these conceptions:

First, a list of certain basic rights, liberties, and opportunities (such as those familiar from constitutional regimes);

Second, an assignment of special priority to those rights, liberties, and opportunities, especially with respect to the claims of the general good and perfectionist values; and

Third, measures ensuring for all citizens adequate all-purpose means to make effective use of their freedoms.³⁵

Each of these liberalisms endorses the underlying ideas of citizens as free and equal persons and of society as a fair system of cooperation over time. Yet since these ideas can be interpreted in various ways, we get different formulations of the principles of justice and different contents of public reason. Political conceptions differ also in how they order, or balance, political principles and values even when they specify the same ones. I assume also that these liberalisms contain substantive principles of justice, and hence cover more than procedural justice. They are required to specify the religious liberties and freedoms of artistic expression of equal citizens, as well as substantive ideas of fairness involving fair opportunity and ensuring adequate all-purpose means, and much else.³⁶

Political liberalism, then, does not try to fix public reason once and for all in the form of one favored political conception of justice.³⁷ That would not be a sensible approach. For instance, political liberalism also admits Habermas's discourse conception

³⁵ Here I follow the definition in Rawls, *Political Liberalism*, lecture I, § 1.2 at 6, lectures IV, § 5.3 at 156-57 (cited in note 1).

³⁶ Some may think the fact of reasonable pluralism means the only forms of fair adjudication between comprehensive doctrines must be only procedural and not substantive. This view is forcefully argued by Stuart Hampshire in *Innocence and Experience* (Harvard 1989). In the text above, however, I assume the several forms of liberalism are each substantive conceptions. For a thorough treatment of these issues, see the discussion in Joshua Cohen, *Pluralism and Proceduralism*, 69 Chi Kent L Rev 589 (1994).

³⁷ I do think that justice as fairness has a certain special place in the family of political conceptions, as I suggest in Rawls, *Political Liberalism*, lecture IV, § 7.4 (cited in note 1). But this opinion of mine is not basic to the ideas of political liberalism and public reason.

of legitimacy (sometimes said to be radically democratic rather than liberal),²⁸ as well as Catholic views of the common good and solidarity when they are expressed in terms of political values.²⁹ Even if relatively few conceptions come to dominate over time, and one conception even appears to have a special central place, the forms of permissible public reason are always several. Moreover, new variations may be proposed from time to time and older ones may cease to be represented. It is important that this be so; otherwise the claims of groups or interests arising from social change might be repressed and fail to gain their appropriate political voice.³⁰

2. We must distinguish public reason from what is sometimes referred to as secular reason and secular values. These are not the same as public reason. For I define secular reason as reasoning in terms of comprehensive nonreligious doctrines. Such doctrines and values are much too broad to serve the purposes of public reason. Political values are not moral doctrines,³¹ however available or accessible these may be to our reason and common sense reflection. Moral doctrines are on a level with religion and

²⁸ See Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* 107-09 (MIT 1996) (William Rehg, trans) (defining the discourse principle). Seyla Benhabib in her discussion of models of public spaces in *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics* (Routledge 1992), says that: "The discourse model is the only one which is compatible both with the general social trends of our societies and with the emancipatory aspirations of new social movements like the women's movement." Id. at 113. She has previously considered Arendt's agonistic conception, as Benhabib calls it, and that of political liberalism. But I find it hard to distinguish her view from that of a form of political liberalism and public reason, since it turns out that she means by the public sphere what Habermas does, namely what *Political Liberalism* calls the background culture of civil society in which the ideal of public reason does not apply. Hence political liberalism is not limiting in the way she thinks. Also, Benhabib does not try to show, so far as I can see, that certain principles of right and justice belonging to the content of public reason could not be interpreted to deal with the problems raised by the women's movement. I doubt that this can be done. The same holds for Benhabib's earlier remarks in Seyla Benhabib, *Liberal Dialogue Versus a Critical Theory of Discursive Legitimation*, in Nancy L. Rosenblum, ed., *Liberalism and the Moral Life* 143, 154-56 (Harvard 1989), in which the problems of the women's movement were discussed in a similar way.

²⁹ Deriving from Aristotle and St. Thomas, the idea of the common good is essential to much of Catholic moral and political thought. See, for example, John Finnis, *Natural Law and Natural Rights* 153-56, 160 (Clarendon 1980); Jacques Maritain, *Man and the State* 108-14 (Chicago 1951). Finnis is especially clear, while Aquinas is occasionally ambiguous.

³⁰ Thus, Jeremy Waldron's criticism of political liberalism as not allowing new and changing conceptions of political justice is incorrect. See Jeremy Waldron, *Religious Contributions in Public Deliberation*, 30 San Diego L. Rev. 817, 837-38 (1993). See the reply to Waldron's criticisms in Lawrence B. Solum, *Novel Public Reasons*, 29 Loyola L.A. L. Rev. 1459, 1460 (1996) ("[G]eneral acceptance of a liberal ideal of public reason would permit the robust evolution of political discourse.")

³¹ See note 2 for my definition of doctrine.

first philosophy. By contrast, liberal political principles and values, although intrinsically moral values, are specified by liberal political conceptions of justice and fall under the category of the political. These political conceptions have three features:

First, their principles apply to basic political and social institutions (the basic structure of society);

Second, they can be presented independently from comprehensive doctrines of any kind (although they may, of course, be supported by a reasonable overlapping consensus of such doctrines); and

Finally, they can be worked out from fundamental ideas seen as implicit in the public political culture of a constitutional regime, such as the conceptions of citizens as free and equal persons, and of society as a fair system of cooperation.

Thus, the content of public reason is given by the principles and values of the family of liberal political conceptions of justice meeting these conditions. To engage in public reason is to appeal to one of these political conceptions—to their ideals and principles, standards and values—when debating fundamental political questions. This requirement still allows us to introduce into political discussion at any time our comprehensive doctrine, religious or nonreligious, provided that, in due course, we give properly public reasons to support the principles and policies our comprehensive doctrine is said to support. I refer to this requirement as *the proviso*, and consider it in detail below.³²

A feature of public reasoning, then, is that it proceeds entirely within a political conception of justice. Examples of political values include those mentioned in the preamble to the United States Constitution: a more perfect union, justice, domestic tranquillity, the common defense, the general welfare, and the blessings of liberty for ourselves and our posterity. These include under them other values: so, for example, under justice we also have equal basic liberties, equality of opportunity, ideals concerning the distribution of income and taxation, and much else.

The political values of public reason are distinct from other values in that they are realized in and characterize political institutions. This does not mean that analogous values cannot characterize other social forms. The values of effectiveness and efficiency may characterize the social organization of teams and clubs, as well as the political institutions of the basic structure of

³² See § 4.

society. But a value is properly political only when the social form is itself political: when it is realized, say, in parts of the basic structure and its political and social institutions. It follows that many political conceptions are nonliberal, including those of aristocracy and corporate oligarchy, and of autocracy and dictatorship. All of these fall within the category of the political.³⁵ We, however, are concerned only with those political conceptions that are reasonable for a constitutional democratic regime, and as the preceding paragraphs make clear, these are the ideals and principles expressed by reasonable liberal political conceptions.

3. Another essential feature of public reason is that its political conceptions should be complete. This means that each conception should express principles, standards, and ideals, along with guidelines of inquiry, such that the values specified by it can be suitably ordered or otherwise united so that those values alone give a reasonable answer to all, or to nearly all, questions involving constitutional essentials and matters of basic justice. Here the ordering of values is made in the light of their structure and features within the political conception itself, and not primarily from how they occur within citizens' comprehensive doctrines. Political values are not to be ordered by viewing them separately and detached from one another or from any definite context. They are not puppets manipulated from behind the scenes by comprehensive doctrines.³⁶ The ordering is not distorted by those doctrines provided that public reason sees the ordering as reasonable. And public reason can indeed see an ordering of political values as reasonable (or unreasonable), since institutional structures are open to view and mistakes and gaps within the political ordering will become exposed. Thus, we may be confident that the ordering of political values is not distorted by particular reasonable comprehensive doctrines. (I emphasize that the only criterion of distortion is that the ordering of political values be itself unreasonable.)

The significance of completeness lies in the fact that unless a political conception is complete, it is not an adequate framework of thought in the light of which the discussion of fundamental political questions can be carried out.³⁷ What we cannot do in

³⁵ Here see Rawls, *Political Liberalism*, lecture IX, § 1.1 at 374-75 (cited in note 1).

³⁶ This thought I owe to Peter de Marneffe.

³⁷ Note here that different political conceptions of justice will represent different interpretations of the constitutional essentials and matters of basic justice. There are also different interpretations of the same conception, since its concepts and values may be taken in different ways. There is not, then, a sharp line between where a political conception ends and its interpretation begins, nor need there be. All the same, a conception greatly limits its possible interpretations, otherwise discussion and argument could not

public reason is to proceed directly from our comprehensive doctrine, or a part thereof, to one or several political principles and values, and the particular institutions they support. Instead, we are required first to work to the basic ideas of a complete political conception and from there to elaborate its principles and ideals, and to use the arguments they provide. Otherwise public reason allows arguments that are too immediate and fragmentary.

4. I now note several examples of political principles and values to illustrate the more specific content of public reason, and particularly the various ways in which the criterion of reciprocity is both applicable and subject to violation.

(a) As a first example, consider the value of autonomy. It may take two forms: one is political autonomy, the legal independence and assured integrity of citizens and their sharing equally with others in the exercise of political power; the other is purely moral and characterizes a certain way of life and reflection, critically examining our deepest ends and ideals, as in Mill's ideal of individuality.³⁸ Whatever we may think of autonomy as a purely moral value, it fails to satisfy, given reasonable pluralism, the constraint of reciprocity, as many citizens, for example, those holding certain religious doctrines, may reject it. Thus moral autonomy is not a political value, whereas political autonomy is.

(b) As a second example, consider the familiar story of the Good Samaritan. Are the values appealed to properly political values and not simply religious or philosophical values? While the wide view of public political culture allows us, in making a proposal, to introduce the Gospel story, public reason requires us to justify our proposal in terms of proper political values.³⁹

(c) As a third example, consider appeals to desert in discussing the fair distribution of income: people are wont to say

proceed. For example, a constitution declaring the freedom of religion, including the freedom to affirm no religion, along with the separation of church and state, may appear to leave open the question whether church schools may receive public funds, and if so, in what way. The difference here might be seen as how to interpret the same political conception, one interpretation allowing public funds, the other not; or alternatively, as the difference between two political conceptions. In the absence of particulars, it does not matter which we call it. The important point is that since the content of public reason is a family of political conceptions, that content admits the interpretations we may need. It is not as if we were stuck with a fixed conception, much less with one interpretation of it. This is a comment on Kent Greenawalt, *Private Consciences and Public Reasons* 113-20 (Oxford 1995), where *Political Liberalism* is said to have difficulty dealing with the problem of determining the interpretation of political conceptions.

³⁸ John Stuart Mill, *On Liberty* ch 3 ¶¶ 1-9 (1859), in 18 *Collected Works of John Stuart Mill* 260-75 (Toronto 1977) (John M. Robson, ed).

³⁹ See § 4.1 on the proviso and the example of citing the Gospel story. For a detailed consideration of the wide view of public political culture, see generally § 4.

that ideally distribution should be in accordance with desert. What sense of desert do they have in mind? Do they mean that persons in various offices should have the requisite qualifications—judges must be qualified to judge—and all should have a fair opportunity to qualify themselves for favored positions? That is indeed a political value. But distribution in accordance with moral desert, where this means the moral worth of character, all things considered, and including comprehensive doctrines, is not. It is not a feasible political and social aim.

(d) Finally, consider the state's interest in the family and human life. How should the political value invoked be specified correctly? Traditionally it has been specified very broadly. But in a democratic regime the government's legitimate interest is that public law and policy should support and regulate, in an ordered way, the institutions needed to reproduce political society over time. These include the family (in a form that is just), arrangements for rearing and educating children, and institutions of public health generally. This ordered support and regulation rests on political principles and values, since political society is regarded as existing in perpetuity and so as maintaining itself and its institutions and culture over generations. Given this interest, the government would appear to have no interest in the particular form of family life, or of relations among the sexes, except insofar as that form or those relations in some way affect the orderly reproduction of society over time. Thus, appeals to monogamy as such, or against same-sex marriages, as within the government's legitimate interest in the family, would reflect religious or comprehensive moral doctrines. Accordingly, that interest would appear improperly specified. Of course, there may be other political values in the light of which such a specification would pass muster: for example, if monogamy were necessary for the equality of women, or same-sex marriages destructive to the raising and educating of children.³⁸

5. The four examples bring out a contrast to what I have above called secular reason.³⁹ A view often expressed is that while religious reasons and sectarian doctrines should not be invoked to justify legislation in a democratic society, sound secular arguments may be.⁴⁰ But what is a secular argument? Some

³⁸ Of course, I don't here attempt to decide the question, since we are concerned only with the kinds of reasons and considerations that public reasoning involves.

³⁹ See § 2.2.

⁴⁰ See Robert Audi, *The Place of Religious Argument in a Free and Democratic Society*, 30 San Diego L. Rev. 677 (1993). Here Audi defines a secular reason as follows: "A secular reason is roughly one whose normative force does not evidentially depend on the

think of any argument that is reflective and critical, publicly intelligible and rational, as a secular argument; and they discuss various such arguments for considering, say, homosexual relations unworthy or degrading.⁴¹ Of course, some of these arguments may be reflective and rational secular ones (as so defined). Nevertheless, a central feature of political liberalism is that it views all such arguments the same way it views religious ones, and therefore these secular philosophical doctrines do not provide public reasons. Secular concepts and reasoning of this kind belong to first philosophy and moral doctrine, and fall outside of the domain of the political.

Thus, in considering whether to make homosexual relations between citizens criminal offenses, the question is not whether those relations are precluded by a worthy idea of full human good as characterized by a sound philosophical and nonreligious view, nor whether those of religious faith regard it as sin, but primarily whether legislative statutes forbidding those relations infringe the civil rights of free and equal democratic citizens.⁴² This question calls for a reasonable political conception of justice specifying those civil rights, which are always a matter of constitutional essentials.

§ 3: RELIGION AND PUBLIC REASON IN DEMOCRACY

1. Before examining the idea of the wide view of public political culture, we ask: How is it possible for those holding religious doctrines, some based on religious authority, for example, the Church or the Bible, to hold at the same time a reasonable political conception that supports a reasonable constitutional democratic regime? Can these doctrines still be compatible for the right reasons with a liberal political conception? To attain this compatibility, it is not sufficient that these doctrines accept a democratic government merely as a *modus vivendi*. Referring to citizens holding religious doctrines as citizens of faith we ask:

existence of God or on theological considerations, or on the pronouncements of a person or institution qua religious authority." Id. at 692. This definition is ambiguous between secular reasons in the sense of a nonreligious comprehensive doctrine and in the sense of a purely political conception within the content of public reason. Depending on which is meant, Audi's view that secular reasons must also be given along with religious reasons might have a role similar to what I call the proviso in § 4.1.

⁴¹ See the discussion by Michael Perry of John Finnis's argument, which denies that such relations are compatible with human good, *Religion in Politics: Constitutional and Moral Perspectives* ch. 3 at 85-86 (Oxford 1997).

⁴² Here I follow T.M. Scanlon's view in *The Difficulty of Tolerance*, in David Heyd, ed., *Tolerance: An Elusive Virtue* 226 (Princeton 1996). While the whole is instructive, § 3 at 220-230 is especially relevant here.

How is it possible for citizens of faith to be wholehearted members of a democratic society who endorse society's intrinsic political ideals and values and do not simply acquiesce in the balance of political and social forces? Expressed more sharply: 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? This last question brings out anew the significance of the idea of legitimacy and public reason's role in determining legitimate law.

To clarify the question, consider two examples. The first is that of Catholics and Protestants in the sixteenth and seventeenth centuries when the principle of toleration was honored only as a *modus vivendi*.⁴³ This meant that should either party fully gain its way it would impose its own religious doctrine as the sole admissible faith. A society in which many faiths all share this attitude and assume that for the indefinite future their relative numbers will stay roughly the same might well have a constitution resembling that of the United States, fully protecting the religious liberties of sharply divided religions more or less equal in political power. The constitution is, as it were, honored as a pact to maintain civil peace.⁴⁴ In this society political issues might be discussed in terms of political ideas and values so as not to open religious conflict and arouse sectarian hostility. The role of public reason here serves merely to quiet divisiveness and encourage social stability. However, in this case we do not have stability for the right reasons, that is, as secured by a firm allegiance to a democratic society's political (moral) ideals and values.

Nor again do we have stability for the right reasons in the second example—a democratic society where citizens accept as political (moral) principles the substantive constitutional clauses that ensure religious, political, and civil liberties, when their allegiance to these constitutional principles is so limited that none is willing to see his or her religious or nonreligious doctrine losing ground in influence and numbers, and such citizens are prepared to resist or to disobey laws that they think undermine their positions. And they do this even though the full range of religious and other liberties is always maintained and the doctrine

⁴³ See Rawls, *Political Liberalism*, lecture IV, § 3.4 at 148 (cited in note 1).

⁴⁴ See Kent Greenawald's example of the society of Diverse Fervent Believers in Greenawald, *Private Consciences and Public Reasons* at 16-18, 21-22 (cited in note 35).

in question is completely secure. Here again democracy is accepted conditionally and not for the right reasons.

What these examples have in common is that society is divided into separate groups, each of which has its own fundamental interest distinct from and opposed to the interests of the other groups and for which it is prepared to resist or to violate legitimate democratic law. In the first example, it is the interest of a religion in establishing its hegemony, while in the second, it is the doctrine's fundamental interest in maintaining a certain degree of success and influence for its own view, either religious or nonreligious. While a constitutional regime can fully ensure rights and liberties for all permissible doctrines, and therefore protect our freedom and security, a democracy necessarily requires that, as one equal citizen among others, each of us accept the obligations of legitimate law.⁴⁵ While no one is expected to put his or her religious or nonreligious doctrine in danger, we must each give up forever the hope of changing the constitution so as to establish our religion's hegemony, or of qualifying our obligations so as to ensure its influence and success. To retain such hopes and aims would be inconsistent with the idea of equal basic liberties for all free and equal citizens.

2. To expand on what we asked earlier: 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? Here the answer lies in the religious or nonreligious doctrine's understanding and accepting that, except by endorsing a reasonable constitutional democracy, there is no other way fairly to ensure the liberty of its adherents consistent with the equal liberties of other reasonable free and equal citizens. In endorsing a constitutional democratic regime, a religious doctrine may say that such are the limits God sets to our liberty; a nonreligious doctrine will express itself otherwise.⁴⁶ But in either case, these

⁴⁵ See Rawls, *Political Liberalism*, lecture V, § 6 at 195-200 (cited in note 1).

⁴⁶ An example of how a religion may do this is the following. Abdullahi Ahmed An-Na'im, in his book *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* 52-57 (Syracuse 1990), introduces the idea of reconsidering the traditional interpretation of Shari'a, which for Muslims is divine law. For his interpretation to be accepted by Muslims, it must be presented as the correct and superior interpretation of Shari'a. The basic idea of An-Na'im's interpretation, following the late Sudanese author *Usiadh* Mahmud Mohamed Taha, is that the traditional understanding of Shari'a has been based on the teachings of the later Medina period of Muhammad, whereas the message of Islam. An-Na'im claims that the superior Mecca teachings and principles were rejected in favor of the more realistic and practical (in a seventh-century historical context) Medina teachings because society was not yet ready for their implementation. Now

doctrines formulate in different ways how liberty of conscience and the principle of toleration can cohere with equal justice for all citizens in a reasonable democratic society. Thus, the principles of toleration and liberty of conscience must have an essential place in any constitutional democratic conception. They lay down the fundamental basis to be accepted by all citizens as fair and regulative of the rivalry between doctrines.

Observe here that there are two ideas of toleration. One is purely political, being expressed in terms of the rights and duties protecting religious liberty in accordance with a reasonable political conception of justice. The other is not purely political but expressed from within a religious or a nonreligious doctrine, as when, for example, it was said above that such are the limits God sets on our liberty. Saying this offers an example of what I call reasoning from conjecture.⁴⁷ In this case we reason from what we believe, or conjecture, may be other people's basic doctrines, religious or philosophical, and seek to show them that, despite what they might think, they can still endorse a reasonable political conception of justice. We are not ourselves asserting that ground of toleration but offering it as one they could assert consistent with their comprehensive doctrines.

§ 4: THE WIDE VIEW OF PUBLIC POLITICAL CULTURE

1. Now we consider what I call the wide view of public political culture and discuss two aspects of it. The first is that reasonable comprehensive doctrines, religious or nonreligious, may be

that historical conditions have changed, An-Na'im believes that Muslims should follow the earlier Mecca period in interpreting Shari'a. So interpreted, he says that Shari'a supports constitutional democracy. *Id.* at 69-100.

In particular, the earlier Mecca interpretation of Shari'a supports equality of men and women, and complete freedom of choice in matters of faith and religion, both of which are in accordance with the constitutional principle of equality before the law. An-Na'im writes:

The Qur'an does not mention constitutionalism, but human rational thinking and experience have shown that constitutionalism is necessary for realizing the just and good society prescribed by the Qur'an.

An Islamic justification and support for constitutionalism is important and relevant for Muslims. Non-Muslims may have their own secular or other justifications. As long as all are agreed on the principle and specific rules of constitutionalism, including complete equality and non-discrimination on grounds of gender or religion, each may have his or her own reasons for coming to that agreement.

Id. at 100. (This is a perfect example of overlapping consensus.) I thank Akeel Bilgrami for informing me of An-Na'im's work. I also owe thanks to Roy Mottahedeh for valuable discussion.

^r See § 4.3.

introduced in public political discussion at any time, provided that in due course proper political reasons—and not reasons given solely by comprehensive doctrines—are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support. This injunction to present proper political reasons I refer to as *the proviso*, and it specifies public political culture as distinct from the background culture.⁴⁸ The second aspect I consider is that there may be positive reasons for introducing comprehensive doctrines into public political discussion. I take up these two aspects in turn.

Obviously, many questions may be raised about how to satisfy the proviso.⁴⁹ One is: when does it need to be satisfied? On the same day or some later day? Also, on whom does the obligation to honor it fall? It is important that it be clear and established that the proviso is to be appropriately satisfied in good faith. Yet the details about how to satisfy this proviso must be worked out in practice and cannot feasibly be governed by a clear family of rules given in advance. How they work out is determined by the nature of the public political culture and calls for good sense and understanding. It is important also to observe that the introduction into public political culture of religious and secular doctrines, provided the proviso is met, does not change the nature and content of justification in public reason itself. This justification is still given in terms of a family of reasonable political conceptions of justice. However, there are no restrictions or requirements on how religious or secular doctrines are themselves to be expressed; these doctrines need not, for example, be by some standards logically correct, or open to rational appraisal, or evidentially supportable.⁵⁰ Whether they are or not is a matter to be decided by those presenting them, and how they want what they say to be taken. They will normally have practical reasons for wanting to make their views acceptable to a broader audience.

2. Citizens' mutual knowledge of one another's religious and nonreligious doctrines expressed in the wide view of public political culture⁵¹ recognizes that the roots of democratic citizens' allegiance to their political conceptions lie in their respective com-

⁴⁸ Rawls, *Political Liberalism*, lecture I, § 2.3 at 13-14 (cited in note 1) (contrasting public political culture with background culture).

⁴⁹ I am indebted here to valuable discussion with Dennis Thompson.

⁵⁰ Greenawalt discusses Franklin Gamwell and Michael Perry, who do evidently impose such constraints on how religion is to be presented. See Greenawalt, *Private Conscience and Public Reasons* at 85-95 (cited in note 35).

⁵¹ Again, as always, in distinction from the background culture, where I emphasize there are no restrictions.

prehesive doctrines, both religious and nonreligious. In this way citizens' allegiance to the democratic ideal of public reason is strengthened for the right reasons. We may think of the reasonable comprehensive doctrines that support society's reasonable political conceptions as those conceptions' vital social basis, giving them enduring strength and vigor. When these doctrines accept the proviso and only then come into political debate, the commitment to constitutional democracy is publicly manifested.⁵³ Made aware of this commitment, government officials and citizens are more willing to honor the duty of civility, and their following the ideal of public reason helps foster the kind of society that ideal exemplifies. These benefits of the mutual knowledge of citizens' recognizing one another's reasonable comprehensive doctrines bring out a positive ground for introducing such doctrines, which is not merely a defensive ground, as if their intrusion into public discussion were inevitable in any case.

Consider, for example, a highly contested political issue—the issue of public support for church schools.⁵⁴ Those on different sides are likely to come to doubt one another's allegiance to basic constitutional and political values. It is wise, then, for all sides to introduce their comprehensive doctrines, whether religious or secular, so as to open the way for them to explain to one another how their views do indeed support those basic political values. Consider also the Abolitionists and those in the Civil Rights Movement.⁵⁵ The proviso was fulfilled in their cases, however

⁵³ Political liberalism is sometimes criticized for not itself developing accounts of these social roots of democracy and setting out the formation of its religious and other supports. Yet political liberalism does recognize these social roots and stresses their importance. Obviously the political conceptions of toleration and freedom of religion would be impossible in a society in which religious freedom were not honored and cherished. Thus, political liberalism agrees with David Hollenbach, S.J., when he writes:

Not the least important of [the transformations brought about by Aquinas] was his insistence that the political life of a people is not the highest realization of the good of which they are capable—an insight that lies at the root of constitutional theories of limited government. And though the Church resisted the liberal discovery of modern freedoms through much of the modern period, liberalism has been transforming Catholicism once again through the last half of our own century. The memory of these events in social and intellectual history as well as the experience of the Catholic Church since the Second Vatican Council leads me to hope that communities holding different visions of the good life can get somewhere if they are willing to risk conversation and argument about these visions.

David Hollenbach, S.J., *Contexts of the Political Role of Religion: Civil Society and Culture*, 30 San Diego L. Rev. 877, 891 (1993). While a conception of public reason must recognize the significance of these social roots of constitutional democracy and note how they strengthen its vital institutions, it need not itself undertake a study of these matters. For the need to consider this point I am indebted to Paul Weithman.

⁵⁴ See Rawls, *Political Liberalism*, lecture VI, § 8.2 at 248–49 (cited in note 1).

⁵⁵ See id., lecture VI, § 8.3 at 249–51. I do not know whether the Abolitionists and King

much they emphasized the religious roots of their doctrines, because these doctrines supported basic constitutional values—as they themselves asserted—and so supported reasonable conceptions of political justice.

3. Public reasoning aims for public justification. We appeal to political conceptions of justice, and to ascertainable evidence and facts open to public view, in order to reach conclusions about what we think are the most reasonable political institutions and policies. Public justification is not simply valid reasoning, but argument addressed to others: it proceeds correctly from premises we accept and think others could reasonably accept. This meets the duty of civility, since in due course the proviso is satisfied.

There are two other forms of discourse that may also be mentioned, though neither expresses a form of public reasoning. One is declaration: here we each declare our own comprehensive doctrine, religious or nonreligious. This we do not expect others to share. Rather, each of us shows how, from our own doctrines, we can and do endorse a reasonable public political conception of justice with its principles and ideals. The aim of doing this is to declare to others who affirm different comprehensive doctrines that we also each endorse a reasonable political conception belonging to the family of reasonable such conceptions. On the wide view, citizens of faith who cite the Gospel parable of the Good Samaritan do not stop there, but go on to give a public justification for this parable's conclusions in terms of political values.⁵⁶ In this way citizens who hold different doctrines are reassured, and this strengthens the ties of civic friendship.⁵⁷

The second form is conjecture, defined thus: we argue from what we believe, or conjecture, are other people's basic doctrines, religious or secular, and try to show them that, despite what they might think, they can still endorse a reasonable political conception that can provide a basis for public reasons. The ideal of pub-

thought of themselves as fulfilling the purpose of the proviso. But whether they did or not, they could have. And had they known and accepted the idea of public reason, they would have. I thank Paul Weithman for this point.

⁵⁶ Luke 10:29–37. It is easy to see how the Gospel story could be used to support the imperfect moral duty of mutual aid, as found, say, in Kant's fourth example in the *Grounding*. See Immanuel Kant, *Groundwork for the Metaphysics of Morals* AK 4:423, in Mary Gregor, trans., *Practical Philosophy* (Cambridge 1996). To formulate a suitable example in terms of political values only, consider a variant of the difference principle or of some other analogous idea. The principle could be seen as giving a special concern for the poor, as in the Catholic social doctrine. See John Rawls, *A Theory of Justice* § 13 (Belknap 1971) (defining the difference principle).

⁵⁷ For the relevance of this form of discourse I am indebted to discussion with Charles Larmore.

lic reason is thereby strengthened. However, it is important that conjecture be sincere and not manipulative. We must openly explain our intentions and state that we do not assert the premises from which we argue, but that we proceed as we do to clear up what we take to be a misunderstanding on others' part, and perhaps equally on ours.⁵⁷

§ 5: ON THE FAMILY AS PART OF THE BASIC STRUCTURE

1. To illustrate further the use and scope of public reason, I shall now consider a range of questions about a single institution, the family.⁵⁸ I do this by using a particular political conception of justice and looking at the role that it assigns to the family in the basic structure of society. Since the content of public reason is determined by all the reasonable political conceptions that satisfy the criterion of reciprocity, the range of questions about the family covered by this political conception will indicate the ample space for debate and argument comprehended by public reason as a whole.

⁵⁷ I will mention another form of discourse that I call witnessing: it typically occurs in an ideal, politically well ordered, and fully just society in which all votes are the result of citizens' voting in accordance with their most reasonable conception of political justice. Nevertheless, it may happen that some citizens feel they must express their principled dissent from existing institutions, policies, or enacted legislation. I assume that Quakers accept constitutional democracy and abide by its legitimate law, yet at the same time may reasonably express the religious basis of their pacifism. (The parallel case of Catholic opposition to abortion is mentioned in § 6.1.) Yet witnessing differs from civil disobedience in that it does not appeal to principles and values of a (liberal) political conception of justice. While on the whole these citizens endorse reasonable political conceptions of justice supporting a constitutional democratic society, in this case they nevertheless feel they must not only let other citizens know the deep basis of their strong opposition but must also bear witness to their faith by doing so. At the same time, those bearing witness accept the idea of public reason. While they may think the outcome of a vote on which all reasonable citizens have conscientiously followed public reason to be incorrect or not true, they nevertheless recognize it as legitimate law and accept the obligation not to violate it. In such a society there is strictly speaking no case for civil disobedience and conscientious refusal. The latter requires what I have called a nearly just, but not fully just, society. See Rawls, *A Theory of Justice* § 55 (cited in note 55).

⁵⁸ I have thought that J.S. Mill's landmark *The Subjection of Women* (1869), in 21 Collected Works of John Stuart Mill 259 (cited in note 36), made clear that a decent liberal conception of justice (including what I called justice as fairness) implied equal justice for women as well as men. Admittedly, *A Theory of Justice* should have been more explicit about this, but that was a fault of mine and not of political liberalism itself. I have been encouraged to think that a liberal account of equal justice for women is visible by Susan Moller Okin, *Justice, Gender, and the Family* (Basic Books 1989); Linda C. McClain, "Atomistic Man" Revisited: Liberalism, Connection, and Feminist Jurisprudence, 65 S Cal L Rev 1171 (1992); Martha Nussbaum, *Sex and Social Justice* (Oxford forthcoming 1998) (a collection of her essays from 1990 to 1996, including *The Feminist Critique of Liberalism*, her Oxford Amnesty Lecture for 1996); and Sharon A. Lloyd, *Situating a Feminist Criticism of John Rawls's Political Liberalism*, 28 Loyola LA L Rev 1319 (1995). I have gained greatly from their writings.

The family is part of the basic structure, since one of its main roles is to be the basis of the orderly production and reproduction of society and its culture from one generation to the next. Political society is always regarded as a scheme of social cooperation over time indefinitely; the idea of a future time when its affairs are to be concluded and society disbanded is foreign to the conception of political society. Thus, reproductive labor is socially necessary labor. Accepting this, a central role of the family is to arrange in a reasonable and effective way the raising of and caring for children, ensuring their moral development and education into the wider culture.⁵⁹ Citizens must have a sense of justice and the political virtues that support political and social institutions. The family must ensure the nurturing and development of such citizens in appropriate numbers to maintain an enduring society.⁶⁰

These requirements limit all arrangements of the basic structure, including efforts to achieve equality of opportunity. The family imposes constraints on ways in which this goal can be achieved, and the principles of justice are stated to try to take these constraints into account. I cannot pursue these complexities here, but assume that as children we grow up in a small intimate group in which elders (normally parents) have a certain moral and social authority.

2. In order for public reason to apply to the family, it must be seen, in part at least, as a matter for political justice. It may be thought that this is not so, that the principles of justice do not apply to the family and hence those principles do not secure equal justice for women and their children.⁶¹ This is a misconception. It may arise as follows: the primary subject of political justice is the basic structure of society understood as the arrangement of society's main institutions into a unified system of social cooperation over time. The principles of political justice are to apply directly to this structure, but are not to apply directly to the internal life of the many associations within it, the family among them. Thus, some may think that if those principles do

⁵⁹ Rawls, *A Theory of Justice* §§ 70-76 (cited in note 55) (discussing the stages of moral development and their relevance to justice as fairness).

⁶⁰ However, no particular form of the family (monogamous, heterosexual, or otherwise) is required by a political conception of justice so long as the family is arranged to fulfill these tasks effectively and doesn't run afoul of other political values. Note that this observation sets the way in which justice as fairness deals with the question of gay and lesbian rights and duties, and how they affect the family. If these rights and duties are consistent with orderly family life and the education of children, they are, *celestis paribus*, fully admissible.

⁶¹ See Okin, *Justice, Gender, and the Family* at 90-93 (cited in note 58).

not apply directly to the internal life of families, they cannot ensure equal justice for wives along with their husbands.

Much the same question arises in regard to all associations, whether they be churches or universities, professional or scientific associations, business firms or labor unions. The family is not peculiar in this respect. To illustrate: it is clear that liberal principles of political justice do not require ecclesiastical governance to be democratic. Bishops and cardinals need not be elected; nor need the benefits attached to a church's hierarchy of offices satisfy a specified distributive principle, certainly not the difference principle.⁶³ This shows how the principles of political justice do not apply to the internal life of a church, nor is it desirable, or consistent with liberty of conscience or freedom of association, that they should.

On the other hand, the principles of political justice do impose certain essential constraints that bear on ecclesiastical governance. Churches cannot practice effective intolerance, since, as the principles of justice require, public law does not recognize heresy and apostasy as crimes, and members of churches are always at liberty to leave their faith. Thus, although the principles of justice do not apply directly to the internal life of churches, they do protect the rights and liberties of their members by the constraints to which all churches and associations are subject. This is not to deny that there are appropriate conceptions of justice that do apply directly to most if not all associations and groups, as well as to various kinds of relationships among individuals. Yet these conceptions of justice are not political conceptions. In each case, what is the appropriate conception is a separate and additional question, to be considered anew in each particular instance, given the nature and role of the relevant association, group, or relation.

Now consider the family. Here the idea is the same: political principles do not apply directly to its internal life, but they do impose essential constraints on the family as an institution and so guarantee the basic rights and liberties, and the freedom and opportunities, of all its members. This they do, as I have said, by specifying the basic rights of equal citizens who are the members of families. The family as part of the basic structure cannot violate these freedoms. Since wives are equally citizens with their husbands, they have all the same basic rights, liberties, and opportunities as their husbands; and this, together with the correct

⁶³ The difference principle is defined in Rawls, *A Theory of Justice* § 13 (cited in note 55).

application of the other principles of justice, suffices to secure their equality and independence.

To put the case another way, we distinguish between the point of view of people as citizens and their point of view as members of families and of other associations.⁶⁴ As citizens we have reasons to impose the constraints specified by the political principles of justice on associations; while as members of associations we have reasons for limiting those constraints so that they leave room for a free and flourishing internal life appropriate to the association in question. Here again we see the need for the division of labor between different kinds of principles. We wouldn't want political principles of justice—including principles of distributive justice—to apply directly to the internal life of the family.

These principles do not inform us how to raise our children, and we are not required to treat our children in accordance with political principles. Here those principles are out of place. Surely parents must follow some conception of justice (or fairness) and due respect with regard to their children, but, within certain limits, this is not for political principles to prescribe. Clearly the prohibition of abuse and neglect of children, and much else, will, as constraints, be a vital part of family law. But at some point society has to rely on the natural affection and goodwill of the mature family members.⁶⁵

Just as the principles of justice require that wives have all the rights of citizens, the principles of justice impose constraints on the family on behalf of children who as society's future citizens have basic rights as such. A long and historic injustice to women is that they have borne, and continue to bear, an unjust share of the task of raising, nurturing, and caring for their children. When they are even further disadvantaged by the laws regulating divorce, this burden makes them highly vulnerable. These injustices bear harshly not only on women but also on their children; and they tend to undermine children's capacity to acquire the political virtues required of future citizens in a viable democratic society. Mill held that the family in his day was a school for male despotism: it inculcated habits of thought and ways of feeling and conduct incompatible with democracy.⁶⁶ If so,

⁶⁴ I borrow this thought from Joshua Cohen, *Okin on Justice, Gender, and Family*, 22 *Can J Phil* 263, 278 (1992).

⁶⁵ Michael Sandel supposes the two principles of justice as fairness to hold generally for associations, including families. See Michael J. Sandel, *Liberalism and the Limits of Justice* 30-34 (Cambridge 1982).

⁶⁶ Mill, *Subjection of Women* ch 2 at 283-98 (cited in note 58).

the principles of justice enjoining a reasonable constitutional democratic society can plainly be invoked to reform the family.

3. More generally, when political liberalism distinguishes between political justice that applies to the basic structure and other conceptions of justice that apply to the various associations within that structure, it does not regard the political and nonpolitical domains as two separate, disconnected spaces, each governed solely by its own distinct principles. Even if the basic structure alone is the primary subject of justice, the principles of justice still put essential restrictions on the family and all other associations. The adult members of families and other associations are equal citizens first: that is their basic position. No institution or association in which they are involved can violate their rights as citizens.

A domain so-called, or a sphere of life, is not, then, something already given apart from political conceptions of justice. A domain is not a kind of space, or place, but rather is simply the result, or upshot, of how the principles of political justice are applied, directly to the basic structure and indirectly to the associations within it. The principles defining the equal basic liberties and opportunities of citizens always hold in and through all so-called domains. The equal rights of women and the basic rights of their children as future citizens are inalienable and protect them wherever they are. Gender distinctions limiting those rights and liberties are excluded.⁶⁶ So the spheres of the political and the public, of the nonpublic and the private, fall out from the content and application of the conception of justice and its principles. If the so-called private sphere is alleged to be a space exempt from justice, then there is no such thing.

The basic structure is a single social system, each part of which may influence the rest. Its basic principles of political justice specify all its main parts and its basic rights reach throughout. The family is only one part (though a major part) of the system that produces a social division of labor based on gender over time. Some have argued that discrimination against women in the marketplace is the key to the historical gendered division of labor in the family. The resulting wage differences between the genders make it economically sensible that mothers spend more time with their children than fathers do. On the other hand, some believe that the family itself is the linchpin⁶⁷ of gender in-

⁶⁶ Rawls, *A Theory of Justice* § 16 at 99 (cited in note 65).

⁶⁷ This is Okin's term. See Okin, *Justice, Gender, and the Family* at 6, 14, 170 (cited in note 58).

justice. However, a liberal conception of justice may have to allow for some traditional gendered division of labor within families—assume, say, that this division is based on religion—provided it is fully voluntary and does not result from or lead to injustice. To say that this division of labor is in this case fully voluntary means that it is adopted by people on the basis of their religion, which from a political point of view is voluntary,⁶⁸ and not because various other forms of discrimination elsewhere in the social system make it rational and less costly for husband and wife to follow a gendered division of labor in the family.

Some want a society in which division of labor by gender is reduced to a minimum. But for political liberalism, this cannot mean that such division is forbidden. One cannot propose that equal division of labor in the family be simply mandated, or its absence in some way penalized at law for those who do not adopt it. This is ruled out because the division of labor in question is connected with basic liberties, including the freedom of religion. Thus, to try to minimize gendered division of labor means, in political liberalism, to try to reach a social condition in which the remaining division of labor is voluntary. This allows in principle that considerable gendered division of labor may persist. It is only involuntary division of labor that is to be reduced to zero.

Hence the family is a crucial case for seeing whether the single system—the basic structure—affords equal justice to both men and women. If the gendered division of labor in the family is indeed fully voluntary, then there is reason to think that the single system realizes fair equality of opportunity for both genders.

4. Since a democracy aims for full equality for all its citizens, and so of women, it must include arrangements to achieve it. If a basic, if not the main, cause of women's inequality is their greater share in the bearing, nurturing, and caring for children in the traditional division of labor within the family, steps need to be taken either to equalize their share, or to compensate them

⁶⁸ On this point, see Rawls, *Political Liberalism*, lecture VI, § 3.2 at 221-22 (cited in note 1). Whether it is properly voluntary, and if so, under what conditions, is a disputed question. Briefly, the question involves the distinction between the reasonable and the rational explained thus: an action is voluntary in one sense, but it may not be voluntary in another. It may be voluntary in the sense of rational: doing the rational thing in the circumstances even when these involve unfair conditions; or an action may be voluntary in the sense of reasonable: doing the rational thing when all the surrounding conditions are also fair. Clearly the text interprets "voluntary" in the second sense: affirming one's religion is voluntary when all of the surrounding conditions are reasonable, or fair. In these remarks I have assumed that the subjective conditions of voluntariness (whatever they may be) are present and have only noted the objective ones. A full discussion would lead us far afield.

for it.⁶⁸ How best to do this in particular historical conditions is not for political philosophy to decide. But a now common proposal is that as a norm or guideline, the law should count a wife's work in raising children (when she bears that burden as is still common) as entitling her to an equal share in the income that her husband earns during their marriage. Should there be a divorce, she should have an equal share in the increased value of the family's assets during that time.

Any departure from this norm would require a special and clear justification. It seems intolerably unjust that a husband may depart the family taking his earning power with him and leaving his wife and children far less advantaged than before. Forced to fend for themselves, their economic position is often precarious. A society that permits this does not care about women, much less about their equality, or even about their children, who are its future.

The crucial question may be what precisely is covered by gender-structured institutions. How are their lines drawn? If we say the gender system includes whatever social arrangements adversely affect the equal basic liberties and opportunities of women, as well as those of their children as future citizens, then surely that system is subject to critique by the principles of justice. The question then becomes whether the fulfillment of these principles suffices to remedy the gender system's faults. The remedy depends in part on social theory and human psychology, and much else. It cannot be settled by a conception of justice alone.

In concluding these remarks on the family, I should say that I have not tried to argue fully for particular conclusions. Rather, to repeat, I have simply wanted to illustrate how a political conception of justice and its ordering of political values apply to a single institution of the basic structure and can cover many (if not all) of its various aspects. As I have said, these values are given an order within the particular political conception to which they are attached.⁶⁹ Among these values are the freedom and equality of women, the equality of children as future citizens, the freedom of religion, and finally, the value of the family in securing the orderly production and reproduction of society and of its culture from one generation to the next. These values provide

⁶⁸ See Victor R. Fuchs, *Women's Quest for Economic Equality* (Harvard 1988). Chapters 3 and 4 summarize the evidence for saying the main cause is not, as it is often said, employer discrimination, while chapters 7 and 8 propose what is to be done.
⁶⁹ See § 2.3.

public reasons for all citizens. So much is claimed not only for justice as fairness but for any reasonable political conception.

§ 6: QUESTIONS ABOUT PUBLIC REASON

I now turn to various questions and doubts about the idea of public reason and try to allay them.

1. First, it may be objected that the idea of public reason would unreasonably limit the topics and considerations available for political argument and debate, and that we should adopt instead what we may call the open view with no constraints. I now discuss two examples to rebut this objection.

(a) One reason for thinking public reason is too restrictive is to suppose that it mistakenly tries to settle political questions in advance. To explain this objection, let's consider the question of school prayer. It might be thought that a liberal position on this question would deny its admissibility in public schools. But why so? We have to consider all the political values that can be invoked to settle this question and on which side the decisive reasons fall. The famous debate in 1784-1785 between Patrick Henry and James Madison over the establishment of the Anglican Church in Virginia and involving religion in the schools was argued almost entirely by reference to political values alone. Henry's argument for establishment was based on the view that:

Christian knowledge hath a natural tendency to correct the morals of men, restrain their vices, and preserve the peace of society, which cannot be effected without a competent provision for learned teachers⁷¹

Henry did not seem to argue for Christian knowledge as good in itself but rather as an effective way to achieve basic political values, namely, the good and peaceable conduct of citizens. Thus, I take him to mean by "vices," at least in part, those actions contrary to the political virtues found in political liberalism,⁷² and expressed by other conceptions of democracy.

Leaving aside the obvious difficulty of whether prayers can be composed that satisfy all the needed restrictions of political

⁷¹ See Thomas J. Curry, *The First Freedoms: Church and State in America to the Passage of the First Amendment* 139-48 (Oxford 1986). The quoted language, which appears in id. at 140, is from the preamble to the proposed "Bill Establishing a Provision for Teachers of the Christian Religion" (1784). Note that the popular Patrick Henry also provided the most serious opposition to Jefferson's "Bill for Establishing Religious Freedom" (1779), which won out when reintroduced in the Virginia Assembly in 1786. Curry, *The First Freedoms* at 146.

⁷² For a discussion of these virtues, see Rawls, *Political Liberalism*, lecture V, § 5.4 at 194-95 (cited in note 1).

justice, Madison's objections to Henry's bill turned largely on whether religious establishment was necessary to support orderly civil society. He concluded it was not. Madison's objections depended also on the historical effects of establishment both on society and on the integrity of religion itself. He was acquainted with the prosperity of colonies that had no establishment, notably Pennsylvania; he cited the strength of early Christianity in opposition to the hostile Roman Empire, and the corruption of past establishments.⁷³ With some care, many if not all of these arguments can be expressed in terms of the political values of public reason.

Of special interest in the example of school prayer is that it brings out that the idea of public reason is not a view about specific political institutions or policies. Rather, it is a view about the kind of reasons on which citizens are to rest their political cases in making their political justifications to one another when they support laws and policies that invoke the coercive powers of government concerning fundamental political questions. Also of special interest in this example is that it serves to emphasize that the principles that support the separation of church and state should be such that they can be affirmed by all free and equal citizens, given the fact of reasonable pluralism.

The reasons for the separation of church and state are these, among others: It protects religion from the state and the state from religion; it protects citizens from their churches⁷⁴ and citizens from one another. It is a mistake to say that political liberalism is an individualist political conception, since its aim is the protection of the various interests in liberty, both associational and individual. And it is also a grave error to think that the separation of church and state is primarily for the protection of secular culture; of course it does protect that culture, but no more so than it protects all religions. The vitality and wide acceptance

⁷³ See James Madison, *Memorial and Remonstrance* (1785), in *The Mind of the Founder* 8-16 (Bobbs-Merrill 1973) (Marvin Meyers, ed.). Paragraph 6 refers to the vigor of early Christianity in opposition to the empire, while paragraphs 7 and 11 refer to the mutually corrupting influence of past establishments on both state and religion. In the correspondence between Madison and William Bradford of Pennsylvania, whom he met at Princeton (College of New Jersey), the freedom and prosperity of Pennsylvania without an establishment is praised and celebrated. See 1 *The Papers of James Madison* (Chicago 1962) (William T. Hutchinson and William M.E. Rachal, eds). See especially Madison's letters of 1 December 1773, id. at 100-01; 24 January 1774, id. at 104-06; and 1 April 1774, id. at 111-13. A letter of Bradford's to Madison, 4 March 1774, refers to liberty as the genius of Pennsylvania. Id. at 109. Madison's arguments were similar to those of Tocqueville I mention below. See also Curry, *The First Freedoms* at 142-48 (cited in note 71).

⁷⁴ It does this by protecting the freedom to change one's faith. Heresy and apostasy are not crimes.

of religion in America is often commented upon, as if it were a sign of the peculiar virtue of the American people. Perhaps so, but it may also be connected with the fact that in this country the various religions have been protected by the First Amendment from the state, and none has been able to dominate and suppress the other religions by the capture and use of state power.⁷⁵ While some have no doubt entertained that aim since the early days of the Republic, it has not been seriously tried. Indeed, Tocqueville thought that among the main causes of the strength of democracy in this country was the separation of church and state.⁷⁶ Po-

⁷⁵ What I refer to here is the fact that from the early days of the Emperor Constantine in the fourth century Christianity punished heresy and tried to stamp out by persecution and religious wars what it regarded as false doctrine (for example, the crusade against the Albigenses led by Innocent III in the 13th century). To do this required the coercive powers of the state. Instituted by Pope Gregory IX, the Inquisition was active throughout the Wars of Religion in the 16th and 17th centuries. While most of the American Colonies had known establishments of some kind (Congregationalist in New England, Episcopalian in the South), the United States, thanks to the plurality of its religious sects and the First Amendment which they endorsed, never did. A persecuting zeal has been the great curse of the Christian religion. It was shared by Luther and Calvin and the Protestant Reformers, and it was not radically changed in the Catholic Church until Vatican II. In the Council's Declaration on Religious Freedom—*Dignitatis Humanae*—the Catholic Church committed itself to the principle of religious freedom as found in a constitutional democratic regime. It declared the ethical doctrine of religious freedom resting on the dignity of the human person; a political doctrine with respect to the limits of government in religious matters; a theological doctrine of the freedom of the Church in its relations to the political and social world. All persons, whatever their faith, have the right of religious liberty on the same terms. *Declaration on Religious Freedom (Dignitatis Humanae): On the Right of the Person and of Communities to Social and Civil Freedom in Matters Religious* (1965), in Walter Abbott, S.J., ed., *The Documents of Vatican II* 675, 692-96 (Geoffrey Chapman 1966). As John Courtney Murray, S.J., said, "A long-standing ambiguity had finally been cleared up. The Church does not deal with the secular order in terms of a double standard—freedom for the Church when Catholics are in the minority, privilege for the Church and intolerance for others when Catholics are a majority." John Courtney Murray, S.J., *Religious Freedom*, in Abbott, ed., *Documents of Vatican II* at 672, 673. See also the instructive discussion by Paul E. Sigmond, *Catholicism and Liberal Democracy*, in R. Bruce Douglas and David Hollenbach, S.J., eds., *Catholicism and Liberalism: Contributions to American Public Philosophy* (Cambridge 1994). See especially id. at 233-39.

⁷⁶ Alexis de Tocqueville, *1 Democracy in America* 294-301 (Perennial Library 1988) (J.P. Mayer, ed. George Lawrence, trans). In discussing "The Main Causes That Make Religion Powerful in America," Tocqueville says the Catholic priests "all thought that the main reason for the quiet sway of religion over their country was the complete separation of church and state. I have no hesitation in stating that throughout my stay in America I met nobody, lay or cleric, who did not agree about that." Id. at 295. He continues:

There have been religions intimately linked to earthly governments, dominating men's souls both by terror and by faith; but when a religion makes such an alliance, I am not afraid to say that it makes the same mistake as any man might, it sacrifices the future for the present, and by gaining a power to which it has no claim, it risks its legitimate authority

Hence religion cannot share the material strength of the rulers without being burdened with some of the animosity roused against them.

Id. at 297. He remarks that these observations apply all the more to a democratic country,

litical liberalism agrees with many other liberal views in accepting this proposition.⁷⁷ Some citizens of faith have felt that this separation is hostile to religion and have sought to change it. In doing this I believe they fail to grasp a main cause of the strength of religion in this country and, as Tocqueville says, seem ready to jeopardize it for temporary gains in political power.

(b) Others may think that public reason is too restrictive because it may lead to a stand-off⁷⁸ and fail to bring about decisions on disputed issues. A stand-off in some sense may indeed happen, not only in moral and political reasoning but in all forms of reasoning, including science and common sense. Nevertheless, this is irrelevant. The relevant comparison is to those situations in which legislators enacting laws and judges deciding cases must make decisions. Here some political rule of action must be laid down and all must be able reasonably to endorse the process by which a decision is reached. Recall that public reason sees the office of citizen with its duty of civility as analogous to that of judge with its duty of deciding cases. Just as judges are to decide cases by legal grounds of precedent, recognized canons of statutory interpretation, and other relevant grounds, so citizens are to reason by public reason and to be guided by the criterion of reciprocity, whenever constitutional essentials and matters of basic justice are at stake.

Thus, when there seems to be a stand-off, that is, when legal arguments seem evenly balanced on both sides, judges cannot resolve the case simply by appealing to their own political views. To do that is for judges to violate their duty. The same holds with public reason: if, when stand-offs occur, citizens simply invoke grounding reasons of their comprehensive views,⁷⁹ the principle of reciprocity is violated. From the point of view of public reason, citizens must vote for the ordering of political values they sincerely think the most reasonable. Otherwise they fail to exercise political power in ways that satisfy the criterion of reciprocity.

for in that case when religion seeks political power it will attach itself to a particular party and be burdened by hostility to it. Id. at 298. Referring to the cause of the decline of religion in Europe, he concludes, "I am profoundly convinced that this accidental and particular cause is the close union of politics and religion. . . . European Christianity has allowed itself to be intimately united with the powers of this world." Id. at 300-01. Political liberalism accepts Tocqueville's view and sees it as explaining, so far as possible, the basis of peace among comprehensive doctrines both religious and secular.

⁷⁷ I use the term "grounding reasons" since many who might appeal to these reasons view them as the proper grounds, or the true basis—religious, philosophical, or moral—of the ideals and principles of public reasons and political conceptions of justice.

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In particular, when hotly disputed questions, such as that of abortion, arise which may lead to a stand-off between different political conceptions, citizens must vote on the question according to their complete ordering of political values.⁸⁰ Indeed, this is a normal case: unanimity of views is not to be expected. Reasonable political conceptions of justice do not always lead to the same conclusion,⁸¹ nor do citizens holding the same conception always agree on particular issues. Yet the outcome of the vote, as I said before, is to be seen as legitimate provided all government officials, supported by other reasonable citizens, of a reasonably just constitutional regime sincerely vote in accordance with the idea of public reason. This doesn't mean the outcome is true or correct, but that it is reasonable and legitimate law, binding on citizens by the majority principle.

Some may, of course, reject a legitimate decision, as Roman Catholics may reject a decision to grant a right to abortion. They may present an argument in public reason for denying it and fail to win a majority.⁸² But they need not themselves exercise the

⁸⁰ Some have quite naturally read the footnote in Rawls, *Political Liberalism*, lecture VI, § 7.2 at 243-44 (cited in note 1), as an argument for the right to abortion in the first trimester. I do not intend it to be one. (It does express my opinion, but my opinion is not an argument.) I was in error in leaving it in doubt whether the aim of the footnote was only to illustrate and confirm the following statement in the text to which the footnote is attached: "The only comprehensive doctrines that run afoul of public reason are those that cannot support a reasonable balance [or ordering] of political values [on the issue]." To try to explain what I meant, I used three political values (of course, there are more) for the troubled issue of the right to abortion to which it might seem improbable that political values could apply at all. I believe a more detailed interpretation of those values may, when properly developed in public reason, yield a reasonable argument. I don't say the most reasonable or decisive argument; I don't know what that would be, or even if it exists. (For an example of such a more detailed interpretation, see Judith Jarvis Thomson, *Abortion*, 20 *Boston Rev* 11 (Summer 1995), though I would want to add several addenda to it.) Suppose now, for purposes of illustration, that there is a reasonable argument in public reason for the right to abortion but there is no equally reasonable balance, or ordering, of the political values in public reason that argues for the denial of that right. Then in this kind of case, but only in this kind of case, does a comprehensive doctrine denying the right to abortion run afoul of public reason. However, if it can satisfy the proviso of the wide public reason better, or at least as well as other views, it has made its case in public reason. Of course, a comprehensive doctrine can be unreasonable on one or several issues without being simply unreasonable.

⁸¹ Rawls, *Political Liberalism*, lecture VI, § 7.1 at 240-41 (cited in note 1).

⁸² For such an argument, see Cardinal Joseph Bernardin, *The Consistent Ethic: What Sort of Framework?*, 16 *Origins* 345, 347-50 (Oct 30, 1986). The idea of public order the Cardinal presents includes these three political values: public peace; essential protections of human rights, and the commonly accepted standards of moral behavior in a community of law. Further, he grants that not all moral imperatives are to be translated into prohibitive civil statutes and thinks it essential to the political and social order to protect human life and basic human rights. The denial of the right to abortion he hopes to justify on the basis of those three values. I don't of course assess his argument here, except to say it is clearly cast in some form of public reason. Whether it is itself reasonable or not, or more

right to abortion. They can recognize the right as belonging to legitimate law enacted in accordance with legitimate political institutions and public reason, and therefore not resist it with force. Forceful resistance is unreasonable: it would mean attempting to impose by force their own comprehensive doctrine that a majority of other citizens who follow public reason, not unreasonably, do not accept. Certainly Catholics may, in line with public reason, continue to argue against the right to abortion. Reasoning is not closed once and for all in public reason any more than it is closed in any form of reasoning. Moreover, that the Catholic Church's nonpublic reason requires its members to follow its doctrine is perfectly consistent with their also honoring public reason.⁶⁵

I do not discuss the question of abortion in itself since my concern is not with that question but rather to stress that political liberalism does not hold that the ideal of public reason should always lead to a general agreement of views, nor is it a fault that it does not. Citizens learn and profit from debate and argument, and when their arguments follow public reason, they instruct society's political culture and deepen their understanding of one another even when agreement cannot be reached.

2. Some of the considerations underlying the stand-off objection lead to a more general objection to public reason, namely, that the content of the family of reasonable political conceptions of justice on which it is based is itself much too narrow. This objection insists that we should always present what we think are true or grounding reasons for our views. That is, the objection insists, we are bound to express the true, or the right, as seen from our comprehensive doctrines.

However, as I said in the Introduction, in public reason ideas of truth or right based on comprehensive doctrines are replaced by an idea of the politically reasonable addressed to citizens as citizens. This step is necessary to establish a basis of political reasoning that all can share as free and equal citizens. Since we are seeking public justifications for political and social institutions—for the basic structure of a political and social world—we

reasonable than the arguments on the other side, is another matter. As with any form of reasoning in public reason, the reasoning may be fallacious or mistaken.

⁶⁵ As far as I can see, this view is similar to Father John Courtney Murray's position about the stand the Church should take in regard to contraception in *We Hold These Truths: Catholic Reflections on the American Proposition* 167-68 (Sheed and Ward 1960). See also Mario Cuomo's lecture on abortion in his Notre Dame Lecture of 1984, in *More Than Words: The Speeches of Mario Cuomo* 32-51 (St. Martin's 1993). I am indebted to Leslie Griffin and Paul Weithman for discussion and clarification about points involved in this and the preceding footnote and for acquainting me with Father Murray's view.

think of persons as citizens. This assigns to each person the same basic political position. In giving reasons to all citizens we don't view persons as socially situated or otherwise rooted, that is, as being in this or that social class, or in this or that property and income group, or as having this or that comprehensive doctrine. Nor are we appealing to each person's or each group's interests, though at some point we must take these interests into account. Rather, we think of persons as reasonable and rational, as free and equal citizens, with the two moral powers⁶⁴ and having, at any given moment, a determinate conception of the good, which may change over time. These features of citizens are implicit in their taking part in a fair system of social cooperation and seeking and presenting public justifications for their judgments on fundamental political questions.

I emphasize that this idea of public reason is fully compatible with the many forms of nonpublic reason.⁶⁵ These belong to the internal life of the many associations in civil society and they are not of course all the same; different nonpublic reasons of different religious associations shared by their members are not those of scientific societies. Since we seek a shareable public basis of justification for all citizens in society, giving justifications to particular persons and groups here and there until all are covered fails to do this. To speak of all persons in society is still too broad, unless we suppose that they are in their nature basically the same. In political philosophy one role of ideas about our nature has been to think of people in a standard, or canonical, fashion so that they might all accept the same kind of reasons.⁶⁶ In political liberalism, however, we try to avoid natural or psychological views of this kind, as well as theological or secular doctrines. Accounts of human nature we put aside and rely on a political conception of persons as citizens instead.

3. As I have stressed throughout, it is central to political liberalism that free and equal citizens affirm both a comprehensive doctrine and a political conception. However, the relation be-

⁶⁴ These two powers, the capacity for a conception of justice and the capacity for a conception of the good, are discussed in Rawls, *Political Liberalism* (cited in note 1). See especially id., lecture I, § 3.2 at 19, lecture II, § 7.1 at 81, lecture III, § 3.3 at 103-04, lecture III, § 4.1 at 106.

⁶⁵ Id., lecture VI, § 4 at 223-27.
⁶⁶ Sometimes the term "normalize" is used in this connection. For example, persons have certain fundamental interests of a religious or philosophical kind; or else certain basic needs of a natural kind. Again, they may have a certain typical pattern of self-realization. A Thomist will say that we always desire above all else, even if unknown to ourselves, the *Visio Dei*; a Platonist will say we strive for a vision of the good; a Marxist will say we aim for self-realization as species-beings.

tween a comprehensive doctrine and its accompanying political conception is easily misunderstood.

When political liberalism speaks of a reasonable overlapping consensus of comprehensive doctrines,⁶⁷ it means that all of these doctrines, both religious and nonreligious, support a political conception of justice underwriting a constitutional democratic society whose principles, ideals, and standards satisfy the criterion of reciprocity. Thus, all reasonable doctrines affirm such a society with its corresponding political institutions: equal basic rights and liberties for all citizens, including liberty of conscience and the freedom of religion.⁶⁸ On the other hand, comprehensive doctrines that cannot support such a democratic society are not reasonable. Their principles and ideals do not satisfy the criterion of reciprocity, and in various ways they fail to establish the equal basic liberties. As examples, consider the many fundamentalist religious doctrines, the doctrine of the divine right of monarchs and the various forms of aristocracy, and, not to be overlooked, the many instances of autocracy and dictatorship.

Moreover, a true judgment in a reasonable comprehensive doctrine never conflicts with a reasonable judgment in its related political conception. A reasonable judgment of the political conception must still be confirmed as true, or right, by the comprehensive doctrine. It is, of course, up to citizens themselves to affirm, revise, or change their comprehensive doctrines. Their doctrines may override or count for naught the political values of a constitutional democratic society. But then the citizens cannot claim that such doctrines are reasonable. Since the criterion of reciprocity is an essential ingredient specifying public reason and its content, political liberalism rejects as unreasonable all such doctrines.

In a reasonable comprehensive doctrine, in particular a religious one, the ranking of values may not be what we might expect. Thus, suppose we call *transcendent* such values as salvation and eternal life—the *Visio Dei*. This value, let's say, is higher, or superior to, the reasonable political values of a constitutional democratic society. These are worldly values and therefore on a different, and as it were lower, plane than those transcendent values. It doesn't follow, however, that these lower yet reasonable values are overridden by the transcendent values of the religious doctrine. In fact, a *reasonable* comprehensive doctrine is

⁶⁷ The idea of such a consensus is discussed at various places in Rawls, *Political Liberalism* (cited in note 1). See especially *id.*, lecture IV, and consult the index.

⁶⁸ See *id.* at xviii (paperback edition).

one in which they are not overridden; it is the unreasonable doctrines in which reasonable political values are overridden. This is a consequence of the idea of the politically reasonable as set out in political liberalism. Recall that it was said: In endorsing a constitutional democratic regime, a religious doctrine may say that such are the limits God sets to our liberty.⁶⁹

A further misunderstanding alleges that an argument in public reason could not side with Lincoln against Douglas in their debates of 1858.⁷⁰ But why not? Certainly they were debating fundamental political principles about the rights and wrongs of slavery. Since the rejection of slavery is a clear case of securing the constitutional essential of the equal basic liberties, surely Lincoln's view was reasonable (even if not the most reasonable), while Douglas's was not. Therefore, Lincoln's view is supported by any reasonable comprehensive doctrine. It is no surprise, then, that his view is in line with the religious doctrines of the Abolitionists and the Civil Rights Movement. What could be a better example to illustrate the force of public reason in political life?⁷¹

4. A third general objection is that the idea of public reason is unnecessary and serves no purpose in a well established constitutional democracy. Its limits and constraints are useful primarily when a society is sharply divided and contains many hostile religious associations and secular groups, each striving to become the controlling political force. In the political societies of the European democracies and the United States these worries, so the objection goes, are idle.

⁶⁹ See § 3.2. It is sometimes asked why political liberalism puts such a high value on political values, as if one could only do that by assessing those values in comparison with transcendent values. But this comparison political liberalism does not make, nor does it need to make, as is observed in the text.

⁷⁰ On this, see Michael J. Sandel, *Review of Political Liberalism*, 107 *Harv L Rev* 1765, 1778-82 (1994), and more recently Michael J. Sandel, *Democracy's Discontent: America in Search of a Public Philosophy* 21-23 (Belknap 1996).

⁷¹ Perhaps some think that a political conception is not a matter of (moral) right and wrong. If so, that is a mistake and is simply false. Political conceptions of justice are themselves intrinsically moral ideas, as I have stressed from the outset. As such they are a kind of normative value. On the other hand, some may think that the relevant political conceptions are determined by how a people actually establish their existing institutions—the political given, as it were, by politics. Viewed in this light, the prevalence of slavery in 1858 implies that Lincoln's criticisms of it were moral, a matter of right and wrong, and certainly not a matter of politics. To say that the political is determined by a people's politics may be a possible use of the term *political*. But then it ceases to be a normative idea and it is no longer part of public reason. We must hold fast to the idea of the political as a fundamental category and covering political conceptions of justice as intrinsic moral values.

However, this objection is incorrect and sociologically faulty. For without citizens' allegiance to public reason and their honoring the duty of civility, divisions and hostilities between doctrines are bound in time to assert themselves, should they not already exist. Harmony and concord among doctrines and a people's affirming public reason are unhappily not a permanent condition of social life. Rather, harmony and concord depend on the vitality of the public political culture and on citizens' being devoted to and realizing the ideal of public reason. Citizens could easily fall into bitterness and resentment, once they no longer see the point of affirming an ideal of public reason and come to ignore it.

To return to where we began in this Section: I do not know how to prove that public reason is not too restrictive, or whether its forms are properly described. I suspect it cannot be done. Yet this is not a serious problem if, as I believe, the large majority of cases fit the framework of public reason, and the cases that do not fit all have special features that both enable us to understand why they should cause difficulty and show us how to cope with them as they arise. This prompts the general questions of whether there are examples of important cases of constitutional essentials and basic justice that do not fit the framework of public reason, and if so, why they cause difficulty. In this paper I do not pursue these questions.

§ 7: CONCLUSION

1. Throughout, I have been concerned with a torturing question in the contemporary world, namely: Can democracy and comprehensive doctrines, religious or nonreligious, be compatible? And if so, how? At the moment a number of conflicts between religion and democracy raise this question. To answer it political liberalism makes the distinction between a self-standing political conception of justice and a comprehensive doctrine. A religious doctrine resting on the authority of the Church or the Bible is not, of course, a liberal comprehensive doctrine: its leading religious and moral values are not those, say, of Kant or Mill. Nevertheless, it may endorse a constitutional democratic society and recognize its public reason. Here it is basic that public reason is a political idea and belongs to the category of the political. Its content is given by the family of (liberal) political conceptions of justice satisfying the criterion of reciprocity. It does not trespass upon religious beliefs and injunctions insofar as these are consistent with the essential constitutional liberties, including the freedom of religion and liberty of conscience. There

is, or need be, no war between religion and democracy. In this respect political liberalism is sharply different from and rejects Enlightenment Liberalism, which historically attacked orthodox Christianity.

The conflicts between democracy and reasonable religious doctrines and among reasonable religious doctrines themselves are greatly mitigated and contained within the bounds of reasonable principles of justice in a constitutional democratic society. This mitigation is due to the idea of toleration, and I have distinguished between two such ideas.⁵² One is purely political, being expressed in terms of the rights and duties protecting religious liberty in accordance with a reasonable political conception of justice.⁵³ The other is not purely political but expressed from within a religious or a nonreligious doctrine. However, a reasonable judgment of the political conception must still be confirmed as true, or right, by a reasonable comprehensive doctrine.⁵⁴ I assume, then, that a reasonable comprehensive doctrine accepts some form of the political argument for toleration. Of course, citizens may think that the grounding reasons for toleration and for the other elements of a constitutional democratic society are not political but rather are to be found in their religious or nonreligious doctrines. And these reasons, they may well say, are the true or the right reasons; and they may see the political reasons as superficial, the grounding ones as deep. Yet there is no conflict here, but simply concordant judgments made within political conceptions of justice on the one hand, and within comprehensive doctrines on the other.

There are limits, however, to reconciliation by public reason. Three main kinds of conflicts set citizens at odds: those deriving from irreconcilable comprehensive doctrines; those deriving from differences in status, class position, or occupation, or from differences in ethnicity, gender, or race; and finally, those deriving

⁵² See § 3.2.

⁵³ See Rawls, *Political Liberalism*, lecture II, § 3.2-4 at 60-62 (cited in note 1). The main points can be set out in summary fashion as follows: (1) Reasonable persons do not all affirm the same comprehensive doctrine. This is said to be a consequence of the burdens of judgment. See note 95. (2) Many reasonable doctrines are affirmed, not all of which can be true or right (as judged from within a comprehensive doctrine). (3) It is not unreasonable to affirm any one of the reasonable comprehensive doctrines. (4) Others who affirm reasonable doctrines different from ours are, we grant, reasonable also, and certainly not for that reason unreasonable. (5) In going beyond recognizing the reasonableness of a doctrine and affirming our belief in it, we are not being unreasonable. (6) Reasonable persons think it unreasonable to use political power, should they possess it, to repress other doctrines that are reasonable yet different from their own.

⁵⁴ See § 6.3.

from the burdens of judgment.⁸⁶ Political liberalism concerns primarily the first kind of conflict. It holds that even though our comprehensive doctrines are irreconcilable and cannot be compromised, nevertheless citizens who affirm reasonable doctrines may share reasons of another kind, namely, public reasons given in terms of political conceptions of justice. I also believe that such a society can resolve the second kind of conflict, which deals with conflicts between citizens' fundamental interests—political, economic, and social. For once we accept reasonable principles of justice and recognize them to be reasonable (even if not the most reasonable), and know, or reasonably believe, that our political and social institutions satisfy them, the second kind of conflict need not arise, or arise so forcefully. Political liberalism does not explicitly consider these conflicts but leaves them to be considered by justice as fairness, or by some other reasonable conception of political justice. Finally, conflicts arising from the burdens of judgment always exist and limit the extent of possible agreement.

2. Reasonable comprehensive doctrines do not reject the essentials of a constitutional democratic polity.⁸⁷ Moreover, reasonable persons are characterized in two ways: First, they stand ready to offer fair terms of social cooperation between equals, and they abide by these terms if others do also, even should it be to their advantage not to;⁸⁸ second, reasonable persons recognize and accept the consequences of the burdens of judgment, which leads to the idea of reasonable toleration in a democratic society.⁸⁹ Finally we come to the idea of legitimate law, which reasonable citizens understand to apply to the general structure of political authority.⁹⁰ They know that in political life unanimity can rarely if ever be expected, so a reasonable democratic constitution must include majority or other plurality voting procedures in order to reach decisions.⁹¹

The idea of the politically reasonable is sufficient unto itself for the purposes of public reason when basic political questions are at stake. Of course, fundamentalist religious doctrines and

⁸⁶ These burdens are discussed in Rawls, *Political Liberalism*, lecture II, § 2 (cited in note 1). Roughly, they are sources or causes of reasonable disagreement between reasonable and rational persons. They involve balancing the weight of different kinds of evidence and kinds of values, and the like, and they affect both theoretical and practical judgments.

⁸⁷ *Id.* at xviii.

⁸⁸ *Id.* lecture II, § 1.1 at 49-50.

⁸⁹ *Id.* lecture II, §§ 2-3.4 at 54-62.

⁹⁰ *Id.* lecture IV, § 1.2-3 at 135-37.

⁹¹ *Id.* lecture IX, § 2.1 at 393.

autocratic and dictatorial rulers will reject the ideas of public reason and deliberative democracy. They will say that democracy leads to a culture contrary to their religion, or denies the values that only autocratic or dictatorial rule can secure.¹⁰¹ They assert that the religiously true, or the philosophically true, overrides the politically reasonable. We simply say that such a doctrine is politically unreasonable. Within political liberalism nothing more need be said.

I noted in the beginning¹⁰² the fact that every actual society, however dominant and controlling its reasonable citizens may be, will normally contain numerous unreasonable doctrines that are not compatible with a democratic society—either certain religious doctrines, such as fundamentalist religions, or certain non-religious (secular) doctrines, such as those of autocracy and dictatorship, of which our century offers hideous examples. How far unreasonable doctrines may be active and are to be tolerated in a constitutional democratic regime does not present a new and different question, despite the fact that in this account of public reason we have focused on the idea of the reasonable and the role of reasonable citizens. There is not one account of toleration for reasonable doctrines and another for unreasonable ones. Both cases are settled by the appropriate political principles of justice and the conduct those principles permit.¹⁰³ Unreasonable doctrines are a threat to democratic institutions, since it is impossible for them to abide by a constitutional regime except as a *modus vivendi*. Their existence sets a limit to the aim of fully realizing a reasonable democratic society with its ideal of public reason and the idea of legitimate law. This fact is not a defect or failure of the idea of public reason, but rather it indicates that there are limits to what public reason can accomplish. It does not diminish the great value and importance of attempting to realize that ideal to the fullest extent possible.

3. I end by pointing out the fundamental difference between *A Theory of Justice* and *Political Liberalism*. The first explicitly attempts to develop from the idea of the social contract, represented by Locke, Rousseau, and Kant, a theory of justice that is no longer open to objections often thought fatal to it, and that proves superior to the long dominant tradition of utilitarianism. *A Theory of Justice* hopes to present the structural features of

¹⁰¹ Observe that neither the religious objection to democracy nor the autocratic one could be made by public reasoning.

¹⁰² See note 3.

¹⁰³ See Rawls, *A Theory of Justice* § 35 (cited in note 55) (on toleration of the intolerant); Rawls, *Political Liberalism*, lecture V, § 6.2 at 197-99 (cited in note 1).

such a theory so as to make it the best approximation to our considered judgments of justice and hence to give the most appropriate moral basis for a democratic society. Furthermore, justice as fairness is presented there as a comprehensive liberal doctrine (although the term "comprehensive doctrine" is not used in the book) in which all the members of its well ordered society affirm that same doctrine. This kind of well ordered society affirms the fact of reasonable pluralism and hence *Political Liberalism* regards that society as impossible.

Thus, *Political Liberalism* considers a different question, namely: How is it possible for those affirming a comprehensive doctrine, religious or nonreligious, and in particular doctrines based on religious authority, such as the Church or the Bible, also to hold a reasonable political conception of justice that supports a constitutional democratic society? The political conceptions are seen as both liberal and self-standing and not as comprehensive, whereas the religious doctrines may be comprehensive but not liberal. The two books are asymmetrical, though both have an idea of public reason. In the first, public reason is given by a comprehensive liberal doctrine, while in the second, public reason is a way of reasoning about political values shared by free and equal citizens that does not trespass on citizens' comprehensive doctrines so long as those doctrines are consistent with a democratic polity. Thus, the well ordered constitutional democratic society of *Political Liberalism* is one in which the dominant and controlling citizens affirm and act from irreconcilable yet reasonable comprehensive doctrines. These doctrines in turn support reasonable political conceptions—although not necessarily the most reasonable—which specify the basic rights, liberties, and opportunities of citizens in society's basic structure.

BP: Your problem in your recent work, then, is different from your problem in *A Theory of Justice*.

JR: Yes, I think it is. *A Theory of Justice* was a comprehensive doctrine of liberalism designed to set out a certain classical theory of justice—the theory of the social contract—so as to make it immune to various traditional objections. The difference is that, in *Political Liberalism*, the problem is how do you see religion and comprehensive secular doctrines as compatible with and supportive of the basic institutions of a constitutional regime.

BP: Keep to this new problem, to this question of how to make a liberal constitutional democracy not only receptive, but attractive to religious believers, people who wouldn't call themselves first and foremost liberals, people who live according to a comprehensive doctrine. Now the distinction between a comprehensive doctrine and a political conception, in your language, has been difficult for many people to understand. Could you clarify it?

The following interview was conducted by Bernard Prusak of *Commonweal*, a liberal Catholic magazine, in January of 1998. It is appropriate to include it in this volume because it clarifies what has come to be an important issue for John Rawls, namely the relation of a liberal society to the many religions that flourish within it. —Ed.

BP: In *A Theory of Justice*, religion is not listed in the index. But in your recent work, *Political Liberalism* and “The Idea of Public Reason Revisited” [Chapter 26 of the present volume], religion has become, if not the central theme, at least a major focus. You've had a turn in your interests. Whereas this coming from? What's the motivation for this new focus?

JR: Well, that's a good question. I think the basic explanation is that I'm concerned about the survival, historically, of constitutional democracy. I live in a country where 95 or 90 percent of the people profess to be religious, and maybe they are religious, though my experience of religion suggests that very few people are actually religious in more than a conventional sense. Still, religious faith is an important aspect of American culture and a fact of American political life. So the question is: in a constitutional democracy, how can religious and secular doctrines of all kinds get on together and cooperate in running a reasonably just and effective government? What assumptions would you have to make about religious and secular doctrines, and the political sphere, for these to work together?

JR: A comprehensive doctrine, either religious or secular, aspires to cover all of life. I mean, if it's a religious doctrine, it talks about our relation to God and the universe; it has an ordering of all the virtues, not only political virtues but moral virtues as well, including the virtues of private life, and the rest. Now we may feel philosophically that it doesn't really cover everything, but it aims to cover everything, and a secular doctrine does also. But a political conception, as I use that term, has a narrower range: it just applies to the basic structure of a society, its institutions, constitutional essentials, matters of basic justice and property, and so on. It covers the right to vote, the political virtues, and the good of political life, but it doesn't intend to cover anything else. I try to show how a political conception can be seen as self-standing, as being able to fit, as a part, into many different comprehensive doctrines.

Now the good of political life is a great political good. It is not a secular good specified by a comprehensive doctrine like those of Kant or J. S. Mill. You could characterize this political good as the good of free and equal citizens recognizing the duty of civility to one another: the duty to give citizens *public reasons* for one's political actions.

BP: To make the distinction clearer and perhaps more concrete, could you discuss a particular example, like physician-assisted suicide? You cosigned the “Philosophers' Brief,” submitted to the Supreme Court last year [see the *New York Review of Books*, March 27, 1997]. In the brief, you argue that

people have different ways of understanding suffering and that, in a constitutional democracy, no philosophical or religious authority should be able to say how a person should live his or her last days. How, on the question of physician-assisted suicide, does your argument play out?

JR: We wanted the Court to decide the cases in terms of what we thought was a basic constitutional right. That's not a matter of religious right, one way or the other; it's a constitutional principle. It's said to be part of American liberties that you should be able to decide these fundamental questions as a free citizen. Of course, we know that not everyone agrees with assisted suicide, but people might agree that one has the right to it, even if they're not themselves going to exercise it.

Now I think a good argument against this view would be one like Cass Sunstein's [see "From Theory to Practice," *Arizona State Law Journal*, Summer 1997]. What he says is that it would be very unwise for the Court to establish a right like this which is so controversial. The Court's decision would depend on a philosophical argument of constitutional law and allow a right that a lot of people would object to. This would be my candidate for a good political argument against the "Philosophers' Brief." The way to argue against the brief is that the Supreme Court should not, at this stage, take sides either way. It should say—as I think the Court can be interpreted as saying—that, no, we're not going to decide this question, it's being discussed, it may be tried in the states, different states can take different views, and we ought not to preempt the constitutional question when we don't have to. Partly, I think, the Court had in mind the issue of *Roe v. Wade*. Now that's a complicated matter on which I don't have an opinion as to whether things would have gone better or worse if the Court had not made that decision. Some people say they would have gone better, some people say they would have gone worse. Sunstein is somebody who thinks things would have gone better, because the decision established a right in a really controversial matter when it need not have done that. The Court should have let the debate play out a bit more.

BP: Your overall argument, then, has to do really with the kinds of arguments that should be made within a constitutional democracy. So "public reason"—your technical term for these kinds of arguments—is not monolithic.

JR: Exactly: the idea of public reason has to do with how questions should be decided, but it doesn't tell you what are the good reasons or correct

decisions. You see, the argument in the "Philosophers' Brief," as I understand it, was a political argument. The argument by Sunstein is also a political argument. But his is based on the nature of courts: they're not good at philosophical arguments, they ought not to try to get engaged in them, they ought to go by lower-level, less broad decisions if possible. Otherwise, the Court opens itself to very great controversy.

BP: Now another argument against physician-assisted suicide would be like Michael Walzer's: that the vulnerable population—the elderly, the poor, the abandoned—would be too large, at least at this time, for this right to be granted [see "Feed the Face," *The New Republic*, June 9, 1997]. This right is fine and well for people with the means to use the law as an instrument of freedom, but for other people it would actually be quite dangerous. Now that would be yet another example of an argument within public reason.

JR: Absolutely. I'm not sure that it's a good argument, but that's another question. Public reason arguments can be good or bad just like other arguments. There are many arguments within public reason, and that's the thing to emphasize. I didn't emphasize it enough, you see. I'm now revising *Political Liberalism* so that it fits "The Idea of Public Reason Revisited," where this is perfectly clear.

I want to say something here about what in this article [Chapter 26] I call the "proviso," because I think it's important. It's this: any comprehensive doctrine, religious or secular, can be introduced into any political argument at any time, but I argue that people who do this should also present what they believe are public reasons for their argument. So their opinion is no longer just that of one particular party, but an opinion that all members of a society might reasonably agree to, not necessarily that they would agree to. What's important is that people give the kinds of reasons that can be understood and appraised apart from their particular comprehensive doctrines. So the idea of public reason isn't about the right answers to all these questions, but about the kinds of reasons that they ought to be answered by.

BP: A critique of your work is that, really, even though you're open to religiously grounded arguments that could be translated, let's say, into public terms, terms all people could understand, nonetheless you're making a veiled argument for secularism. Now this is something you deny.

JR: Yes, I emphatically deny it. Suppose I said that it is not a veiled argument for secularism any more than it is a veiled argument for religion. Consider: there are two kinds of comprehensive doctrines, religious and secular.

Those of religious faith will say I give a veiled argument for secularism, and the latter will say I give a veiled argument for religion. I deny both. Each side presumes the basic ideas of constitutional democracy, so my suggestion is that we can make our political arguments in terms of public reason. Then we stand on common ground. That's how we can understand each other and cooperate.

BP: Let me restate this: the question would be who determines the terms of public reason. A religious believer might say, well, revelation isn't only private—it's here in this book. How come I can't make an argument from this background? Or more to the point, how come I have to argue in terms everybody agrees with, or might agree with? Given who I have to argue with, it seems that those terms slide into secularism. Take the argument for the sacredness of life. The believer might say that this has been revealed. But by having to make arguments in terms everybody recognizes, I'm being asked to renounce the truth as I know it . . .

JR: No, you're not being asked to renounce it! Of course not. The question is, we have a particular problem. How many religions are there in the United States? How are they going to get on together? One way, which has been the usual way historically, is to fight it out, as in France in the sixteenth century. That's a possibility. But how do you avoid that?

See, what I should do is to turn around and say, what's the better suggestion, what's your solution to it? And I can't see any other solution. This solution has been followed in the United States since the First Amendment. As you know, until then, we had establishment in New England with the Congregational church, and we had it in the South with the Anglican church. How did Madison get separation through Virginia and later Congress? The Baptists, the Presbyterians, and the smaller sects hated Jefferson; to them he was a secularist of the worst kind. But Madison could get Jefferson's bill passed because the Baptists, the Presbyterians, and smaller sects who were excluded in New England and in the South got together for their own protection.

People can make arguments from the Bible if they want to. But I want them to see that they should also give arguments that all reasonable citizens might agree to. Again, what's the alternative? How are you going to get along in a constitutional regime with all these other comprehensive doctrines? And just put it in those terms.

BP: Can religion flourish, can religion survive in this kind of society?

JR: I would say the answer is clear: the answer's yes. If you compare the United States with Europe, my view is that what happened in Europe is that the church became deeply distrusted by people, because it sided with the monarchs. It instituted the Inquisition and became part of the repressive state apparatus. That never happened here. We don't have that history. Our history confirms, if anything does, that the answer's yes. I give a historical answer, I don't give a theoretical answer; but I think you can ask whether Catholicism, for example, flourishes better here than in Brazil, or in France. Tocqueville says the same thing. He traveled around this country and talked to a lot of Catholic priests, who were then very much in a minority. When he asked them why they thought religion was so free and flourishing in this country, they told him because of the separation between church and state.

BP: You say, well, what's your alternative, what do you want? In a way, it almost sounds like what you're saying is, look, this is the best way of getting along, this is the best *modus vivendi*. But you want to argue for more than that as well: you want "stability for the right reasons." Well, what would those reasons be besides peace—which I think would be a very good reason?

JR: Peace surely is a good reason, yes. But there are other reasons too. I already mentioned the good of political life: the good of free and equal citizens recognizing the duty of civility to one another and supporting the institutions of a constitutional regime. I assume that, in line with Vatican II, Roman Catholics affirm these political institutions. So do many Protestants, Jews, and Muslims.

BP: It sounds like really you're arguing for the dignity of the individual. I'll turn it back: it almost sounds like, in another way, a religious argument.

JR: All right. Why should I deny that? If you want to say that comes down from the sacredness of the individual in the Bible, fine, I don't have to deny that.

BP: But at the same time you don't want to argue for this on any traditional basis. Instead, your argument for respecting the dignity of the individual follows from the functioning of liberal constitutional democracy.

JR: Liberal constitutional democracy is supposed to ensure that each citizen is free and equal and protected by basic rights and liberties. You see, I don't use other arguments since for my purposes I don't really need them and it would cause division from the start. Citizens can have their own grounding in their comprehensive doctrines, whatever they happen to be. I make a

point in *Political Liberalism* of really not discussing anything, as far as I can help it, that will put me at odds with any theologian, or any philosopher.

BP: How do you think, in your work, the idea of the common good is revised? Is there still a common good? How would we speak of it in a liberal constitutional democracy where pluralism is a fact? Is it thrown out, or is it reconceived?

JR: Different political views, even if they're all liberal, in the sense of supporting liberal constitutional democracy, undoubtedly have some notion of the common good in the form of the means provided to assure that people can make use of their liberties, and the like. There are various ways you might define the common good, but that would be one way you could do it.

BP: So the common good would be the good that is common to each citizen, each citizen's good, rather than an overarching good.

JR: The point I would stress is this. You hear that liberalism lacks an idea of the common good, but I think that's a mistake. For example, you might say that, if citizens are acting for the right reasons in a constitutional regime, then regardless of their comprehensive doctrines they want every other citizen to have justice. So you might say they're all working together to do one thing, namely to make sure every citizen has justice. Now that's not the only interest they all have, but it's the single thing they're all trying to do. In my language, they're striving toward one single end, the end of justice for all citizens.

BP: What you're trying to do is bring together the practice of constitutional democracy and present it in a way that's compelling.

JR: Yes—I hope it's compelling. I try to show that this form of regime, under certain circumstances, is possible and has its own public form of discourse. This doesn't answer any particular question, but only says how political questions should be discussed. I am really explaining what I think should be the public philosophy in a reasonably just constitutional regime.

only part of the story. As already indicated, the basic questions joined today are more properly seen as theological than as questions of political alignment. Of course it is often easier—also, oddly enough, easier for theologians—to talk about politics.

Perhaps Christians should, if they have the ecumenical nerve for it, first try to resolve the disputes among themselves before they attempt to articulate the implications of what they believe for the society at large. This proposal has a distinct appeal. Two thousand years of Christian history, however, offer little reason to believe that such a comprehensive ecumenical resolution is likely or even possible. In addition, committed Christians with distinctly different agendas for political and social change are not going to hold themselves back from the public arena pending such an ecumenical agreement. (Nor can we overlook the fact that many of the most aggressive among fundamentalist political actors are persuaded that such an ecumenical rapprochement is undesirable. The Christians with whom they disagree are seen as being marginally Christian, if they are Christians at all. Ecumenical initiatives will, for the most part, have to come from those who have traditionally deemed ecumenism a virtue.)

Those who would keep the public square naked of religious symbol and substance are often motivated by a not unreasonable fear. The frequently expressed fear is that politics could degenerate into religious warfare. When one speaks of religion influencing public policy, the immediate question is, *Whose religion?* If one subscribes to the notion that this is in some sense a Christian society, then the question becomes, *Whose Christianity?* Without some basic agreement religiously the entrance of religion into the public arena would seem to be a formula for open-ended conflict and possible anarchy.

Yet, in the absence of a public ethic, we arrive at that point where, in Alistair MacIntyre's arresting phrase, "politics becomes civil war carried on by other means."² MacIntyre believes that we have already reached that point, and he may be right. A major problem, however, is that a public ethic cannot be reestablished unless it is informed by religiously grounded values. That is, without such an engagement of religion, it cannot be reestablished in a way that would be viewed as democratically legitimate. The reason for this is that, in sociological fact, the values of the American people are deeply rooted in religion.

That sociological reality is not necessarily something to be cheered. It simply is. There are other, perhaps more attractive, ways to go about constructing a public ethic. A long and in many respects admirable history of moral philosophy has worked at establishing such an ethic that would be based upon "objective" reason and in no way dependent upon particular religious beliefs. This enterprise, while usually self-consciously secular, is not necessarily hostile to religion. To the contrary, major figures such as Immanuel Kant were at pains to assert that their ethical reasoning was

PUBLIC RELIGION AND PUBLIC REASON

THE IDEA OF PUBLIC RELIGION IS THE SUBJECT OF GREAT PUBLIC confusion. The idea is widely accepted that religion is something between an individual and his God. Each person is free to worship the God of her choice. Religion is the business of church and home and has no place in public space. These and other axioms are, it is commonly said, part of the American way. Legally and politically, they are supported by a notion of the "separation of church and state" that is understood to mean the separation of religion and religiously based morality from the public realm.

A competing set of ideas gravitates around the insistent intuition that America is in some significant sense a "Christian nation." Today that is generally thought to be a conservative sentiment. Christians in mainline churches of a liberal political disposition, however, also insist that Christian faith is in some necessary way "relevant" to public policy. Christians, as Christians (and not simply as people of good-will), have a responsibility to advance a social vision derived from biblical teaching.

In the late sixties another way of talking about public religion was revived. Taking a leaf from Rousseau, the conversation turned to "civil religion." Some scholars preferred to talk about "public virtue" or "public piety," referring to the operative values by which, more or less, American life is ordered.¹ That discussion was carried on chiefly among academics in social science and religious studies departments. For the most part, they did not dissent from the conventional and essentially liberal agenda for social progress. Certainly they lived and wrote in a world far removed from the constituencies of what was to become the religious new right.

The current discussion is in continuity with these earlier ways of thinking about public religion. But the discussion has also been changed dramatically by the power and prominence of politicized Christian conservatism. It might appear that there is another discussion within the Christian community itself. It is in many respects a new and politically escalated discussion along the fundamentalist-modernist lines of sixty and more years ago. In truth, it is more confrontation than discussion, at least to date. The earlier fundamentalist-modernist confrontation was a theological dispute. But contrary readings of social and political change were never far from the surface and sometimes dominated the argument. Therefore to say that an earlier theological dispute has now been politicized is

perfectly consonant with Christian faith. In American thought there is ample evidence that the founding fathers—Jefferson, the Adamises, Madison, et al.—had the deepest appreciation of the need for a public ethic and the cultivation of what were called republican virtues. They would also have protested vigorously the suggestion that they shonchanged the importance of particular religions. In their view, a public and universal ethic is to be supported in its observance by the teachings of a variety of faiths. The confidence was frequently expressed that, when it comes to public morality, the sundry sects were, despite their conflicts of doctrine, in essential agreement upon the ethical basics. Still in this century that confidence was reflected in Protestant ecumenical efforts which declared that doctrines divide while ethics and service unite.

Religious belief was seen as a reinforcement, a backstop, if you will, to the public ethic. Religion, especially in its insistence upon ultimate rewards and punishments, was the motivating force for good behavior. But the agreed upon understanding of what constitutes "good" behavior was not to be derived from religious belief. In other words, religion was to motivate and sanction but not to inform or shape the public ethic. The definitions of right and wrong were to be constructed from other building materials. It is important to note that, unlike Rousseau, for example, the founders thought the conventional religions could manage this role of ancillary reinforcement. They did not think it necessary to construct a new "civil religion" for the maintenance of republican virtue.

Thinking about public ethics in the American experiment has not been all of a piece. There was, on the one hand, the belief that, if all religions were reduced to their moral essentials, they were really saying the same thing. In this sense, the public ethic was seen to be derived from a religious common denominator. On the other hand, and this is a more recent development, the articulation of a public ethic has been conscientiously divorced from religious belief. The approach that assumed a religious common denominator, although at times painfully contrived, worked passably well for a long time. It worked as long as it could be safely assumed by the country's several establishments that America is essentially white Anglo-Saxon Protestant. This was the regularly declared assumption in the great common school movement of the nineteenth century.³ Today's debates about how or whether values are to be taught in public schools would have been inconceivable a hundred years ago. Then it was a matter of course that the public school was to inculcate a Christian and Protestant ethic.

That taken-for-granted assumption was early contested by Roman Catholics, Lutherans, and others who had a different understanding of the relationship between belief and ethics. Instead of working through the problematic of a public ethic, the American polity at that time allowed these dissidents to spin off their deviant view into separately supported

parochial school systems. This allowance, it should be noted, was not made readily. Indeed it was not until 1925 (*Pierce v. Society of Sisters*) that the Supreme Court made it clear that government schools could not exercise a coercive monopoly over education. In any case, having made exception for deviations from the norm, the public school continued to advance what was taken to be (and to a large extent was) the mainline moral consensus.

The idea of a religiously based moral common denominator was soon to come in for hard times, however. The alternative to the common denominator of the American "melting pot" is often described in terms of the rise of pluralism. (Pluralism, as we will have occasion to consider in greater detail, is frequently a synonym for pervasive confusion.) In moments of candor public educators had recognized that the common denominator was somewhat artificial and contrived; too much of what people really believed most deeply had to be swept under the carpet in order to maintain the putative consensus. At the same time, there were new and aggressive forces in American cultural and political life that did not go along even with the minimal belief system. The much assailed *Humanist Manifesto* of 1933 was a particularly strident dissent from the consensus. The signers, including John Dewey, the high priest of American public philosophy, must be credited with honesty in their pointing out what might be described as the bootlegging of religion into the public arena, and especially into government schools. That is, the complaint is warranted if one is serious, as the signers of the manifesto were, in believing that America is or should be a secular society.

H. Edward Rowe is typical of the critics of secular humanism: "There are only two movements in history—God's and man's. *God's movement* has been revealed in the Holy Scriptures, which tell us about salvation through Christ, freedom, morality, justice, and the life of service. It is theocentric: God is at the center. *Man's movement* is humanism. It is based on the denial of God's existence. It is anthropocentric: Man is at the center."⁴ Among the signers of the manifesto, Paul Blanshard outdid most in his stridency. Writing in *The Humanist*, the magazine of the movement, he declares: "We have an obligation to expose and attack the world of religious miracles, magic, Bible-worship, salvationism, heaven, hell, and all the mythical deities. We should be particularly specific and energetic in attacking such quack millennialists as Billy Graham and such embattled reactionaries as [the pope] because they represent the two greatest anti-humanist aggregates in our society."⁵

Rowe's distinction between "God's movement" and "man's movement" is simplistic but nonetheless revealing. A great change had in fact been worked in American public thought. A century and more ago, Horace Mann, the father of the common school movement, would have had little, if any, difficulty in accepting Rowe's idea of "God's movement" as being

congenial to the purposes of public education. He would have been considerably less definite about scriptural revelation and salvation through Christ, but the rest of the definition was unquestionably entrenched in the WASP consensus. Today, needless to say, the proposal that public education should inculcate such an understanding of "God's movement" would be deemed an egregious violation of the constitutional stricture against the "establishment" of religion. Those who today express puzzlement at the fury of the religious new right sometimes suggest that the changes have not been that dramatic, that these reactionaries are making it all up. As historian Robert Handy has argued in his *Christian America*, however, the idea that ours is a secular society is of amazingly recent provenance.⁸

Of course the change was not effected simply by the *Humanist Manifesto* and those who signed it. It is likely that in 1933—and this is also true today—relatively few people shared the manifesto's robust confidence that a vital public ethic could be maintained without the taint, so to speak, of religion. Even fewer would assault religion with the passionate intensity that came naturally to the Paul Blanshards. Forty years later, when a memorial version, as it were, of the manifesto was issued, that confidence and that animus seemed to have declined even further. The signers of *Humanist Manifesto II* made up a reunion of survivors against this century's assaults upon unbelief. Those under seventy were in a distinct minority. From the geriatric wards of America, academics emeritus gathered to unfold the grand old banner one last time. Religionists who rage against the "secular humanist conspiracy" appear to be beating up on old people who might more kindly be left to their dreams of a brave new world that was not to be.

There may, however, be another reason why few of today's leaders thought it worthwhile forty years later to sign up with the movement for secular humanism. It may be that the movement is passé only because a movement is no longer needed. Nobody today would sign a petition calling on the United States to match German rearmament. That hot issue of 1933 was settled by World War II. In truth, short of war ending in unconditional surrender, no movement for change is ever completely or securely triumphant. The new right exaggerates the victories of secular humanism. It does so for understandable strategic reasons. Focusing on the *Humanist Manifesto* lifts up an abrasive and doctrinaire world view that is abhorrent to most Americans. Almost every movement depicts its opponents in the least attractive light. The *Humanist Manifesto*, with its vulgar apotheosis of supposedly rational man and its dogmatic dismissal of religion as superstition, is not likely to fare well in a public referendum.

Exaggerations aside, however, those who attack secular humanism are not so wide of the mark as some of their critics suggest. True, in the face of these attacks it must be responded that there is a venerable tradition

of humanism, also Christian humanism, that is not secularistic. Christians especially should affirm humanism. After all, we are the ones who say that God became a human being, and you cannot get any more humanistic than that. Nonetheless, it cannot be denied that the variant called *secular* humanism has had a pervasive and debilitating effect upon our public life. Without ever having to put them to a vote, without even subjecting them to democratic debate, some of the key arguments of what is properly called *secularism* have prevailed. There need not be a conspiracy in any coherent or calculated sense for ideas and prejudices to insinuate themselves into our thinking and acting. They become part of the conceptual air we breathe.

One idea that has been insinuated and legally rooted is a peculiar reading of what the First Amendment means for "the separation of church and state." It is not, as some fundamentalists complain, that God has been taken out of our public schools or out of our public life. God, being God, cannot be "taken out" of anything. It is the case that truth claims and normative ethics that have specific reference to God or religion have been, at least in theory, excluded. One says "at least in theory" because, in uncounted classrooms and forums where the business of the *polis* is debated, religiously grounded beliefs continue to play a vigorous part. In everyday fact, people do not and cannot bifurcate themselves so at one moment they are thinking religiously and at another secularly, so to speak. But specific reference to religion, specific claims "tainted" by religious belief, are always subject to challenge. The challengers can usually call in the law on their side.

Thus religion in public space became increasingly surreptitious and suspect. There are remnants in public oaths, prayers in legislatures, and the like. Determined secularists view these as residual inconsistencies that they have not yet got around to extirpating and that may not be worth bothering about. A few belligerent atheists might excite themselves about these matters, but they are not taken seriously and their legal protests are dismissed as nuisance suits. [On the other hand, in the 1950s not many people took seriously the proposal that prayer in public schools might be unconstitutional.] From the secularist perspective it may be that the essential battles have been won and excessive zeal in pressing a final mop-up operation might only excite further public hostility. Residual religion in public poses no threat. Something of this reasoning is reflected in a recent state court ruling that tolerated even some prayer in a public classroom. The prayer, said the court in effect, should be seen as a morale-boosting folk custom and not significantly religious in nature. When religion has been tamed and its triumph no longer threatens, it can be tolerated as cultural trivia. Secularists with some appreciation of cultural continuities might actually fight the removal of, for example, inscriptions on courtroom walls that refer to God. Such things are, after all, quite harmless; at most they are piquant reminders of how America used to be.

The separation of church and state is an issue to which we will return in these pages. It is an issue that should not be, that cannot be, resolved short of the coming of the kingdom of God. In recent decades, separationism has provided the legal rationale for the sanitizing of the public square. As we have seen, this sanitizing of public space, while programmatic in nature, has not been subjected to democratic debate or vote. Leo Pfeffer, a grand old warhorse of strict separationism who has to his credit several important Supreme Court rulings, is quite candid on this score:

The nine judges on the Supreme Court, being immune to political reprisal since they serve for life, may be performing a significant though quite controversial function, they may be compelling the people to accept what the judges think is good for them but which they would not accept from elected legislators.⁷

At times the courts have been called upon to resolve questions that resist political resolution. Even on some relatively minor but divisive questions, politicians prefer not to stand up and be counted and they therefore toss "hot potatoes" to the courts. When this happens, it does not necessarily constitute a failure of democratic governance. The courts too are part of the democratic process. Nor do we forget that, as Mr. Dooley observed, the Supreme Court, for all its august majesty, also follows the election returns.

Thus the courts venture where politicians fear to tread. An outstanding instance of this was the Dred Scott decision of 1857, excluding slaves from the protection of the Constitution. That decision did not "take" democratically; it did not resolve but only exacerbated the issue it intended to settle. In that case, the issue was only resolved by civil war carried on by means of civil war. In more recent history, notably in the *Brown* decision of 1954 on school segregation, the court has moved in to break up logjams created by the absence and apparent unattainability of political consensus. In the instance of *Brown*, societal forces ratified the court's direction, although not without much pain and continuing confusions. Today our public life is not significantly influenced by the few holdouts against the proposition that legally mandated racial segregation is wrong and should be forbidden.

Yet more recently, the court rushed in where politicians had been tromping all over the issue. In *Roe v. Wade* (1973) the court "settled" the debate over abortion law by the apparently simple expedient of suspending all law relative to the protection of the unborn. As John Noonan, professor of jurisprudence at the University of California, has noted, this is an audacious experiment without precedent in the law of any Western nation.⁸ As many others have noted, the failure of *Roe v. Wade* to be ratified by public consensus invokes the memory of the Dred Scott decision.⁹ Mr. Pfeffer and those who cheered the abortion ruling deplore the fact that Americans (a majority of Americans!) have refused to "accept what the

judges think is good for them." It is said that the court may have been too far ahead of popular opinion and prejudice. It seems more likely, however, that this is not an instance of aheadness or behindness but of fundamental disagreement with the court's decision. One suspects that the most fundamental disagreement is with the court's stated assumption that religious belief can have no bearing upon the determination of which human life has a claim and which human life does not have a claim upon societal protection.

In American public life in the 1980s, abortion law was the single most fevered and volatile question that inescapably joined religion and politics. It was far from being the only such question, but those on all sides of the debate insisted that it was not merely one question among others. I believe they were and are right. Some political theorists talk about questions that are pre-political or meta-political. Abortion may be such a question. That is, it may be prior to, or it may transcend, what is ordinarily meant by the political. As a result, it will never be resolved to the satisfaction of all, and quite possibly no resolution will ever be supported by a stable consensus. (It should be remembered, however, that until the early 1960s there had been a more or less stable consensus for more than a century, a consensus that supported minor state-by-state exceptions to the blanket protection of the unborn. The immediate point is not that abortion was not a problem then but only that we should not preclude the possibility of a reconstituted and relatively enduring consensus in the future.)

Abortion poses the most basic, indeed comundrum-like, of problems regarding the individual and community. From the "pro-choice" viewpoint it asks about the meaning of privacy and the limits of individual freedom. From the "pro-life" viewpoint, it is a matter of how we define the human community for which we accept collective responsibility. We will not go into further detail at the moment regarding the merits of the conflicting arguments in this debate. The reader would be making no mistake, however, in sensing the presence of that debate throughout these pages. No other dispute so clearly and painfully illustrates the problematic of the naked public square.

Through specific policy disputes underlying assumptions erupt. It is the underlying assumptions, the cultural postures, if you will, that concern us here. Our own underlying assumption, which needs to be brought to the surface and exposed to examination, is that politics is in large part a function of culture. Beyond that, it is our assumption that at the heart of culture is religion. In this connection "religion" is meant comprehensively. It includes not just those ideas and activities and attitudes that we ordinarily call religious, but all the ways we think and act and interact with respect to what we believe is ultimately true and important. There is nothing frightfully original in this way of connecting politics, culture, and religion. A host of thinkers, including Tillich, Hegel, and Plato, have made

sion of our public life. This makes it possible for not a few politicians to build political careers upon being anti-politics. Even governments are formed on the platform of being anti-government. It is all very curious.

The foregoing description of what it feels like to be alienated from the public and the political will doubtless have many heads nodding agreement. Other heads are perhaps nodding in inattention, for the description is so very familiar. But do people, in fact, really feel that alienation? The evidence seems incontrovertible that it is felt powerfully by the forces that make up the new right. The populist premise of that movement is that "they"—the government and whoever else is in charge of the culture—are not simply alien but are contemptuous of "us"—the little people, the real people. As the title of one book has it, *Harvard Hates America*. This sensation is not limited to the right, however. The very term "alienation"—derived as it is from Marxist theory—has a distinctly leftist cast. Not surprisingly, many on the left who call themselves social democrats or democratic socialists seem to be as suspicious as is the new right about government's unlimited embrace of public space.¹³ Having learned something from the collectivist catastrophes of socialisms in our time, they too seek forms of community fit for people who do not possess exchangeable selves.

Such communities would be more whole, less dysfunctional. The communities that are candidates for meeting that felt need are, for the most part, outside the sphere of laws and kings. There is, across the spectrum of political viewpoints, a resurgent yearning for communities that are, as we say, authentic. At its best, this yearning can revivify the diversity of communities in which felicities can be made and found. That revival can, in turn, check the imperiousness of the political that would change all public space into political space.

The same yearning, however, can result in retreat from the political. The problem with that is not that people who retreat from the political are living smaller lives. Largeness of life has little to do with the size of the space engaged. The person watching the evening political news about budget battles in Washington and bloodier battles in Beirut is not necessarily living more largely. Larger horizons on life's possibilities might more likely be disclosed by listening to a Mozart concerto or taking the dog for a walk around the neighborhood.

We hear it said, also in the churches, that every question is finally a political question. We can be very grateful that that is not true. If one means that the gospel of the coming kingdom is about the coming of the ultimate New Politics—the new and right ordering of all things—then, in that sense, everything is political. From the biblical perspective, to live in the presence of that final promise is to know that there is nothing that is not engaged by the promise's fulfillment. But that is not what is ordinarily meant by politics, and it is not the meaning of politics in the present

the connection in a similar way. With astonishing frequency, however, the connection is neglected in writing about religion and politics today. In American history, of course, the understanding of ultimacies was publicly articulated with specific reference to biblical, Judeo-Christian religion. It is the relatively recent exclusion of that specificity which is now being so vigorously protested by many Americans. They feel that they were not consulted by whoever decided that this is a secular society. And they resent that; they resent it very much.

Among the most important truths about politics is the truth about the limits of politics. As Doctor Johnson put it:

How small, of all that human hearts endure,
That part which laws or kings can cause or cure!
Still to ourselves in every place consign'd,
Our own felicity we make or find.

Just because "our own felicity" is not, at least for most of us, in the realm of politics, that does not mean that we are preoccupied exclusively with private rather than public affairs. There is a great deal that is public but not in the ordinary sense of the term political.¹⁴ Family life, work, learning, and entertainment all have public dimensions of interaction, not only interaction with other individuals but also with other communities. For those of us who are not professional politicians or political junkies, what matters to us most does not take place in the political arena as such. The things that matter most happen in the "mediating structures" of our personal and communal existence.¹⁵ These structures—family, neighborhood, church, voluntary association—are the people-sized, face-to-face institutions where we work day by day at our felicities and our fears. The public square is not limited to Government Square. At the same time—and for reasons that may be nearly unavoidable—government impinges upon all public squares.

This impingement is no great problem if there is a large degree of cultural harmony between the private and the public, and between the public and the political. As Daniel Bell has brilliantly analyzed, however, that degree of harmony seems to be sharply diminished in post-industrial society.¹⁶ There are jarring dysjunctions between the spheres of activity and sensibility in which we live. Especially the political and its impingement on public spaces seems to be "out of synch" with the way we believe the world is or should be. We speak of ourselves as being forced to live schizophrenically in several different worlds. Moving between worlds, we take off and put on different selves, until we are no longer sure which is the true "self." We do not feel "at home" anywhere, least of all in unrelieved privacy when we are most completely by our self, whoever that may be. Nor are we at home in the public arena where, in order to gain admittance, we are told to check our deepest beliefs at the door. The result of this is, in sociological jargon, the delegitimation of the political dimen-

discussion. Politics is the business (more art than science) of governing. It has to do most essentially with power—getting, keeping, and exercising it. I am aware that this is not a very elevated view of politics. Politics can involve nobler works and even visions. But they are not essentially what politics is about. We should resist being taken in by inflated and romantic views of politics. It is in the interest of politicians and the hordes of people who make their living by talking about what politicians do to disguise the stark and simple truth that they are engaged in getting and keeping power. Power, in turn, is the ability to get other people to do what you want, and not to do what you do not want. People who make their living doing that are said to govern.

Every system of government, no matter what it is called, is a system by which some people rule over other people. In every political system, political legerdemain, which is to say political success, requires that people be kept from recognizing the elementary fact that in any society there are the rulers and there are the ruled. In the most fetching evasion of this reality, the rulers insist upon being called public servants. For some who have the peculiar taste for it, politics is the highest enterprise they can imagine. It is said that Thomas Jefferson envisioned heaven as the U.S. Senate in never ending session. In fairness to Jefferson, it should be remembered that the gentlemen's debating society that he knew is related to national politics today in much the way that an elegant dinner at the Four Seasons is related to an army mess hall. And, of course, Jefferson in fact preferred to retire to Monticello where he could nurture his felicitities with his philosophical theories, his science, and his slaves.

Nonetheless, attention must be paid to the political, not because everything is political but because, if attention is not paid, the political threatens to encompass everything. The proper word for the state of affairs in which the political encompasses, or aspires to encompass, everything is totalitarianism. Critics have suggested that totalitarianism is a bogeyman employed by "neo-conservatives" and "neo-liberals" to scare voters away from leftist politics.¹⁴ In the century of Hitler, Stalin, and Mao, however, it is hard to understand how anyone could think the threat of totalitarianism to be bogus. One remembers too that *democratic* totalitarianism is also quite possible. Majority rule is no sure guarantee of freedom. The Grand Inquisitor in Dostoyevsky's *The Brothers Karamazov* had a keen appreciation of humanity's limited appetite for freedom. He was correct in having little doubt that his banishment of Jesus, who talked so recklessly about freedom, would have been supported by democratic referendum.

Attention must be paid the political, then, not because politics bestows meaning upon our lives but because, if we do not, others will pay attention. Almost invariably they will claim to offer an alternative to a society of the rulers and the ruled. When others rule, the system is op-

pressive, when they come to rule, the society is liberated. This is not to say that some governments are not more oppressive and others more liberating. It is to say that, paraphrasing Spinoza, power abhors a vacuum. Biblical people should not be surprised by this view of government. We have been instructed to have no illusions about the principalities and powers short of the kingdom of God. At the deepest level, our feeling of alienation is not disease but sign of health. Our eyes and hearts are fixed on another liberation movement.

On this side of eschatological fulfillment, however, there are degrees of political alienation that may portend significant change. While those who are called conservative and those who are called liberal or radical may be alienated equally from the political process, it is the conservatives who seem to have the fire in their bellies to "turn the country around." They have the advantage of feeling they are the party that has survived long assault and is now in a position to launch a counterattack. Of course there is a simple time factor involved here. After a while, the "new" right, or the "new" anything else, is not so new. After a lengthy period of what is perceived as conservative government, its opponents may also be ready to launch a counterattack. That said, it is hard to imagine Christians of a liberal political persuasion counterattacking with the intensity and cohesiveness that conservatives have displayed. A religious new left of high political potency does not seem likely anytime soon.

One reason for this, it might be suggested, is that liberals are basically nice people with a deep respect for civility. They do not go in for the nasty confrontational politics that is the specialty of the right. That might be suggested, but the suggestion is not very plausible. Anyone who has worked for long in liberal politics, including liberal politics in the churches, knows better than that. A more believable reason why the left is not likely to raise an effective holy crusade for political change has to do with the intensity of actions and reactions. That is, under a conservative government left-of-center Christians do not feel themselves assaulted in the way that right-of-center Christians feel they are assaulted under a liberal government. From a liberal viewpoint, the faults of a conservative government are more passive than active, more sins of omission than sins of commission. The liberal complaint against conservative government is that it does not take care of the domestic poor, or advance foreign aid, or expand environmental protection, or press for the extension of minority rights, or a host of other things that liberals think it the business of government to do.

In conservative eyes, however, the sins of liberal government are sins of commission: government does many things they think it should not do and forbids them to do things they think they should be free to do. They are notably outraged by governments that, they believe, advance changes in sexual and family mores—areas that could hardly be more value-laden.

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While accepting the prohibition of mandatory race segregation, they resent deeply programs such as school busing and "affirmative action" aimed at mandatory racial integration. They react vociferously to government actions that get in the way of praying in schools, owning handguns, hiring whom they want, and living where they please. In sum, in very everyday ways they feel assaulted by liberal government as liberals do not feel assaulted by conservative government.

True, a liberal may feel deeply offended and outraged by the failure of the government to maintain, say, the food stamp program at the level he thinks desirable. Unless he is on food stamps, however, the issue does not immediately affect his way of living. If a government were to expand food stamps and similar programs, the middle-class liberal voter knows he may pay more taxes somewhere along the way but chiefly he feels better because "something is being done" for the poor. Although he may not be on speaking terms with any poor people, he feels obliged to "speak up for" the poor. Even if he does not actually see any, the poor are ever in his moral line of vision. All of this is in many respects admirable and, indeed, morally imperative. But the issue here is that the action or nonaction of government does not immediately or significantly change anything in his life or in the communities that constitute his daily reality.

Admittedly, it is impossible to measure degrees of felt offense. What to one person may be a slight disappointment is to another a catastrophe. Liberal offense at conservative politics might, in some cases, fall into the latter category. In trying to explain how prophets are different from the rest of us, Rabbi Abraham Joshua Heschel wrote: "To us a single act of injustice—cheating in business, exploitation of the poor—is slight; to the prophets, a disaster. To us injustice is injurious to the welfare of the people; to the prophets it is a deathblow to existence: to us, an episode; to them, a catastrophe, a threat to the world."¹⁵ Churches have offices and task forces to churn out "prophetic" pronouncements. The political air today is filled with "prophecy" from the right and the left. But in truth, prophets are so rare as to be history's most long-standing endangered species. They do not form political majorities, moral or otherwise, and that may be just as well.

The argument at hand is that, except for a few rare souls, the sense of liberal outrage is somewhat abstract and intermittent. Between liberals and conservatives there is a significant difference in what might be called "experienced assault level" when their opponents are in power. The implications of this go beyond specific policy disputes. There are different biases about the nature of government. Liberalism, at least since the New Deal, has been marked by the belief, quite simply, that government should do more. The analogy is to Samuel Gompers's one-word statement of purpose for the American labor movement: "More!" Or, as Garry Wills somewhere remarks, the most visible difference between liberals and

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conservatives today is that liberals think government should spend more and conservatives think government should spend less—on everything but defense. In any case, a government that does more is going to be seen as more intrusive and is therefore more likely to generate politically effective resentment.

Once again the abortion debate is persistently pertinent to our subject. In this debate liberal/conservative postures seem to be reversed. It is liberals who seem to resent the government's "doing something" about the protection of the unborn. If not for themselves, at least for others they want no limits on the freedom to abort. Conservatives, on the other hand, not only welcome but demand governmental "intrusion" in a most intimate sphere of life. This apparent reversal of attitudes toward government action deserves careful attention and we will be returning to it. At the moment, suffice it that there is considerable dispute over whether the abortion debate does in fact fall into the left/right imagery. The case can be made that the pro-life position is in fact the liberal one, since it has been characteristic of liberalism to enlarge the circle of communal and governmental care. At the same time, it has also been characteristic of some liberalisms to accentuate above all individual freedom of choice, thus making liberalism pro-choice with respect to abortion. Survey research suggests that the pro-life/pro-choice divide cuts fairly evenly through the population regardless of how people identify themselves politically.¹⁶

Categorizing the pro-life position as conservative makes sense in that it involves the proposal that we return to the policy of a prior time. The proposed return is hardly to an ancient past; it has been little more than a decade since *Roe v. Wade*. To be sure, pro-life advocates insist that laws protecting the unborn now would not mean a simple return. For one thing, there has been significant development in medical technology. (Ironically, these developments are largely the result of financial incentives produced by a greatly expanded abortion industry.) As a result, whatever might be the incidence of illegal abortion after a change in the law, it would be as medically safe as legal abortions are today. In addition, at its best the pro-life movement advocates a quite new and caring attitude toward babies and mothers in difficult circumstances—an attitude that was not typically evident prior to 1973.

Nonetheless, there remains an element of "return" in the pro-life posture and therefore it is understandably viewed as conservative by many. Reinforcing this is the strong insistence upon individual and familial responsibility. Behavior, including sexual behavior, has consequences. It can be debated whether concern for moral responsibility in matters related to sex and family is a conservative monopoly. One would like to think that is not the case. Then too, there are those who contend that what conservatives call concern for moral responsibility is really vindictiveness toward pregnant women. Be that as it may, it becomes obvious that placing the

abortion debate within left/right imagery becomes more problematic the more we think about it. The issue clearly does not fit the mode of "experienced assault level" that otherwise helps us understand the political potency of conservative reaction. More than that, abortion likely cannot be fitted into any political construct. It is a classically pre-political question of our attitude toward the fact that so many people are killing their sons and daughters. Less that seem to be stating it too sharply, one might say that each year since 1973 in America about 1.5 million lives have been terminated that, if not terminated, would have resulted in sons and daughters. Whether one thinks that is alright, or an unavoidable evil, or an eminently avoidable moral outrage is a pre-political question. Certainly it is not inherently liberal or conservative.

On a broad range of issues conservatives react to a high level of *experienced assault*. The issues are not always coherently related, or at least so it seems to the outsider. A large part of the resentment, as we have seen, can be attributed to different attitudes toward government. Behind that difference, however, is a difference yet more deeply grounded. Christians entertain profoundly different ways of thinking about the American experiment in relation to religion. Liberals and all their ways and all their works are viewed by millions of others as being allied with forces that are hostile, or at least indifferent, to religious teaching and values. Politically liberal Christians are understandably outraged by this allegation. They protest that their political views and actions are clearly motivated by Christian commitment, and the protest is no doubt sincere. Their critics, however, assert that Christianity doesn't seem to make much difference in being liberal. They note that liberals, whether they be believers or militantly unbelieving, seem to end up at the same point on issue after issue.

"Our side" always looks more coherent to our opponents than it does to us. Especially is this true if said opponents have a natural proclivity for conspiracy theories. To them, our stumbling ragtag defensive action has all the appearances of a juggernaut. Liberal activism and the way liberals are aligned on specific issues may in fact be no more coherent or consistent than is apparently the case with conservatives. But there is a perceptible pattern in the postures of politically liberal Christians. The pattern involves political agreement with secularists who make no secret of their contempt for religion. To take an obvious example, the official social and political positions of the United Methodist Church are not discernibly different from those of the more leftward planks of the Democratic party platform. We will be looking at the history of how this came about, not only with respect to the Methodists but also other "mainline" Protestant churches. Allowing for the moment that it is the case, it is worth asking what it might mean.

We know that conservative critics explain the phenomenon by saying

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that these liberals cannot be significantly Christian since they so consistently agree with those who have no use for the faith. To which it might be responded that, in the marvelous ways of God, the left side of the Democratic party just happens to take positions that are also mandated by Christian faith. After all, there is a common morality—some call it natural law—that is consonant with, although not explicitly derived from, Christian teaching. The God who is the Father of Jesus is also the universal God of all creation. A liberal who is accused of conforming to the values of the world can respond that it is God's world, isn't it? If so, it is not so surprising that others who follow worldly wisdom will arrive at what Christians believe are the morally correct conclusions. We do not have, nor do we need to have, Bible study in Democratic caucuses.

This is a doctrine of happy convergence between Christianity and culture. Those who subscribe to it risk sounding silly when they call their view prophetic, but such convergence is not entirely implausible. While the fit between Christian truth and secular partisanship seems too neat, all things are possible with God. Eusebius, the father of church history, thought such a convergence of Christ and culture had been divinely effected under the Roman empire. That those who condemn "Constantinism" should themselves be affirming a new form of the same is not the first, although it would be among the more exquisite, of the ironies resulting from the marriage of politics and religion. We cannot determine here whether the typical alignment of religious and political liberalism is an instance of happy convergence or of cultural captivity. Unless, in sectarian fashion, one pits Christianity against culture, agreement between Christians and non-Christians on social and political issues is cause for celebration rather than suspicion. Suspicion may be justified, however, when a program that is said to be shaped by a specifically Christian vision parallels *tout court* the programs of secular parties that are at least indifferent to that vision. That is a degree of happy convergence that one might have thought is reserved for the kingdom of God.

With respect to suspiciously happy convergences of Christian morality and partisan politics, conservatives are hardly above criticism. The alliance in the 1980s between the religious new right and the Republican party has not gone unnoticed. Conservative leaders claim that that alliance is temporary and tentative. Indeed the whole new right to which they have attached their fortunes frequently flexes its muscles of putative independence, threatening to go elsewhere if Republicans do not toe their line. It may or may not be an idle threat. Perhaps a Democratic party that is in search of a "third way" could provide an alternative for advancing the populist passions of the new right, including its religion-based battalions. Such a development would seem to require a Democratic party that proposes a vision other than New Deal nostalgia or rightist reaction. Most particularly, it would require a Democratic seizure of the "social and moral is-

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issues" that motor the new right. Such a Democratic turn seems improbable. That does not mean the new right has only the Republicans. In American politics there is strong precedent for populist movements to express themselves independently of both major parties.

The power of the new right, especially in its religious dimensions, is that it represents a movable constituency. For example, the majority of its white, Southern, evangelical constituency was, until recently, reliably Democratic. They have followed their issues into the Republican column. Being "issues oriented" in politics is usually thought of as a liberal virtue. Seldom, however, have we been witness to a more issues-oriented constituency than that of the new right. For the moment its leaders believe that, at least at the national level, its issues are more effectively carried by the Republican party. Because, they say, the constituency is movable, they will not become Republican captives in the way that, say, liberals and blacks are Democratic captives.

A fringe of the religious new right would prefer a party that comes right out and says that America is a Christian society. For several decades there has been a proposed constitutional amendment knocking about that says just that. The effective leadership, however, in deference to pluralism, has learned to mute the talk about Christian America. They feel they can work within a party that permits the dream of Christian America to be expressed *sotto voce*. This basis of Republican alliance is strengthened by a Democratic alternative that they perceive as militantly secularist. When they enter the public arena, new right leaders do not insist that everyone there must pass a test of Judeo-Christian moral orthodoxy. They do insist that they will not check their own beliefs in the cloakroom before entering. No longer content to be smugglers, they are in open rebellion against the border patrols that would maintain and even intensify the line between sacred and secular. In the Republican party they find greater sympathy for relaxing the border patrol.

This chapter began by suggesting that the issues joined are more theological than political. A dilemma, both political and theological, facing the religious new right is simply this: it wants to enter the *political arena making public claims on the basis of private truths*. The integrity of politics itself requires that such a proposal be resisted. Public decisions must be made by arguments that are public in character. A public argument is transsubjective. It is not derived from sources of revelation or disposition that are essentially private and arbitrary. The perplexity of fundamentalism in public is that its self-understanding is premised upon a view of religion that is emphatically not public in character. Fundamentalism is the religious variant of what Alistair MacIntyre calls "modern emotivism." By emotivism is meant that state of affairs in which every moral statement is simply a statement of private preference. It has no inherently normative or public force. Of course it can have great force in public effect

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if those who agree with it can marshal a majority to their side and thus impose it upon those who do not agree. That is what MacIntyre means when he says that politics becomes civil war carried on by other means.

Fundamentalist leaders rail against secular humanists for creating what I have called the naked public square. In fact, fundamentalism is an indispensable collaborator in that creation. By separating public argument from private belief, by building a wall of strict separatism between faith and reason, fundamentalist religion ratifies and reinforces the conclusions of militant secularism. In order to counter this unwelcome result, the religious new right takes a leaf from the manual of an earlier Christian liberalism: the claim is made that, despite differences in religious belief, there is a core consensus on what is moral. This is the much discussed "moral agenda" on which, presumably, Christians of all stripes and even nonbelievers can come together. That approach will not wash now, however, just as it did not wash for long when employed by earlier religious actors in the public arena. The issues facing our society engage ultimacies. The issues themselves may be penultimate or less, but their resolution requires a publicly discussable sense of more ultimate truths that serve as points of reference in guiding our agreements and disagreements. Such resolution requires a public ethic that we do not now possess.

Groups such as Moral Majority kicked a tripwire alerting us to a pervasive contradiction in our culture and politics. We insist that we are a democratic society, yet we have in recent decades systematically excluded from policy consideration the operative values of the American people, values that are overwhelmingly grounded in religious belief. We may acknowledge our indebtedness to those who have kicked the tripwire while, at the same time, recognizing that they may be the least helpful in addressing the contradiction they have illuminated. Those who have set off the alarm are at the heart of what is alarming. Fundamentalist morality, which is derived from beliefs that cannot be submitted to examination by public reason, is essentially a private morality. If enough people who share that morality are mobilized, it can score victories in the public arena. But every such victory is a setback in the search for a public ethic.

A serviceable public ethic is not somewhere in our past, just waiting to be found and reinstalled. From the past, however, there may be clues to the reconstruction of such an ethic for our time. In exploring this possibility we should at least entertain the hope that those who kicked, or perhaps merely stumbled over, the tripwire may become partners in that reconstruction.

LAW AND THE EXPERIMENT RENEWED!

OUR QUESTIONS BRING US BACK TO LAW, WHAT IT IS AND what it is not. This is not surprising. Law speaks of what is authoritative in a society. Like travelers consulting a road map we consult the law. Or like players in a game consulting the rule book in order to settle a dispute. We usually look at the road map when we are lost and at the rule book when there is disagreement. With respect to the law, however, we are map makers as well as map followers; we ask not only what the rule is but also what the rule ought to be. In a democracy we participate in the drawing of the maps and the making of the rules. Or so it is said.

Some of the sharpest challenges to secularist ideology are being raised by Christian lawyers who believe that what is said about democratic government is true, or should be true. Organizations such as the Council on Religion and Law and the Christian Legal Society involve legal minds from all sectors of American religion who are asking fundamental questions about the nature of law in our society and our world. Some of a fundamentalist persuasion believe that life must be ordered by law and that ultimately the basic law of the land should be that revealed in the Bible. Others, living by the gospel and more nuanced in their approach, ask only that the provisional structure that is human law should not oppose or disregard our understanding of what is human—including the ways in which that understanding is democratically informed by religious faith. But despite their differences, which are not unimportant, lawyers, ethicists, and other thoughtful believers have dared to approach contemporary law and ask, "By what authority?" The question has been met by the ominous secular silence of the naked public square. In law, where conflict compels us to try to articulate the meaning of the community to which we belong, it seems we have run out of meanings. In law, the movement from the authoritarian to the autonomous to the recognition of what is authoritative has become stuck in the autonomous. It is therefore not surprising that the questions which have preoccupied us in this book conclude with a reflection on the nature of law as it relates to religion and democracy in America.

The law is not like life. Therein lies its utility and even its majesty. The law is not like life. Therein lies its weakness and even its danger. To be sure, the law is part of life; it is part of that communal experience we

call history, including this present moment. Law itself, as we shall emphasize, has a history. And yet, when we speak of "the law" we imply that it is something distinct from ordinary experience. It has a normative status by which we order, remedy, and judge the interactions that make up what we call "life."

Legal virtues are impartiality, rationality, objectivity, equality, consistency, and fairness. Such virtues have only limited applicability in the larger reality called life. Life is marked by preference and passion, by contingency and contradiction, by gradations of merit and success, by tragedy and scendipity, by fancy and whim. Most of all, life—in both endowments and opportunities—is unfair. Law that mirrored life would be no law at all. And life ruled by law alone is lethal.

Our understanding of law is subject to both distortions. Our society becomes ever more litigious as people seek securities and solutions in law. In part this is because lawyers encourage the extra business, in larger part it is because people have been taught and have come to believe that they are entitled to protection against the insecurities of existence. Thus, for example, the intimacies of marriage and friendship are increasingly subjected to the calculus of legal contract. Thus, to take a more bizarre example, some lawyers at a recent Congressional hearing on the regulation of religious cults proposed consumer protection laws against false or dangerous religious ideas. Contracts are designed to spare us the uncertainties of human relationships. The covenant of trust mutually pledged is, by comparison, precarious and arduous in its demand for constant renewal in love. The sensible person knows the difference between law and life. She knows that life is fully lived in the risks of decision and the insecurities of commitment beyond the call of contract. She knows that, in the things that really matter, the litigious life is no life at all.

If life, in all its mystery and diversity, cannot be ruled by law, neither can law be subjected entirely to the mysteries and diversities of life. The law is not merely an instrument for solving problems, a set of rules to be manipulated to advantage by the clever and powerful. Admittedly, the law may sometimes seem to be no more than that, but most of us persist in believing it should be more than that. To speak of "the law" in terms of awe and majesty may be no more than an exercise in false consciousness—as the Marxists say, an indulgence in mystification. After all, "the law" is patently a very human thing. Prick it, and does it not bend? Tickle it, and does it not accommodate? Wrong it, and does it not avenge? Like Shylock, the law is not a thing apart.

Or is it? Is it merely useful to think so, or is it true, that the law has its own integrity, its own logic, its own authority? While the law is clearly susceptible to our decisions, is there not another sense in which our decisions are accountable to the law? I do believe that is so. While it is a part of life, the law calls life to account. That is to say that the law pos-

reality. This is not first of all an argument from logic; namely, that there must be a reality prior and related to such sentiments. That argument can be made, but here I would appeal to our experience. Alfred Schurz, the pioneer of "sociology of knowledge," spoke of "Aha!" experiences. Such an experience is a moment in which we are surprised by the self-evident. It is seeing what we had not seen before but had been there all along, and, having seen it, it is impossible to imagine not having seen it. It promptly becomes a part of our "taken-for-granted reality" without which the world is inexplicable. Thus this latest step in discovery becomes the first step, the conclusion turns out to be the premise.

Moral sentiments are part of our experience. To deny their existence is the kind of solipsism that among sophomores passes for profundity. (Yet, as we shall note, they are ignored, if not denied, in much theory about law today.) And these sentiments—guilt, shame, gratitude, and the like—are inherently relational. That is, they do not exist in a vacuum, they do not stand on their own feet. The experience is related to something or someone beyond itself. Guilt is to have offended against an other and leads, or should lead, to saying you are sorry; gratitude likewise is to give thanks; resentment is to protest. The experience and the expression, the feeling and the language, are not two distinct things, as though one were the cause and the other the effect. No, the phenomenon we call guilt, or gratitude, or resentment, is itself relational. To experience it is to be related to what occasions it. Such relationships engage the *religatae*, the network of binding of which our obligations are part.

At this point it may be suspected that we have smuggled God into the argument, and that rather clumsily. But that is not the case. At the appropriate point I will announce his entrance quite candidly. (Although we will then discover he has been here right along, he being the prime instance of the conclusion that turns out to be the premise.) At the moment I would only suggest that this network of binding to which we are related by moral sentiments is what we mean by the law. The law is more than the sum of its parts. There are laws, for example, against indiscriminate stealing. They are not adequately explained by reference to their utilitarian value, nor by the fact that all societies have had such laws. It is rather the case that there is, in Harold Berman's language, "an all-embracing moral reality, a purpose in the universe, which stealing offends."² We break a law, but we offend against the law.

Now offense suggests a personal event, one offends against someone. This does not prove, of course, that there is a someone who is offended. You may drop a cherished vase on the floor and say most sincerely to its shattered remains, "I'm sorry." We do that sort of thing all the time. We personalize, or anthropomorphize, inanimate objects. We do not really think for a moment that breaking the vase offended some great Master Vase that holds together the "vaseness" of the universe. Yet when we break

sesses authority. Without such authority the law is merely a bundle of rules backed up by force, with such authority, the law is a power we are bound to acknowledge. Again, the word "bound" is important, coming as it does from *religare*, the root of religion.

Critical to any life worth living is the ordering of our loyalties—accepting responsibility for deciding by what we will be bound. The life without obligations that are freely accepted and faithfully observed is a life in bondage to chaos, a life without meaning. Freedom is found in obedience to the normative; all other liberations are just different ways of being lost. With greater and lesser degrees of reflection, we thus bind ourselves in friendship, in marriage, in vocation, and a host of other decisions. The obligation that we affirm most deeply, most daringly, and perhaps most desperately, that is our religion.

Our religion may be called a religion, such as Christianity or Islam, or it may be a variation of religion, such as atheism, or it may be a political program or humanitarian ideal or an aspiration to some excellence. It may be superficial or profound, a false god or true, but it is that by which we are bound and which bond we affirm, or at least want to affirm. Such a bond is not at our disposal; we do not possess it, and it is prior to our being possessed by it; to it we hold ourselves accountable because to it we are accountable. Having decided upon the ordering of our loyalties, our loyalties order us. After choosing our obligations, we discover they have chosen us. And Jesus said, "You have not chosen me but I have chosen you" (John 15:16). In theological language it is like prevention grace, the *grace* that is always a step ahead of us, turning our achievements into gifts, our discoveries into revelations, and our choices into the knowledge of being chosen.

Laws may be just or unjust, wise or foolish, but behind the laws is the law. It binds us before we embrace it, and indeed whether or not we embrace it. A lawyer may be an officer of the court, an agent of a particular law, and yet it is not mere hyperbole to say he is a *servant* of the law. So it is with all of us in relation to the law, when our choices encounter the socially articulated loyalties reflected in laws. In describing this attitude toward the law, we are dealing with what philosophers call "moral sentiments": shame, guilt, resentment, indignation, reciprocity, trust, mercy, and so forth. It can be argued that such sentiments are not truly universal and therefore cannot be made necessary to the foundation of law. And, to be sure, there may be people unacquainted with guilt or shame or pride, just as others may be incapable of love. But in our communal conversation about the meaning of law we should not give veto power to the handicapped. Moral sentiments do not defer to the tone deaf, nor painters to the color blind. Moral sentiments may not be universally distributed, they certainly are not evenly distributed, but then, neither is anything else of value.

The contention here is that moral sentiments point to a prevention

a law, our feeling is not one of having offended against that law but of having offended The Law. This does not prove the existence of The Law, but I suggest it is our common experience and that its possible implications are deserving of careful thought.

To be sure, we can attempt to "explain"—meaning to explain away—this experience of having offended by employing psychological and other explanatory devices. What we mean by "the law" may be no more than a residual "father image" or the afterglow of flawed potty training. The trouble with such explanations is that they are reductionist and finally trivializing; they do not do justice to the relational character of our moral sentiments. The person who insists that my experience of a Mozart piano sonata is not an encounter with beauty but a neuro-chemical response to physical vibrations has said nothing of consequence about the experience; he has said a great deal about his own poverty, if not perversity, of mind. His explanation is not more reasonable, it is simply less interesting.

The suggestion, then, is that while the law is of necessity unlike life in important respects, it is rooted in life experience. The further suggestion is that that experience is relational, pointing to something other than itself. It is, in short, of enormous consequence that people have a sense of right and wrong. The experience of right and wrong, in turn, relates to a more universal rightness and wrongness, which is reflected in the law. The person who says the sense of right and wrong is meaningless is, if taken at face value, revealing a deplorable personal deficiency. In any event, he is saying something about himself. For those who know the reality of right and wrong, to ask what it "means" is meaningless. Of course one must ask what it means in the sense of what does it mean in this case or that. But the sense of right and wrong itself is the conclusion that turns out to be the premise of all other meanings. But what is to be done about the person who persists in challenging the reality of the experience of right and wrong? One should be patient of course, and, if one is a believer, one should pray for him. That some people lack a moral sense no more negates the existence of morality and what it implies than does the frequent lack of clear reasoning negate the existence of rationality. If moral sentiments and the traditions that shape them are ruled out of court, so to speak, the result is law that makes the normal subservient to the pathological. Even if, as cannot be demonstrated, the normal is not numerically normal, the law by definition deals with that which is normative.

So far, however, we have spoken of the law in terms of personal and somewhat individual experience. The personal dimension is important because, however much our ideas may be socially constructed and conditioned, it is as individual persons that we give our yes or no to the moral sense that is the foundation of law. Yet the law is preeminently a social

phenomenon. However we severally acknowledge that which is binding, it is together that we spell out those acknowledgments in the bonding that creates community. Law is by definition a public enterprise; it is trans-subjective. We can withhold our subjective assent from the reality to which our moral sense points, but we cannot, without abandoning the world of reasonable discourse, refuse to recognize the empirical fact of the law as it makes its appearance in every society. Nor can it be denied that—at least in Western societies, although I suspect the phenomenon is more universal—people distinguish between particular laws and that which they call "the law." It is the latter that partakes of a numinous, even a divine character that, like religion, is binding. In everyday language a person who protests what he thinks to be the unfairness or silliness of a particular rule is told, "But that's the law." He may wish Mr. Bumble respond that "the law is a ass, a idiot." But it is with respect to "the law" that a particular law or system of laws is declared deficient. While particular rules may be deemed silly or unfair, it is acknowledged that they have an authority that, however wrong in particular application, is derived from "the law."

Those who call themselves "realists" in jurisprudence object that talk about the religious dimensions of law is obscurantist mystification. (Herbert Butterfield once remarked that, in law and other fields, "realism" is not a school of thought but simply a boast.) To the charge of obscurantism and mystification, it must be honestly answered that the origins and sustaining force of law are indeed obscure and mysterious. There is nothing more unrealistic, in the sense of being contrary to the evidence, than the proposal that laws are created or obeyed apart from a communal consensus about what is right and wrong. Nor can it be reasonably denied that that sense of right and wrong is inseparably connected to an awareness of preventive obligation, whether or not that obligation is expressed in explicitly religious terms.

In light of this, then (and with a bow to Harold J. Berman who has done so much in our time to reconnect religion and law), permit me to take a try at a definition of law: Laws issue from and participate in "the Law." The law is more than a body of rules; it is the historical, living process of people legislating, adjudicating, administering, and negotiating the allocation of rights and duties. Its purpose is to prevent harro, resolve conflicts, and create means of cooperation. Its premise, from which it derives its perceived legitimacy and therefore its authority, is that it strives to anticipate and give expression to what a people believes to be its collective destiny or ultimate meaning within a moral universe.

Of course talk about ultimate meanings makes many jurists and political theorists nervous. Law and the social sciences, like most intellectual enterprises in the modern world, aspire to the status of being "scientific" in the sense that the natural sciences are scientific. Nothing in this book

is intended to deny that this is in many ways an admirable and necessary aspiration. The scientific method, as it has been understood in the last two hundred years, is a monumentally important liberation from authoritarianism. Any reconstruction of public philosophy and its religious groundings must be an emphatically post-Enlightenment reconstruction. Only those who have internalized the contributions of the Enlightenment can move beyond its confinements. Scientific method makes everything subject to critical reason. Authoritarianism declared, "This is the law and it is to be obeyed because the king for the church, or the Bible, or tribal custom) says so." And that was that. The law is the law, and nobody is permitted to ask, "By what authority?" The king forbid the challenge because it was deemed impious and insubordinate. Certain moderns forbid the challenge because it is deemed meaningless or irrelevant. But the point is that both proscribe what is precisely the question of critical reason: What is the foundation of the authority that law claims for itself?

That question cannot be answered within the terms of the law itself. That is to say, the law is not self-legitimizing. To be sure, the question of legitimacy can be suppressed, but suppression is presumably the enemy of scientific inquiry. Once the question is asked, it must be answered by reference to something beyond law itself. "This law has a claim upon your observance because . . . Over the years legal philosophies have filled the blank with many different answers. Although evasions and circumlocutions have been frequent, the "because" finally comes down to the question of right and wrong, of the good to be maximized and the evil to be minimized. Except, of course, for those who, bowing to the divine right of kings or to the positivism of existent fact, refuse to ask the question "By what authority?" Critical reason refuses to conform to the authoritarianism of pretentious kings and overweening facticity. Critical reason invokes the "oughtness" of things in order to bring the "isness" of things under judgment. Finally, whatever explanations might satisfy us personally, critical reason recognizes that the historical phenomenon of law is produced and sustained by the perception of a people that law is somehow correlated with the way things really are, or with the way things really should be.

It is commonly said that law has evolved from being organic to being technical. It no longer reflects the belief systems, customs, and traditions of the tribe, but has become a tool chest of complex instruments to be rationally applied for the achievement of specified personal and social purposes. To the extent that this transition does indeed represent a demystification of law, it is to be welcomed. To the extent, however, that it inhibits critical reason from venturing beyond the technical and utilitarian, it becomes a new mystification. The new authoritarianism may be worse than the first, and the new mystification worse than the first, because they

claim for themselves the virtue of freedom. In Orwell's "New Speak," war is peace and slavery is freedom. The slavery that claims to be freedom is the most desperate form of slavery because it has subsumed into itself the idea of emancipation. Much social theory today is in bondage to a species of rationality that refuses to ask, or even forbids the asking of, the questions that get in the way of making law and politics an "exact science." The obsession with exactitude is inimical to what is called the human factor (an interesting term, implying that people are one factor among others to be taken into account). Human behavior is notoriously lacking in that prime scientific virtue, predictability. Whatever else law may be, it is a human enterprise in response to human behavior, and human behavior is stubbornly entangled with beliefs about right and wrong. Law that is recognized as legitimate is therefore related to—even organically related to, if you will—the larger universe of moral discourse that helps shape human behavior. In short, if law is not also a moral enterprise, it is without legitimacy or binding force.

An excessive emphasis upon law as technique is also demeaning to its professional practitioners, to lawyers, politicians, and social theorists. Lawyers, for instance, want to be viewed as something more than mechanics. To the extent that that desire reflects merely a search for status, it is just a piece of snobbery. After all, to be a mechanic—an automobile mechanic, for instance—is a perfectly honorable occupation and one can fulfill it without fretting about the metaphysics of transportation. But the thoughtful jurist or legislator is vaguely repulsed by the idea that his task is merely mechanical. The revulsion results from an intuition that is to be trusted. A priest who has great confidence in the mechanical, *ex opere operato*, effect of the sacraments may content himself with doing the technical job at hand, but that is hardly a worthy model of priesthood. So the lawyer and public officer have a quasi-priestly role, mediating between human conflicts and what is hoped is a moral universe. The law then becomes the agreed upon language of mediation. It is not so important that the lawyer who sees his task as purely mechanical demeans herself and her profession; more important is that such an approach demeans the human effort to sustain moral meaning in the universe.

If some theories would turn law into the technique of exact sciences, others take quite the opposite direction. They want to be relentlessly realistic about how law is made and applied; there is a tone of iconoclasm, even cynicism, in their exultation over the arbitrariness of law. To speak of principles or of morality is, in their view, ludicrously naive. Some who are of this temperament say laws are the instrument of class interests, the rules of convenience for the powerful. Others, less ideologically inclined, emphasize accident more than conspiracy. Law is an arbitrary game, and the lawyer is a skilled player of the game. In ancient times it was said that the law is what the king says it is. In our enlightened era it is declared

that the law is what the court says it is. No more and no less. The king and the court may be good or bad, they may have the counsel of wise men or of scoundrels, but if there is no appeal beyond king or court, the law is finally capricious. And capricious is the one thing that, by definition, law is not supposed to be. Capriciousness has always been the mark of tyranny. Law that issues from the whim of monarchs or the caprice of courts can command obedience only by the threat of coercion. It is the formula in which naked force displaces legitimate power.

Recall the earlier definition of law: The premise of law, from which it derives its perceived legitimacy and therefore authority, is that it strives to anticipate and give expression to what people believe to be their collective destiny or ultimate meaning within a moral universe. At this point theology enters the picture. The disciplined application of critical reason to the meaning of life is what is here meant by theology. Pursued relentlessly enough, the question of meaning is the question of God. Theology is the exploration into God, that is, the exploration of the ultimate or absolute meaning, the final source and purpose, of all reality. *Christian* theology works with the data of God's self-revelation in the life, death, resurrection, and promised return of Jesus whom we call the Christ. But there are ways of doing theology other than the Christian way. Much that is in fact theology, as that term is employed here, is not connected with any brand-name religion. But, in law or any other field, the search for ultimate meanings that provide morally binding legitimacy for an enterprise is a theological search.

To put it somewhat differently, theology is the disciplined reflection upon transcendent truth and value that gives significance, perhaps eternal significance, to our lives. It is important to underscore that, while theology may speak of the supernatural and of other worlds, its meaning is the meaning of *this* life, *this* world, *this* history of which we are part. At least Judeo-Christian theology, unlike that of some Eastern religions, is pledged to the ultimate significance of this ordinary stuff of history that makes up what we call reality. And, again in Christian theology, the ultimate meaning of anything is to be found in the end of that thing. As the meaning of an epoch of history is perceived at the end of the epoch, as the meaning of a life is perceived from the end of that life, so the meaning of all history is revealed—if the Christian gospel turns out to be true—in the end time of the consummation of history in the Messianic Age.

But now we may be getting ahead of ourselves. The Messianic Age is, after all, about as far as you can go, while this present moment is, to judge by the evidence, far short of that consummation devoutly to be wished. In this present moment we are witnessing in social philosophy and jurisprudence some signs of an incipient revival of theology, although, of course, it is not always called theology. But some thoughtful persons are addressing the legitimacy crisis of modern law by searching for tran-

scendent meanings that can rescue law from the tyranny of the capricious. In Chapter Six we discussed briefly the work of John Rawls. His elegantly argued *A Theory of Justice* is probably the single most influential effort in recent intellectual history to establish a foundation of moral authority in political philosophy.³ It is an important effort to establish principle over caprice and moral purpose over mechanical precedent.

It will be recalled that Rawls attempts to redeem the idea of social contract as the basis of law, asking how the terms of justice might be established in a normative way that transcends past and present disagreements about the meaning of justice. He argues that the meaning and terms of justice can be determined by rational persons seeking their own interests behind a "veil of ignorance." The veil of ignorance assures that these people do not know what their own placement in life might be. They do not know, in this social contract they are designing, who will be rich and who poor, who gifted and who disadvantaged, who the darling of fate and who life's loser. Therefore, it is argued, they will try to maximize the chances of each but also build in some hedging of their bets for the less fortunate. The result, he contends, will be as close an approximation of justice as we are likely to get.

Rawls' argument, to which the above can hardly do justice, has been much discussed, much celebrated, and much criticized. It is noted that Rawls assumes a rather narrow definition of the rational person, excluding the gambler and adventurer. It is pointed out that antecedent and abstract choices are qualitatively and substantively different from choices made in particular circumstances. It is objected that it is by no means obvious that people would choose equality as the chief goal, they might well prefer some other personal or social excellence. It is proposed that Rawls' "sense of fairness" would not necessarily be the controlling moral sentiment—that a sense of obligation, of altruism, or of achieving some collective purpose might well have priority. It is argued that, while Rawls' theory is on the surface relentlessly individualistic, it in fact destroys the individual by depriving him of all those personal particularities that are the essence of being an individual. There is considerable merit to the criticism that Rawls' theory of justice is in the final analysis a theory of ignorance and selfishness.

In Rawls' theory we have, I believe, an instance of a laudable intention miscarried. It is symptomatic of our problems in relating law to life, in democratizing the public square. Rawls' way of establishing a normative concept of justice contradicts almost every part of the definition of law offered earlier. Law, it was suggested, "is the historical, living process of people legislating, adjudicating, administering, and negotiating the allocation of rights and duties." But Rawls' people behind the veil are, in fact, non-persons. They have no history, no tradition, no vested interests, no self-knowledge, no loves, no hates, no fears, no dreams of transcendent

purpose or duty. Living persons are distinguished by partiality, by passion, by particularity. Instead of re-linking life and law, Rawls subsumes life into a totally abstracted notion of justice that could not be further removed from the world in which the legitimacy of law must be renewed.

It is of paramount importance that there is no history behind the veil of ignorance. Like many other contemporary theorists, Rawls assumes a universe in which everything is, as it were, already in place. As Elzade, the great scholar of comparative religions, has noted, in this respect the "scientific" approach of the secular Enlightenment is similar to the "primitive" world views of ancient times. There is finally no real history, no real contingency, no real change, the world is either composed of static entities or what looks like change is simply a cyclical recurrence of the same old thing. The Judeo-Christian tradition, however, is premised upon the concept of real history, real change, happening in an incomplete universe that is still awaiting its promised fulfillment.

Despite the elegant and earnest abstractions posed by some theorists, there is no alternative to history. Only in history can we address the problems of history. Students of jurisprudence have noted that the idea of the "ongoingness" of law—the way it develops and grows incrementally and corrects itself—is dependent upon the Judeo-Christian understanding of history. Thus, in our earlier definition, it is suggested that law has an "anticipatory" quality, it reaches forward, so to speak, to embrace an excellence of "right order" that has not yet been actualized. Law is therefore always provisional, the "isness" never perfectly embodies the "oughtness," the "now" is at its best only a preview of the promised "not yet." [Here again we recognize the importance of the concept of the twofold kingdom, the kingdom of grace revealed in Jesus Christ and the kingdom of historical experience in a creation not yet fulfilled under the rule of that grace.]

The contrivance of a historyless idea of justice miscarries for all the reasons indicated. Also, and closely related to our concern for religion and democracy, such an idea will not serve because it is impossibly exotic. The legitimacy of law in a democratic society depends upon the popular recognition of the connections between law and what people think life is and ought to be. As for theories such as that proposed by Rawls, only a few thousand people can, or care to, read them—and even then there is little agreement on what to make of them. Thus the theorists' quest for universality becomes simply the parochialism of a few intellectuals. This is not meant to indict intellectuals as a class, nor to suggest that truths must be made easy and popular in order to be true. It is simply to underscore the limitations of theories of justice that cannot sustain a democratic consensus regarding the legitimacy of law. I believe that Rawls' theory fails a number of tests, as indicated above, but most pertinent to this essay, it fails the test of democratic legitimacy.

This is the cultural crisis—and therefore the political and legal cri-

sis—of our society: the popularly accessible and vibrant belief systems and world views of our society are largely excluded from the public arena in which the decisions are made about how the society should be ordered. As we have seen, critics such as Daniel Bell conclude, with some reluctance, that the answer lies in a more public role for religion. What they conclude with reluctance is the gravamen of this book. Specifically with regard to law, there is nothing in store but a continuing and deepening crisis of legitimacy if courts persist in systematically ruling out of order the moral traditions in which Western law has developed and which bear, for the overwhelming majority of the American people, a living sense of right and wrong. The result, quite literally, is the *outliving of the basis of law*. When the moral sentiments and the traditions that have given them shape and voice are ruled out of order, even the most solemn questions are "resolved" by mechanistic reduction to the lowest possible factor. Thus in *Roe v. Wade*, the questions of the meaning of human life and who belongs to the human community for which we accept common responsibility are reduced to the question of "privacy." Numerous constitutional scholars have challenged the Supreme Court's development of the "right to privacy." More immediately pertinent to our discussion is the similarity between "privacy" and life behind the "veil of ignorance." It is an instance of law against life, of individualism's assault upon the individual, of the eradication of the personal and communal bonds without which it is not possible to be an individual.

There is in store a continuing and deepening crisis of legitimacy unless a transcendent moral purpose is democratically asserted by which the state can be brought under critical judgment, unless it is made clear once again that the state is not the source but the servant of the law. As we have paraphrased Spinoza, transcendence abhors a vacuum. Recall John Courtney Murray's cautions about the invitation extended when there is a vacuum in the public space of law and politics. The vacuum will surely be filled, as has so tragically happened elsewhere, by the pretensions of the modern state. As the crisis of legitimacy deepens, it will lead—not next year, maybe not in twenty years, but all too soon—to totalitarianism or to insurrection. The insurrection may be on the way to totalitarianism or on the way to what is described as authoritarianism, but after a period of either it is difficult to envision the resumption of the democratic experiment. Already figures such as Francis Schaeffer call for a reconsideration of justifiable revolution, and a good many less sober than he are in full-throated support of rebellion. They are in curious alliance with those on the left who, with very different analysis and intent, assert that there is no way out apart from revolution.

Meanwhile, the "vital center" of liberal democratic faith is largely unattended. In the deepening night of "cultural contradictions," jurists and politicians go about their business of serving precedent and procedure,

warding off the questions that break through "the issues" of the moment. Yet others who fancy their philosophical indifference makes them pragmatists count on continued material prosperity to give everybody a stake in holding at bay the legitimacy crisis which threatens a system that "works," more or less, to the benefit of all, more or less. The American proposition is no longer proposed. The democracy that began as an experiment has become at best a habit, a temporary condition, perhaps a luxury that can no longer be afforded. The barbarians look less like a threat and more like some kind of answer.

We will not be rescued by religion. Secularists who not long ago were celebrating the twilight of the gods now put their hopes in a great religious revival. There may be a great revival of religion; perhaps it is already underway. But it will not help if it is a religion of private benefit and blessing, offering what Romboeffer called "a god of the gaps," filling in and compensating for the discontents of modernity. And it will not help if it is religion that threatens to revive theocracy, whether of the left or of the right. That kind of religion led to the expulsion of religion from the public square in the first place. At his inauguration in 1978, Pope John Paul I refused to be crowned with the papal tiara, the vestigial symbol of the claim to temporal power. John Paul II followed his example, and so must all the churches set aside their tiaras, not even keeping them in the closet but destroying them altogether. It may seem unwarranted to us, but there are many secularists in this society (and many believers) who do most genuinely fear the church's ambitions to rule. Those fears must be put to rest if we are ever to achieve a more natural and fruitful relationship between church and state, between religion and the public square.

The religious revival that might help must be an ecumenical revival. The wars of religion once destroyed the basis of civil life and nobody who cares about authentic politics should want to run that risk again. There almost certainly will not be and there probably should not be one institutionally unified church. There can be a public and trustworthy expression of the fact that Christians are, in their differences, bound by one Lord, one faith, one baptism, one God and Father of us all. Among Christians this means that mainline Protestantism must reach out to the evangelical/fundamentalist insurgency by which it feels threatened. In the institutionalized ecumenical movement, as in the World Council of Churches, it means that the primacy of Faith and Order must be reasserted over and against those divisive forces that press for a politicized "partisan church."

There are also imperatives for evangelicals and fundamentalists who have lately come in from the cold of their sixty-year exile. Although the advantage lies with them in many ways, they must not come back as conquerors but as members of the family. If they have "come over to slay the Philistines," as some of them think, they will only drive into the

enemy camp the great majority of Christians who do not belong there and do not want to be there. In that event, the moral majoritarians will never be more than a noisy protest movement, they will never "turn America around" as they say they want to, and they will never, as many others hope, contribute to the reconstruction of a public philosophy that is democratically responsive to the values of the American people.

For a revival of religion to help in leading us out of the dark night of cultural contradictions there must also be a profound security about the relationship between Christians and Jews. The rabbi who said that the words "Christian America" conjure for him the image of barbed wire is not irrational. The cosmetic change of talking about "Judeo-Christian" values is not enough. Not nearly enough. Nor is it enough to be enthusiastic about the indispensable role of the State of Israel in the playing out of Bible prophecy's apocalyptic scenarios. Nor is it enough to appreciate the continuing existence of Jews as some kind of "corrective" to the church. What is required is the secure establishment of Christianity's bond with living Judaism, a bonding in theology, piety, and practice that is strong enough to last for the duration—even if the duration be many millennia before the consummation of the Messianic Age. With St. Paul (Romans 9-11) we must ponder anew the divine mystery of living Judaism.

Many Jewish leaders today are coming to the conclusion that the naked public square is a very dangerous place. Where there are no transcendent sanctions, positive and negative, there is no final inhibition against evil, including the evil of anti-Semitism. For good reasons, Jews and others who are uneasy about the idea of "Christian America" will continue to prefer the naked square until it is manifest that Christians have internalized—as a matter of doctrine, even of dogma—reverence for democratic dissent. In Christian thought at present, the linkages between faith and democratic governance are tenuous. And, of course, we may not have the time required for these linkages to be securely fastened and sealed. It may also be that contemporary Christianity can no longer recall the faith that can renew the democratic vision to which that faith once gave birth.

There was once religion in America that attended to the experiment and proposed the proposition. At first it simply called itself Christianity, then evangelical Christianity, and then, much later, mainline Protestantism. It did a far from perfect job of attending to the experiment and proposing the proposition, as witness our present confusions. But it was the culture-defining elite in American religion. Thus we come back to Vilfredo Pareto's concept of "the circulation of elites." Social functions, he said, are performed by groups that, after a while, constitute themselves as elites. After a longer while, the elite (whether economic, military, governmental, or religious) becomes flabby or disillusioned and no longer performs the function by which it acquired its privileged social position. When that happens, the function is not simply neglected. No, some other group, usu-

ally a quite different group, moves in to displace the old elite. And so elite functions circulate from one group to another.

In America there are a number of religious groups that have not had their turn at the culture-forming tasks. The single largest grouping is the Roman Catholic Church, counting fifty million members. In many ways, this ought to be "the Catholic moment" in American life. By virtue of numbers, of a rich tradition of social and political theory, and of Vatican II's theological internalization of the democratic idea, Catholics are uniquely poised to propose the American proposition anew. Not least among their strengths is that in John Paul II we have a historic figure who is singularly persuasive about the ominous alternatives to the human freedom that democracy protects. The Catholic moment was not, as some say, in 1960 when John F. Kennedy was elected, in large part because he seemed to be reassuring the electorate that he was not a very serious Catholic. The Catholic moment is now. It may be missed, however.

If it is missed, some will say that it is because, just as a previously immigrant church "came of age" in America, it began to collapse within. I do not find that persuasive. The silly season is largely past in American Catholicism. Those who wanted to be freed from the disciplines of being Catholic have already elected their forms of liberation or lossiness. Commonally and institutionally, American Catholicism seems to have weathered the storm. But whether it will become a public force of culture-forming influence is quite a different question. It may become simply the largest among churches successfully attending to needs defined as "religious." In part this is because Catholic leaders are understandably put off by the implicit and sometimes explicit anti-Catholicism of the Protestant fundamentalists who are most exercised about the crises of secularism. Catholics have no illusions about the good old days of Protestantism's "Righteous Empire" and are not likely to sign up for a crusade in which they might be among the targets. In larger part, the culture-forming tasks may not "circulate" to American Catholicism because those Catholics who are most concerned about the public role of religion often tend to be those Catholics who are most imitative of the failing Protestant mainline. For many, the style of the Protestant mainline still represents the respectability of having arrived in America. Then too, "the new class" and its struggle is no respecter of denominational lines. For these and other reasons, Catholicism may miss its moment, prematurely embracing the mainline's sense of guilt and unease, finding satisfactions in having failed at a task it never got around to attempting.

We cannot pass over Lutheranism. According to Gallup there are twenty million Americans who claim to be Lutheran, although the church jurisdictions count a little less than ten million. Some of the earlier and more Americanized Lutherans in the Eastern states feel themselves to be part of the Protestant mainline. Most do not, being sociologically and

psychologically (and, although not always admitted, theologically) closer to Catholicism and its immigrant experience. Years ago historian Winthrop Hudson called Lutheranism "the sleeping giant" of American religion. At least with respect to religion in the public arena, the giant sleeps on. Especially in the upper Midwest, Lutherans still resemble the progressive "church-going classes" described by John Dewey in 1922. But Lutheranism as a tradition does not have a rich store of social theory. The specifically Lutheran contribution to democratic practice and thought is not notable. Several Lutheran futures can be envisioned. Some Lutherans have no difficulty in being viewed—indeed aspire to being viewed—as part of the mainline Protestant establishment. Others, particularly in the Missouri Synod, have strong sympathies with evangelical, even fundamentalist, worlds. Cutting across the Lutheran jurisdictions, however, is also a deep intuition that the Lutheran destiny is, as Lutheran beginnings were, with Catholicism. Were there ecumenical advance in the next decade or more toward "healing the breach of the sixteenth century" between Lutherans and Roman Catholics, the result could be a dramatically different future for both communions. But here again there is no one "future" and speculation bogs down in imponderables.

Sad to say, in connection with the present discussion it is almost possible to pass over the Orthodox quite completely. There are approximately as many Orthodox Christians in America as there are Jews. Their influence upon the general culture escapes detection. According to their theologians, such as Alexander Schmemmann, John Meyendorff, and Thomas Hopko, Orthodoxy in America is uncertain about whether it is *the church* in America, an American denomination, or the Eastern Orthodox Church in Exile. Nationally and internationally, Orthodoxy's relationship to culture and to other Christians is very important and very complicated. But it is beyond doubt that Orthodoxy in America will not in the foreseeable future be a player in Pareto's circulations.

And so we are returned to the chief subject of our discussion—the religious new right, the moral majoritarians, the politicized religion that finds its home in worlds called evangelical and fundamentalist. As we have taken pains to make clear, not all evangelicals are involved in or sympathetic to moral majoritarianism. On the questions that have concerned us here, most evangelicals are indistinguishable from other Christians, be they mainline, Catholic, Lutheran, or whatever. That is because most Christians in all these groups have other things to worry about than the role of religion in society. Which is what one might expect, and what may be just as well. Among evangelicals who are so concerned, as we have had occasion to note, are scholars and activists of a Calvinist persuasion who are as distant from the moral majoritarians as they are from the secularists against whom both contend. Of the most militant majoritarians, often led by professed fundamentalists, we have perhaps said enough.

They are making the most aggressive bid to become the new culture-forming elite in American religion. This author's sympathies and skepticisms should be evident by now. I do not think they will succeed. I hope not. At the same time, I am confident they will not go away. They have played a large part in alerting the society to the absurdities and dangers of the naked public square. The most hopeful prospect is that, if we and they have the imagination to move beyond present polarizations, we will become partners in rearticulating the religious base of the democratic experiment.

Mainline, Jews, Catholics, Lutherans, Orthodox, Evangelicals, Fundamentalists—such religious taxonomy is of limited usefulness. He who said, "Behold I am doing a new thing. Do you not perceive it?" no doubt has other surprises in store. We can engage in denominational and confessional classifications as we will, but it may have little to do with where that new thing comes from, with where it is perhaps already stirring and on the edge of its public debut.

But the new thing we are looking for may not come at all. The naked public square may be the last phase of a failed experiment, a mistaken proposition. We have no divine promise that a nation so conceived and so dedicated will endure any longer than it has. Afterward, there will still be laws, of that we can be sure. And the history books, if history books are allowed then, will record this strange moment in which a society was in turmoil over the connections between laws and the law, between law and life. Then the turmoil will seem very distant, for then no dissent will be permitted from the claim that the law is the law is the law.

This dour prospect is not alarmist. Surely something like it is what those thoughtful people must mean when they say that the day of liberal democracy is past. It makes little difference whether the successor regime is of the right or of the left or unclassifiable. By whatever ideology the idea, this audacious democratic idea, would be declared discredited. By whom, where, under what circumstances, by what conception and what dedication could it ever be tried again? Yes, of course, life would go on and God's purposes will not be defeated, not ultimately. But the world would be a darker and colder place. That it can happen is evident to all but the naive and willfully blind. That it will happen seems probable, if we refuse to understand the newness, the fragility, the promise, and the demands of religion and democracy in America.