

Ninth Annual

Carl B. Menges Colloquium

**“Tolerance, the Constitution,
and the Limits of an
Open Society”**

April 14-16, 2016



The Alexander Hamilton Institute
for the Study of Western Civilization

at The Alexander Hamilton Inn
21 W. Park Row
Clinton, NY 13323
USA

web: www.theahi.org
email: ahi@theahi.org

Ninth Annual Carl B. Menges Colloquium, April 14-16, 2016

“Tolerance, the Constitution, and the Limits of an Open Society”
Turning Stone Resort

Location: Turning Stone Resort, 5218 Patrick Road, Verona, NY, 13478
<http://www.turningstone.com/>

Note for Hamilton College Students: For the Thursday night kick-off dinner the Turning Stone bus will pick up students **promptly at the K-J Circle at 4:15 pm.** For the Friday and Saturday sessions the Turning Stone bus will pick up students at **8 am sharp.**

For Electronic Access to Readings Go To

Tentative Schedule:

Thursday, 14 April 2016:

3:00 - 5:00 p.m.: Hospitality Suite (3rd Floor VIP Room)

4:00 – 5:15 p.m.: Cocktail Reception (Cypress Room)

5:15 - 5:30 p.m.: Welcome and Introductory Remarks

Richard Erlanger, President, AHI

5:30-6:30 p.m. Recognition Ceremony:

Robert Paquette “The AHI: Past, Present, and Future”

AHI Undergraduate Fellow Michael Adamo

6:30 – 7:30 p.m.: Banquet (Cypress Room)

7:30 – 8:30 p.m.: Keynote Address

Ninth Annual Carl B. Menges Lecture

Keynote Address: Dr. Roger Pilon Vice President for Legal Affairs, Cato Institute and Publisher, *Cato Supreme Court Review*

9:30 p.m.: Hospitality Suite (4th Floor VIP Room)

Friday, 15, April 2016:

7:30 – 8:45 a.m.: Continental Breakfast (Cypress Room)

8:45-10:30 a.m.--Session I: “Tolerance, Toleration, and the Liberal Tradition”

8:45 – 10:00 a.m.: Panel Discussion (Cypress Room)

10:00- 10:30 a.m.: Questions from audience

10:30 – 11:00 a.m. Break

11:00 a.m.-12:45 p.m. Session II: “The Open Society: For and Against”

11:00 – 12:15 p.m.: Panel Discussion (Cypress Room)

12:15 - 12:45 p.m.: Questions from audience

12:45 – 1:45 p.m.: Lunch (Cypress Foyer)

1:45 – 3:30 p.m.: Free time



The Alexander Hamilton Institute
for the Study of Western Civilization

2:00-4:00 Meeting of AHI Board of Directors (Cedar Room)
3:30--4:00 p.m.: Refreshments (Cypress Room)
4:00 -5:45 p.m.--Session III: “Marriage and the Obergefell Case: Majority and Minority Opinions”
4:00 – 5:15 p.m.: Panel Discussion (Cypress Room)
5:15 - 5:45 p.m.: Questions from audience
6:10 p.m.: Conferees gather at Front Desk for bus transport to AHI
6:30-7:00 p.m.: Reception at AHI
7:00 – 9:30 p.m: Directors’ Dinner **at the headquarters of the AHI** in Clinton, NY
9:30 p.m.: Return by bus to Turning Stone
9:30p.m. – midnight: Hospitality Suite (4th Floor VIP Room)

Saturday, 16 April 2016:

7:30 – 8:30 a.m.: Continental Breakfast (Cypress Room)
8:45-10:30 a.m. Session IV: “The Open Society in the Age of Terror”
8:45 – 10:00 a.m.: Panel Discussion (Cypress Room)
10:00- 10:30 a.m.: Questions from audience
10:30 – 11:00 a.m.: Break (Refreshments)
11:00-12:45 p.m. Session V: “The Campus: Open Curricula; Closing Minds”
11:00 – 12:15 p.m.: Panel Discussion (Cypress Room)
12:15- 12:45 p.m.: Questions from participating students
12:45 – 1:45 p.m.: Lunch (Event Center Atrium)
1:45 – 3:00 p.m.: free time
2:30-3:00 p.m. Refreshments (Cypress Room)
3:00 p.m.-4:45 p.m. Session VI: “Borders: Bridges, Gates, or Walls?”
3:00 – 4:15 p.m.: Panel Discussion (Cypress Room)
4:15 - 4:45 p.m.: Questions from audience
6:00 p.m. – Conference concludes with Barbecue Buffet
7:30 – midnight: Hospitality Suite (4th Floor VIP Room)

Sunday, 17 April 2015:

Breakfast and departure at your convenience.

List of Participants

Keynote:



The Alexander Hamilton Institute
for the Study of Western Civilization

Keynote Speaker: Dr. Roger Pilon Vice President for Legal Affairs, Cato Institute and Publisher, *Cato Supreme Court Review*

Discussion Leader:

David Frisk, Resident Fellow, Alexander Hamilton Institute

Conferees:

Leah Bradshaw, Professor, Department of Political Science, Brock University, Canada

H. Lee Cheek, Dean of Social Sciences and Professor of Political Science, East Georgia State College

Justin Dyer, Associate Professor, Department of Political Science and Director, Kinder Institute on Constitutional Democracy, University of Missouri.

Ted Eismeier, Professor Emeritus, Department of Government, Hamilton College

Janice Hauge, Associate Professor of Economics, University of North Texas

Pamela Jensen, Professor Emerita, Department of Political Science, Kenyon College

Michael Kimmage, Associate Professor of History, Catholic University, Catholic University (pending)

Beth L'Arrive, Visiting Assistant Professor, Department of Political Science, Colgate University

Tillman Nechtman, Associate Professor and Chairman, Department of History, Skidmore College

Brent F. Nelsen, Professor, Department of Political Science, Furman University

Juliana Pilon, Senior Fellow, Alexander Hamilton Institute and former director of the Center for Culture and Security at the Institute of World Politics in Washington, D.C.

Roger Pilon Vice President for Legal Affairs, Cato Institute and Publisher, *Cato Supreme Court Review*

Gregory Smith, Professor of Political Science, Trinity College

Gregory Weiner, Assistant Professor of Political Science, Assumption College

Readings: Ninth Annual Carl B. Menges Colloquium, April 14-16, 2016
Turning Stone Resort, Verona, New York

Session I: “Tolerance, Toleration, and the Liberal Tradition”

1. Definitions of Tolerance from the *Oxford English Dictionary*
2. John Locke, “A Letter Concerning Toleration,” in Mark Goldie, ed., *A Letter Concerning Toleration and Other Writings* (Indianapolis: Liberty Fund, 2010 [1689])
3. Robert Weissberg, *Pernicious Tolerance: How Teaching to 'Accept Differences' Undermines Civil Society* (New Brunswick, NJ: Transaction Publishers, 2008), 1-13.
4. Perez Zagorin, *How the Idea of Religious Toleration Came to the West* (Princeton, NJ: Princeton University Press, 2003), 289-311.
5. Michael Walzer, *On Toleration* (New Haven: Yale University Press, 1997), 93-112.

Session II: “The Open Society: For and Against”

1. John Stuart Mill, *On Liberty* (1859), ch. 2, <http://oll.libertyfund.org/titles/347>
2. Karl Popper, *The Open Society and Its Enemies*, vol. I: *The Spell of Plato* (London: George Routledge & Sons, 1943), pp. 74-77, 149-177.
3. Alfred Cobban, “The Open Society: A Reconsideration,” *Political Science Quarterly* 69: 1 (March, 1954):119-126.
4. Willmoore Kendall, “The 'Open Society' and Its Fallacies,” *American Political Science Review* 54 (December 1960): 972-79
5. F. A. Hayek, *Law Legislation and Liberty*, vol. II: *The Mirage of Social Justice* (Chicago: University of Chicago Press, 1976), pp. 133-152.

Session III: “Marriage and the Obergefell Case: Majority and Minority Opinions”

1. Elizabeth Fox-Genovese, *Marriage: The Dream That Refuses to Die* (Wilmington, DE: ISI Books, 2008), pp. 109-127.
2. Supreme Court of the United States, *Obergefell v. Hodges*, 576 U.S. (2015), Majority and Minority Opinions

Session IV: “The Open Society in the Age of Terror”

1. Mark Tushnet, “Controlling Executive Power in the War on Terrorism,” *Harvard Law Review* 118: 8 (June, 2005):2673-82
2. John Gray, “The Moving Target,” *New York Review of Books*, 5 October, 2006
3. Richard Posner, *Not a Suicide Pact* (New York: Oxford University Press, 2006), pp. 127-157.
4. Floyd Abrams, *Friend of the Court: On the Front Lines with the First Amendment* (New Haven: Yale University Press, 2013), pp. 163-171.
5. Michael B. Mukasey, “Symposium Address, 'Safe and Surveilled: Former U.S. Attorney General Michael B. Mukasey on the NSA, Wiretapping, and PRISM,' ” *National Security Law Journal* 3: 196 (2015): 196-209.

Session V: The Campus: Open Curricula, Closing Minds

1. Richard M. Weaver, *Visions of Order: The Cultural Crisis of Our Time* (Baton Rouge, LA: Louisiana State University Press, 1964), pp. 113-133.
2. Allan Bloom, *The Closing of the American Mind* (Ithaca, NY: Cornell University Press, 1987), 336-56.
3. Kwame Anthony Appiah, "The Multiculturalist Misunderstanding," *New York Review of Books*, 9 October, 1997
4. Roger Kimball, *The Fortunes of Permanence: Culture and Anarchy in an Age of Amnesia* (South Bend, IN: St. Augustine's Press, 2012), 46-72.
5. Michael Austin, "The Pathology of Professors," *National Review*, 30 November 2015.

Session VI: Borders: Bridges, Gates, or Walls?

1. Frederick D. Wilhelmsen and Willmoore Kendall, "Cicero and The Politics of The Public Orthodoxy," *Intercollegiate Review* 5 (Winter 1968-69)
2. Roger Scruton, *The West and the Rest: Globalization and the Terrorist Threat* (Wilmington, DE: ISI Books, 2002), pp. 125-156.
3. Christopher Jencks, "The Immigration Charade," *New York Review of Books*, Sept. 27, 2007.
4. Peter Skerry, "The Muslim-American Muddle," *National Interest*, no. 9, (Fall, 2011).
5. "Why Europe Is Conflicted Over Immigration," *Stratfor Global Intelligence*, 9 September 2015.
6. Bret Stephens, "The Cologne Portent," *Wall Street Journal*, 11 January 2016

Oxford English Dictionary | The definitive record of the English language

tolerance, *n.*

Pronunciation: /'tɒlərəns/

Forms: Also ME–15 **toll-**.

Frequency (in current use):

Etymology: < French *tolérance* (14th cent. in Hatzfeld & Darmesteter), < rare Latin *tolerāntia*, < *tolerāre* to TOLERATE *v.*: see **-ANCE** *suffix*. But from 16th cent. probably directly referred to the Latin.

†1.

a. The action or practice of enduring or sustaining pain or hardship; the power or capacity of enduring; endurance. *Obs.*

1412–20 LYDGATE tr. *Hist. Troy* II. 7014 Riȝt so convenient Is to þe wyse..with suffraunce, In al his port to haue tolleraunce.

1603 P. HOLLAND tr. Plutarch *Morals* 230 Sage counsell and wisdome..in dangers and travels, we tearme tolerance, patience and fortitude.

1653 tr. S. Przykowski *Dissertatio de Pace* v. 30 [They] have omitted nothing to the most certain hope of Salvation, and to all the toyl of a pious life, and to the tolerance of Christs Cross.

1814 W. TAYLOR in *Monthly Mag.* XXXVII. 527 We do not ascribe superior tolerance to the protestant dissenters for enduring more patiently their privations.

b. *Physiol.* The power, constitutional or acquired, of enduring large doses of active drugs, or of resisting the action of poison, etc.; hence diminution in the response to a drug after continued use. Also const. *to*. Cf. TOLERANT *adj.* c, TOLERATE *v.* 1b, TOLERATION *n.* 1b.

1875 H. C. WOOD *Treat. Therapeutics* (1879) 153 By the aid of opiates and careful dilution a species of tolerance was often obtained for these heroic doses.

1876 R. BARTHOLOW *Pract. Treat. Materia Med.* II. 213 When emetic doses even are continued in some subjects, this effect finally ceases, and the drug is borne without producing any gastric symptoms. To this state has been applied the term tolerance.

1890 J. S. BILLINGS *National Med. Dict.* II Tolerance, power of endurance whereby a dangerous drug can be safely taken in excessive doses.

1951 A. GROLLMAN *Pharmacol. & Therapeutics* xviii. 362 A certain degree of tolerance to the nitrites is gained by man from their repeated administration. Especially is this true as regards the headache which they often produce.

1974 M. C. GERALD *Pharmacol.* iii. 62 For the heroin addict, tolerance represents a very real problem, for he is obliged to take larger and larger doses to get the same psychological response.

1982 *Sci. Amer.* Mar. 112/3 The body may accumulate the drug or develop a tolerance to it.

3. The action or practice of tolerating; toleration; the disposition to be patient with or indulgent to the opinions or practices of others; freedom from bigotry or undue severity in judging the conduct of others; forbearance; catholicity of spirit.

1765 R. LOWTH *Let. to Warburton* 13 It admits..of no tolerance, no intercommunity of various sentiments, not the least difference of opinion.

1809–10 S. T. COLERIDGE *Friend* (1865) 56 The only true spirit of tolerance consists in our conscientious toleration of each other's intolerance.

1841–8 F. MYERS *Catholic Thoughts* II. III. §5. 15 It may not accord with the undisciplined instincts of some to associate the tolerance of Imperfection in connection with the instrumentality of Perfection.

1868 A. HELPS *Realmah* (1876) vi. 89 Tolerance, or to use a more Christian word, charity.

1902 C. LENNOX *James Chalmers* (1905) xiv. 70/1 With the same large tolerance he satisfied the curiosity of the astonished black.

John Locke



*A Letter
Concerning
Toleration.*



Honoured Sir,

Since you are pleased to inquire what are my Thoughts about the mutual Toleration of Christians in their different Professions of Religion, I must needs answer you freely, That I esteem that Toleration to be the chief Characteristical Mark of the True Church.⁶ For whatsoever some People boast of the Antiquity of Places and Names, or of the Pomp of their outward Worship; Others, of the Reformation of their Discipline; All, of the Orthodoxy of their Faith; (for every one is Orthodox to himself); these things, and all others of this nature, are much rather Marks of Men

6. "the True Church": arguably, the indefinite article would better represent Locke's view of churches. That toleration is a "mark" of the church is a strong claim. The Reformation saw extensive theological debate over which "marks" or "notes" were the defining characteristics of the (or a) true church.

striving for Power and Empire over one another, than of the Church of Christ. Let any one have never so true a Claim to all these things, yet if he be destitute of Charity, Meekness, and Good-will in general towards all Mankind; even to those that are not Christians, he is certainly yet short of being a true Christian himself. *The Kings of the Gentiles exercise Lordship over them*, said our Saviour to his Disciples, *but ye shall not be so*, Luke 22:25. The Business of True Religion is quite another thing. It is not instituted in order to the erecting of an external Pomp, nor to the obtaining of Ecclesiastical Dominion, nor to the exercising of Compulsive Force; but to the regulating of Mens Lives according to the Rules of Vertue and Piety. Whosoever will list himself under the Banner of Christ, must in the first place, and above all things, make War upon his own Lusts and Vices.⁷ It is in vain for any Man to usurp the Name of Christian, without Holiness of Life, Purity of Manners, and Benignity and Meekness of Spirit.⁸

Thou when thou art converted, strengthen thy Brethren, said our Lord to Peter, Luke 22:32. It would indeed be very hard for one that appears careless about his own Salvation, to persuade me that he were extremely concern'd for mine. For it is impossible that those should sincerely and heartily apply themselves to make other People Christians, who have not really embraced the Christian Religion in their own Hearts. If the Gospel and the Apostles may be credited, no Man can be a Christian without *Charity*, and without *that Faith which works, not by Force, but by Love*.⁹ Now I appeal to the Consciences of those that persecute, torment, destroy, and kill other Men upon pretence of Religion, whether they do it out of Friendship and Kindness towards them, or no: And I shall then indeed, and not till then, believe they do so, when I shall see those fiery Zealots

correcting, in the same manner, their Friends and familiar Acquaintance, for the manifest Sins they commit against the Precepts of the Gospel; when I shall see them prosecute with Fire and Sword the Members of their own Communion that are tainted with enormous Vices, and without Amendment are in danger of eternal Perdition; and when I shall see them thus express their Love and Desire of the Salvation of their Souls, by the infliction of Torments, and exercise of all manner of Cruelties. For if it be out of a Principle of Charity, as they pretend, and Love to Mens Souls, that they deprive them of their Estates, maim them with corporal Punishments, starve and torment them in noisom Prisons, and in the end even take away their Lives;¹⁰ I say, if all this be done meerly to make Men Christians, and procure their Salvation, Why then do they suffer *Whoredom, Fraud, Malice, and such like enormities*, Romans 1; which (according to the Apostle) manifestly rellish¹¹ of Heathenish Corruption, to predominate so much and abound amongst their Flocks and People? These, and such like things, are certainly more contrary to the Glory of God, to the Purity of the Church, and to the Salvation of Souls, than any conscientious Dissent¹² from Ecclesiastical Decisions, or Separation from Publick Worship, whilst accompanied with Innocency of Life. Why then does this burning Zeal for God, for the Church, and for the Salvation of Souls; burning, I say, literally, with Fire and Faggot; pass by those moral Vices and Wickednesses, without any Chastisement, which are acknowledged by all Men to be diametrically opposite to the Profession of Christianity; and bend all its Nerves either to the introducing of Ceremonies, or to the establishment of Opinions, which for the most part are about nice¹³ and intricate Matters, that exceed the Capacity of ordinary Understandings? Which of the Parties contending about these things is in the right, which of them is guilty of Schism or Heresie; whether those that domineer or those that suffer; will then at last be manifest, when the Cause of their Separation comes to be judged of. He certainly that follows Christ,

10. The savagery described here points to Louis XIV's persecution of the Huguenots. See note 17, p. 11, and note 146, p. 55.

11. *rellish*: smell.

12. Pople omits: "however erroneous."

13. *nice*: subtle.

7. "Vices": alternatively, "pride." The appearance of "alternatively," "added by Pople," and "Pople omits" in these footnotes indicates places where Pople deviates from Locke's Latin. See pp. xxx-xxx1.

8. The first edition had included a further scriptural quotation, absent in Locke's *Epistola*: "Let every one that nameth the name of Christ depart from iniquity" (2 Timothy 2:19). If its inclusion in the first edition was inauthentic, what led Pople to be more scrupulous in the second? It has been suggested that this is one of two amendments that point to Locke's own hand in the second edition. See note 69, p. 30.

9. Galatians 5:6.

embraces his Doctrine, and bears his Yoke, tho he forsake both Father and Mother, separate from the Publick Assembly and Ceremonies of his Country, or whomsoever, or whatsoever else he relinquishes, will not then be judged an Heretick.

Now, tho' the Divisions that are amongst Sects should be allowed to be never so obstructive of the Salvation of Souls; yet nevertheless *Adultery, Fornication, Uncleanness, Lasciviousness, Idolatry, and such like things, cannot be denied to be Works of the Flesh*; concerning which the Apostle has expressly declared, that *they who do them shall not inherit the Kingdom of God*. Galatians 5. Whosoever therefore is sincerely solicitous about the Kingdom of God, and thinks it his Duty to endeavour the Enlargement of it amongst Men, ought to apply himself with no less care and industry to the rooting out of these Immoralities, than to the Extirpation of Sects.¹⁴ But if any one do otherwise, and whilst he is cruel and implacable towards those that differ from him in Opinion, he be indulgent to such Iniquities and Immoralities as are unbecoming the Name of a Christian, let such a one talk never so much of the Church, he plainly demonstrates by his Actions, that 'tis another Kingdom¹⁵ he aims at, and not the Advancement of the Kingdom of God.

That any Man should think fit to cause another Man, whose Salvation he heartily desires, to expire in Torments, and that even in an unconverted estate; would, I confess, seem very strange to me; and, I think, to any other also. But no body, surely, will ever believe that such a Carriage can proceed from Charity, Love, or Good-will. If any one maintain that Men ought to be compelled by Fire and Sword to profess certain Doctrines, and conform to this or that exterior Worship, without any regard had unto their Morals; if any one endeavour to convert those that are Erroneous unto the Faith, by forcing them to profess things that they do not believe, and allowing them to practise things that the Gospel does not permit; it cannot be doubted indeed but such a one is desirous to have a numerous

14. This passage, with its insistence that it is a false priority to discipline worship rather than immoral behavior, is characteristic of the Reformation of Manners movement that dominated the 1690s.

15. "another Kingdom": i.e., earthly dominion by priests.

Assembly joyned in the same Profession with himself: But that he principally intends by those means to compose a truly Christian Church, is altogether incredible. It is not therefore to be wondered at, if those who do not really contend for the Advancement of the true Religion, and of the Church of Christ, make use of Arms that do not belong to the Christian Warfare.¹⁶ If, like the Captain of our Salvation, they sincerely desired the Good of Souls, they would tread in the Steps, and follow the perfect Example of that Prince of Peace; who sent out his Soldiers to the subduing of Nations, and gathering them into his Church, not armed with the Sword, or other Instruments of Force, but prepared with the Gospel of Peace, and with the Exemplary Holiness of their Conversation. This was his Method. Tho' if Infidels were to be converted by force, if those that are either blind or obstinate were to be drawn off from their Errors by Armed Soldiers, we know very well that it was much more easie for Him to do it, with Armies of Heavenly Legions, than for any Son of the Church, how potent soever, with all his Dragoons.¹⁷

The Toleration of those that differ from others in Matters of Religion, is so agreeable to the Gospel of Jesus Christ, and to the genuine Reason of Mankind, that it seems monstrous for Men to be so blind, as not to perceive the Necessity and Advantage of it,¹⁸ in so clear a Light. I will not here tax the Pride and Ambition of some, the Passion and uncharitable Zeal of others. These are Faults from which Humane Affairs can perhaps scarce ever be perfectly freed; but yet such as no body will bear the plain Imputation of, without covering them with some specious Colour; and so pretend to Commendation, whilst they are carried away by their own irregular Passions.¹⁹ But however, that some may not colour their spirit of Persecution and unchristian Cruelty, with a Pretence of Care of the Publick Weal, and Observation of the Laws; and that others, under pretence

16. 2 Corinthians 10:4.

17. *Dragons*: an allusion to the French *dragonnades*, the quartering of soldiers on Huguenot households to terrorize them into conversion. The Latin has *cohortes*.

18. "as not . . . it": added by Popple, where Locke has just "blind in so clear a light."

19. "whilst they . . . Passions": added by Popple.

of Religion, may not seek Impunity for their Libertinism and Licentiousness;²⁰ in a word, that none may impose either upon himself or others, by the Pretences of Loyalty and Obedience to the Prince, or of Tenderness and Sincerity in the Worship of God; I esteem it above all things necessary to distinguish exactly the Business of Civil Government from that of Religion, and to settle the just Bounds that lie between the one and the other. If this be not done, there can be no end put to the Controversies that will be always arising, between those that have, or at least pretend to have, on the one side, a Concernment for the Interest of Mens Souls, and on the other side, a Care of the Commonwealth.

The Commonwealth seems to me to be a Society of Men constituted only for the procuring, preserving, and advancing of their own *Civil Interests*.²¹

Civil Interests I call Life, Liberty, Health, and Indolency of Body;²² and the Possession of outward things, such as Money, Lands, Houses, Furniture, and the like.

It is the Duty of the Civil Magistrate, by the impartial Execution of equal Laws, to secure unto all the People in general, and to every one of his Subjects in particular, the just Possession of these things belonging to this Life. If any one presume to violate the Laws of Publick Justice and Equity, established for the Preservation of these things,²³ his Presumption is to be check'd by the fear of Punishment, consisting in the Deprivation or Diminution of those Civil Interests, or Goods, which otherwise he might and ought to enjoy. But seeing no Man does willingly suffer himself to be punished by the Deprivation of any part of his Goods, and much less of his Liberty or Life, therefore is the Magistrate armed with the Force and Strength of all his Subjects, in order to the punishment of those that violate any other Man's Rights.

Now that the whole Jurisdiction of the Magistrate reaches only to these civil Concernments; and that all Civil Power, Right, and Dominion,

20. "Impunity . . . Licentiousness": alternatively, "licence for their immorality and impunity for their misdeeds."

21. "Civil Interests": alternatively, "civil goods" (*bona civilia*).

22. "Indolency of Body": alternatively, "freedom from pain."

23. "established . . . things": added by Popple.

is bounded and confined to the only care of promoting these things; and that it neither can nor ought in any manner to be extended to the Salvation of Souls; these following Considerations seem unto me abundantly to demonstrate.

First, Because the Care of Souls is not committed to the Civil Magistrate any more than to other Men. It is not committed unto him, I say, by God; because it appears not that God has ever given any such Authority to one Man over another, as to compell any one to his Religion. Nor can any such Power be vested in the Magistrate by the *Consent of the People*;²⁴ because no man can so far abandon the care of his own Salvation, as blindly to leave it to the choice of any other, whether Prince or Subject, to prescribe to him what Faith or Worship he shall embrace. For no Man can, if he would, conform his Faith to the Dictates, of another. All the Life and Power of true Religion consists in the inward and full perswasion of the mind: And Faith is not Faith without believing.²⁵ Whatever Profession we make, to whatever outward Worship we conform, if we are not fully satisfied in our mind that the one is true, and the other well pleasing unto God; such Profession and such Practice, far from being any furtherance, are indeed great Obstacles to our Salvation. For in this manner, instead of expiating other Sins by the exercise of Religion; I say, in offering thus unto God Almighty such a Worship as we esteem to be displeasing unto him, we add unto the number of our other sins those also of Hypocrisie, and Contempt of his Divine Majesty.

In the second place. The care of Souls cannot belong to the Civil Magistrate, because his Power consists only in outward force: But true and saving Religion consists in the inward perswasion of the Mind; without which nothing can be acceptable to God. And such is the nature of the Understanding, that it cannot be compell'd to the belief of any thing by outward Force. Confiscation of Estate, Imprisonment, Torments, nothing of that Nature can have any such Efficacy as to make Men change the inward Judgment that they have framed of things.

It may indeed be alledged, that the Magistrate may make use of Argu-

24. "by the Consent of the People": alternatively, "by men" (*ab hominibus*).

25. "All the Life . . . believing": alternatively, "It is faith that gives force and efficacy to the true religion that brings salvation."

ments, and thereby draw the Heterodox into the way of Truth, and procure their Salvation. I grant it. But this is common to him with other Men. In teaching, instructing, and redressing the Erroneous by Reason, he may certainly do what becomes any good Man to do. Magistracy does not oblige him to put off either Humanity or Christianity. But it is one thing to perswade, another to command: One thing to press with Arguments, another with Penalties. This the Civil Power alone has a Right to do: to the other Good-will is Authority enough. Every Man has Commission to admonish, exhort, convince another of Error; and by reasoning to draw him into Truth. But to give Laws, receive Obedience, and compel with the Sword, belongs to none but the Magistrate. And upon this ground I affirm, that the Magistrate's Power extends not to the establishing of any Articles of Faith, or Forms of Worship, by the force of his Laws. For Laws are of no force at all without Penalties, and Penalties in this case are absolutely impertinent; because they are not proper²⁶ to convince the mind. Neither the Profession of any Articles of Faith, nor the Conformity to any outward Form of Worship (as has already been said) can be available to the Salvation of Souls; unless the Truth of the one, and the acceptableness of the other unto God, be thoroughly believed by those that so profess and practise. But Penalties are no ways capable to produce such Belief. It is only Light and Evidence that can work a change in Mens Opinions. And that Light can in no manner proceed from corporal Sufferings, or any other outward Penalties.²⁷

In the third place. The care of the Salvation of Mens Souls cannot belong to the Magistrate; because, though the rigour of Laws and the force of Penalties were capable to convince and change Mens minds, yet would not that help at all to the Salvation of their Souls. For there being but one Truth, one way to heaven; what hopes is there that more Men would be led into it, if they had no other Rule to follow but the Religion of the Court; and were put under a necessity to quit the Light of their own Reason; to oppose the Dictates of their own Consciences; and blindly to resign up themselves to the Will of their Governors, and to the

26. "and Penalties . . . proper": alternatively, "while if penalties are applied they are obviously futile and inappropriate."

27. "or any . . . Penalties": added by Popple.

Religion, which either Ignorance, Ambition, or Superstition had chanced to²⁸ establish in the Countries where they were born? In the variety and contradiction of Opinions in Religion, wherein the Princes of the World are as much divided as in their Secular Interests, the narrow way would be much straitned.²⁹ One Country alone would be in the right, and all the rest of the World would be put under an Obligation of following their Princes in the ways that lead to Destruction.³⁰ And that which heightens the absurdity, and very ill suits the Notion of a Deity, Men would owe their eternal Happiness or Misery to the places of their Nativity.

These Considerations, to omit many others that might have been urged to the same purpose, seem unto me sufficient to conclude that all the Power of Civil Government relates only to Mens Civil Interests; is confined to the care of the things of this World; and hath nothing to do with the World to come.

Let us now consider what a Church is. A Church then I take to be a voluntary Society³¹ of Men, joining themselves together of their own accord, in order to the publick worshipping of God, in such a manner as they judge acceptable to him, and effectual to the Salvation of their Souls.

I say it is a free and voluntary Society. No body is born a Member of any Church. Otherwise the Religion of Parents would descend unto Children, by the same right of Inheritance as their Temporal Estates, and every one would hold his Faith by the same Tenure he does his Lands; than which nothing can be imagined more absurd. Thus therefore that matter stands. No Man by nature is bound unto any particular Church or Sect, but every one joins himself voluntarily to that Society in which he believes he has found that Profession and Worship which is truly acceptable unto God. The hopes of Salvation, as it was the only cause of his entrance into that Communion, so it can be the only reason of his stay there. For if afterwards he discover any thing either erroneous in the Doc-

28. "which either . . . chanced to": added by Popple.

29. Matthew 7:14.

30. "and all . . . Destruction": added by Popple.

31. "voluntary Society": alternatively, "free society" (*societas libera*); the next paragraph has "free and voluntary Society" (*societatem liberam et voluntariam*). Locke's definition is striking; historically, since the fourth century, the Christian churches had scarcely been "voluntary" societies.

trine, or incongruous in the Worship of that Society to which he has join'd himself; Why should it not be as free for him to go out, as it was to enter? No Member of a Religious Society can be tied with any other Bonds but what proceed from the certain expectation of eternal Life. A Church then is a Society of Members voluntarily uniting to this end.

It follows now that we consider what is the Power of this Church and unto what Laws it is subject.

Forasmuch as no Society, how free soever, or upon whatsoever slight occasion instituted, (whether of Philosophers for Learning, of Merchants for Commerce, or of men of leisure for mutual Conversation and Discourse), No Church or Company, I say, can in the least subsist and hold together, but will presently dissolve and break to pieces, unless it be regulated by some Laws, and the Members all consent to observe some Order. Place, and time of meeting must be agreed on; Rules for admitting and excluding Members must be establish'd. Disjunction of Officers, and putting things into a regular Course, and such like, cannot be omitted. But since the joyning together of several Members into this Church-Society, as has already been demonstrated, is absolutely free and spontaneous, it necessarily follows, that the Right of making its Laws can belong to none but the Society it self; or at least (which is the same thing) to those whom the Society by common consent has authorised thereunto.

Some perhaps may object, that no such Society can be said to be a true Church, unless it have in it a Bishop, or Presbyter,³² with Ruling Authority derived from the very Apostles, and continued down unto the present times by an uninterrupted Succession.

To these I answer. *In the first place*, Let them shew me the Edict by which Christ has imposed that Law upon his Church.³³ And let not any man think me impertinent, if in a thing of this consequence, I require that the Terms of that Edict be very express and positive. For the Promise he

32. *Presbyter*: Locke means the Calvinist system of church government by consistories of ministers and elders.

33. Locke ignores the *locus classicus* for precisely this "Edict," Matthew 16:18-19: "Thou art Peter, and upon this rock I will build my church. . . . And I will give unto thee the keys of the kingdom of heaven: and whatsoever thou shalt bind on earth shall be bound in heaven." See next note.

has made us, that *whosoever two or three are gathered together in his Name, he will be in the midst of them*, Matthew 18:20, seems to imply the contrary. Whether such an Assembly want any thing necessary to a true Church, pray do you consider. Certain I am, that nothing can be there wanting unto the Salvation of Souls; Which is sufficient to our purpose.

Next, Pray observe how great have always been the Divisions amongst even those who lay so much stress upon the Divine Institution, and continued Succession of a certain Order of Rulers in the Church.³⁴ Now their very Dissention unavoidably puts us upon a necessity of deliberating, and consequently allows a Liberty of choosing that which upon consideration we prefer.

And in the last place, I consent that these men have a Ruler of their Church, established by such a long Series of Succession as they judge necessary; provided I may have liberty at the same time to join my self to that Society, in which I am perswaded those things are to be found which are necessary to the Salvation of my Soul. In this manner Ecclesiastical Liberty will be preserved on all sides, and no man will have a Legislator imposed upon him, but whom himself has chosen.

But since men are so solicitous about the true Church, I would only ask them, here by the way, if it be not more agreeable to the Church of Christ, to make the Conditions of her Communion consist in such things, and such things only, as the Holy Spirit has in the Holy Scriptures declared, in express Words, to be necessary to Salvation; I ask, I say, whether this be not more agreeable to the Church of Christ, than for men to impose their own Inventions and Interpretations upon others, as if they were of Divine Authority; and to establish by Ecclesiastical Laws, as absolutely necessary to the Profession of Christianity, such things as the Holy Scriptures do either not mention, or at least not expressly com-

34. Episcopalians believed in the *apostolic succession*, namely that authority was conveyed to them because there was an unbroken succession of bishops from the apostles. In its strongest form, this was the doctrine of the divine right of episcopacy. Catholics additionally believed in a Petrine succession of the papacy from the first pope, St. Peter. Given Locke's recent reference to "presbyters," his targets here also include the further claim that presbyters have exclusive succession from the apostles.

mand. Whoever requires those things in order to³⁵ Ecclesiastical Communion, which Christ does not require in order to life Eternal; he may perhaps indeed constitute a Society accommodated to his own Opinion, and his own Advantage; but how that can be called the Church of Christ, which is established upon Laws that are not his, and which excludes such Persons from its Communion as he will one day receive into the Kingdom of Heaven, I understand not. But this being not a proper place to enquire into the marks of the true Church,³⁶ I will only mind³⁷ those that contend so earnestly for the Decrees of their own Society, and that cry out continually the Church, the Church, with as much noise, and perhaps upon the same Principle, as the *Ephesian* Silversmiths did for their *Diana*;³⁸ this, I say, I desire to mind them of, That the Gospel frequently declares that the true Disciples of Christ must suffer Persecution; but that the Church of Christ should persecute others, and force others by Fire and Sword, to embrace her Faith and Doctrine, I could never yet find in any of the Books of the New Testament.

The end of a Religious Society (as has already been said) is the Publick Worship of God, and by means thereof the acquisition of Eternal Life. All Discipline ought therefore to tend to that End, and all Ecclesiastical Laws to be thereunto confined. Nothing ought, nor can be transacted in this Society, relating to the Possession of Civil and Worldly Goods. No Force is here to be made use of, upon any occasion whatsoever. For Force belongs wholly to the Civil Magistrate, and the Possession of all outward Goods is subject to his Jurisdiction.

But it may be asked, By what means then shall Ecclesiastical Laws be established, if they must be thus destitute of all compulsive Power. I answer, They must be established by means suitable to the Nature of such Things, whereof the external Profession and Observation, if not proceeding from a thorow Conviction and Approbation of the Mind, is alto-

35. *in order to*: "for."

36. See note 6, p. 7.

37. *mind*: remind.

38. Acts 19. The silversmiths' livelihood depended on the cult of Diana, and accordingly they were angry at the arrival of Christianity. The cry "Great is Diana" was commonly taken to epitomize self-interest masquerading as godliness. Charles Blount's deistic tract of 1680 is titled *Great is Diana of the Ephesians*.

gether useless and unprofitable. The Arms by which the Members of this Society are to be kept within their Duty, are Exhortations, Admonitions, and Advices. If by these means the Offenders will not be reclaimed, and the Erroneous convinced, there remains nothing farther to be done, but that such stubborn and obstinate Persons, who give no ground to hope for their Reformation, should be cast out and separated from the Society.³⁹ This is the last and utmost Force of Ecclesiastical Authority. No other Punishment can thereby be inflicted, than that the relation ceasing between the Body and the Member which is cut off, the Person so condemned ceases to be a part of that Church.

These things being thus determined, let us inquire in the next place, how far the Duty of Toleration extends; and what is required from every one by it.

And first, I hold, That no Church is bound by the Duty of Toleration to retain any such Person in her Bosom, as, after Admonition, continues obstinately to offend against the Laws of the Society. For these being the Condition of Communion, and the Bond of the Society; If the Breach of them were permitted without any Animadversion, the Society would immediately be thereby dissolved. But nevertheless, in all such Cases, care is to be taken that the Sentence of Excommunication, and the Execution thereof, carry with it no rough usage of Word or Action, whereby the ejected Person may any wise be damnified⁴⁰ in Body or Estate. For all Force (as has often been said) belongs only to the Magistrate; nor ought any private Persons, at any time, to use Force, unless it be in Self-defence against unjust Violence. Excommunication neither does, nor can deprive the excommunicated Person of any of those Civil Goods that he formerly possessed. All those things belong to the Civil Government, and are under the Magistrate's Protection. The whole Force of Excommunication consists only in this, that the Resolution of the Society in that respect being declared, the Union that was between the Body and some

39. This is what churches call excommunication. Historically, and in Locke's time, excommunication by the established church carried civil penalties. Locke argues that while churches have a right to control their membership, no civil penalties should be attached to excommunication.

40. *damnified*: injured.

Member comes thereby to be dissolved; and that Relation ceasing; the participation of some certain things, which the Society communicated to its Members, and unto which no Man has any Civil Right, comes also to cease. For there is no Civil Injury done unto the excommunicated Person, by the Church-Minister's refusing him that Bread and Wine, in the Celebration of the Lord's Supper, which was not bought with his, but other mens Money.

Secondly, No private Person has any Right, in any manner, to prejudice another Person in his Civil Enjoyments, because he is of another Church or Religion. All the Rights and Franchises⁴¹ that belong to him as a Man, or as a Denison,⁴² are inviolably to be Preserved to him. These are not the Business of Religion. No Violence nor Injury is to be offered him, whether he be Christian or Pagan. Nay, we must not content our selves with the narrow Measures of bare Justice. Charity, Bounty, and Liberty must be added to it. This the Gospel enjoyns; this Reason directs; and this that natural Fellowship we are born into requires of us. If any man err from the right way, it is his own Misfortune, no Injury to thee: Nor therefore art thou to punish him in the things of this Life, because thou supposest he will be miserable in that which is to come.

What I say concerning the mutual Toleration of private Persons differing from one another in Religion, I understand also of particular Churches; which stand as it were in the same relation to each other as private Persons among themselves; nor has any one of them any manner of Jurisdiction over any other, no not even when the Civil Magistrate (as it sometimes happens) comes to be of this or the other Communion. For the Civil Government can give no new Right to the Church, nor the Church to the Civil Government. So that whether the Magistrate joyn himself to any Church, or separate from it, the Church remains always as it was before, a free and voluntary Society. It neither acquires the Power of the Sword by the Magistrate's coming to it, nor does it lose the Right of Instruction and Excommunication by his going from it. This is the fundamental and immutable Right of a spontaneous Society; that it has

41. *Franchises*: liberties.

42. "Denison": alternatively, "citizen."

power to remove any of its Members who transgress the Rules of its Institution. But it cannot, by the accession of any new Members, acquire any Right of Jurisdiction over those that are not joyned with it. And therefore Peace, Equity and Friendship, are always mutually to be observed by particular Churches, in the same manner as by private Persons, without any pretence of Superiority or Jurisdiction over one another.

~~That the thing may be made yet clearer by an Example, I suppose two Churches, the one of *Arminians*, the other of *Calvinists*,⁴³ residing in the City of *Constantinople*; Will any one say, that either of these Churches has Right to deprive the Members of the other of their Estates and Liberty,⁴⁴ (as we see practised elsewhere) because of their differing from it in some Doctrines or Ceremonies; whilst the *Turks* in the mean while silently stand by, and laugh to see with what inhumane Cruelty Christians thus rage against Christians? But if one of these Churches hath this Power of treating the other ill, I ask which of them it is to whom that Power belongs, and by what Right? It will be answered undoubtedly, That it is the Orthodox Church which has the Right of Authority over the Erroneous or Heretical. This is, in great and specious words, to say just nothing at all. For every Church is Orthodox to it self; to others, Erroneous or Heretical. Whatsoever any Church believes, it believes to be true; and the contrary thereunto it pronounces to be Error. So that the Controversie between these Churches about the Truth of their Doctrines, and the Purity of their Worship, is on both sides equal, nor is there any Judgment either at *Constantinople*, or elsewhere upon Earth, by whose Sentence it can be determined. The Decision of that Question belongs only to the Supreme Judge of all men, to whom also alone belongs the Punishment of the Erroneous. In the mean while, let those men consider how unanimously~~

43. "Arminians" and "Calvinists": alternatively "Remonstrants" and "Anti-Remonstrants." Popple here anglicizes Locke's text. Arminians derived their name from the Dutch theologian Jacob Arminius (1560–1609), who broke with the Calvinist doctrine of divine predestination to eternal life. By Locke's time, Arminians were called Remonstrants. The term *Arminian* was also regularly used in England for those who departed from Calvinism. A few lines later in this same paragraph, Locke's parenthetical comment "as we see practised elsewhere" hints at the persecution of Arminians by Calvinists in Holland.

44. Popple omits: "or punish them with exile or death."

they sin; Who, adding Injustice, if not to their Error, yet certainly to their Pride, do rashly and arrogantly take upon them to misuse the Servants of another Master, who are not at all accountable to them.

Nay further: If it could be manifest which of these two dissenting Churches were in the right way, there would not accrue thereby to the Orthodox any Right of destroying the other. For Churches have neither any Jurisdiction in worldly Matters, nor are Fire and Sword any proper Instruments wherewith to convince men's Minds of Error, and inform them of the Truth. Let us suppose, nevertheless, that the Civil Magistrate inclined to favour one of them, and to put his Sword into their Hands; that (by his consent) they might chastise the Dissenters as they pleased. Will any man say, that any Right can be derived unto a Christian Church over its Brethren, from a Turkish Emperor? An Infidel, who has himself no Authority to punish Christians for the Articles of their Faith, cannot confer such an Authority upon any Society of Christians, nor give unto them a Right, which he himself has not himself. This would be the Case at *Constantinople*.⁴⁵ And the Reason of the thing is the same in any Christian Kingdom. The Civil Power is the same in every place; nor can that Power, in the Hands of a Christian Prince, confer any greater Authority upon the Church, than in the Hands of a Heathen; which is to say, just none at all. Nevertheless, it is worthy to be observed, and lamented, that the most violent of these Defenders of the Truth, the Opposers of Errors, the Exclaimers against Schism, do hardly ever let loose this their Zeal for God, with which they are so warmed and inflamed, unless where they have the Civil Magistrate on their side. But so soon as ever Court favour has given them the better end of the Staff, and they begin to feel themselves the stronger,⁴⁶ then presently Peace and Charity are to be laid aside; otherwise they are religiously to be observed. Where they have not the Power to carry on Persecution, and to become Masters, there they desire

45: "This would . . . *Constantinople*": added by Popple.

46: "But so soon . . . stronger": alternatively, "But as soon as ever the magistrate's favour makes them the stronger." The colloquial phrase "the better end of the Staff" is Popple's addition. Locke here attacks the alliance between persecuting priests and authoritarian governments.

to live upon fair Terms, and preach up Toleration.⁴⁷ When they are not strengthened with the Civil Power, then they can bear most patiently and unmovedly the Contagion of Idolatry, Superstition and Heresie in their Neighbourhood; of which, in other Occasions, the Interest of Religion makes them to be extremely apprehensive. They do not forwardly attack those Errors which are in fashion at Court, or are countenanced by the Government. Here they can be content to spare their Arguments; which yet (with their leave) is the only right Method of propagating Truth; which has no such way of prevailing, as when strong Arguments and good Reason are joined with the softness of Civility, and good Usage.⁴⁸

No body therefore, in fine,⁴⁹ neither single Persons, nor Churches, nay, nor even Commonwealths, have any just Title to invade the Civil Rights and Worldly Goods of each other upon pretence of Religion. Those that are of another Opinion, would do well to consider with themselves how pernicious a Seed of Discord and War, how powerful a Provocation to endless Hatreds, Rapines, and Slaughters, they thereby furnish unto Mankind. No Peace and Security, no not so much as common Friendship, can ever be established or preserved amongst Men, so long as this Opinion prevails, That *Dominion is founded in Grace*,⁵⁰ and that Religion is to be propagated by force of Arms.

In the third Place, Let us see what the *Duty of Toleration* requires from those who are distinguished from the rest of Mankind, (from the Laity, as

47: "Where they . . . Toleration": added by Popple. While this passage has a general application, it had particular resonance in 1689, since the Church of England had in recent years blown hot and cold about tolerating dissenters, depending on its own circumstances. Under the shock of James II's Catholicizing policies, the church had offered to settle with dissenters, which resulted in the begrudging passage of the Toleration Act.

48: "Civility and good Usage": alternatively, "humanity and benevolence."
49: *in fine*: to conclude.

50: *Dominion is founded in Grace*: the doctrine that the authority of governors depends upon their adherence to true religion. When citing (and deploring) this dictum, Locke's contemporaries sometimes had radical Puritan zealots in mind, the "rule of the saints." But the doctrine was also attributed to Catholics. The papacy claimed the power to depose heretical princes, and Catholic princes claimed the power to coerce heretical minorities. Locke regards this doctrine as antinomian. See notes 127 and 128, p. 50.

they please to call us) by some *Ecclesiastical Character and Office*; whether they be Bishops, Priests, Presbyters, Ministers, or however else dignified or distinguished. It is not my Business to enquire here into the Original of the Power or Dignity of the Clergy. This only I say, That whencesoever their Authority be sprung, since it is Ecclesiastical, it ought to be confined within the Bounds of the Church, nor can it in any manner be extended to Civil Affairs; because the Church it self is a thing absolutely separate and distinct from the Commonwealth. The Boundaries on both sides are fixed and immovable. He jumbles Heaven and Earth together, the things most remote and opposite, who mixes these Societies; which are in their Original, End, Business, and in every thing, perfectly distinct, and infinitely different from each other. No man therefore, with whatsoever Ecclesiastical Office he be dignified, can deprive another man, that is not of his Church and Faith, either of Liberty, or of any part of his Worldly Goods, upon the account of that difference which is between them in Religion. For whatever is not lawful to the whole Church, cannot, by any Ecclesiastical Right, become lawful to any of its Members.

But *this is not all*. It is not enough that Ecclesiastical Men abstain from Violence and Rapine, and all manner of Persecution. He that pretends to be a Successor of the Apostles, and takes upon him the Office of Teaching, is obliged also to admonish his Hearers of the Duties of Peace and Good-will towards all men; as well towards the Erroneous, as the Orthodox; towards those that differ from them in Faith and Worship, as well as towards those that agree with them therein. And he ought industriously to exhort all men, whether private Persons or Magistrates, (if any such there be in his Church) to Charity, Meekness, and Toleration; and diligently endeavour to allay and temper all that Heat and unreasonable Averseness of Mind, which either any man's fiery Zeal for his own Sect, or the Craft⁵¹ of others, has kindled against Dissenters. I will not undertake to represent how happy and how great would be the Fruit, both in Church and State, if the Pulpits every where sounded with this Doctrine of Peace and Toleration; lest I should seem to reflect too severely upon

51. "Craft": The word *priestcraft* became fashionable in the 1690s. Locke uses it in his *Reasonableness of Christianity* (1695).

those Men whose Dignity I desire not to detract from, nor would have it diminished either by others or themselves. But this I say, That thus it ought to be. And if any one that professes himself to be a Minister of the Word of God, a Preacher of the Gospel of Peace, teach otherwise; he either understands not, or neglects the Business of his Calling, and shall one day give account thereof unto the Prince of Peace. If Christians are to be admonished that they abstain from all manner of Revenge, even after repeated Provocations and multiplied Injuries;⁵² how much more ought they who suffer nothing, who have had no harm done them, forbear Violence, and abstain from all manner of ill usage towards those from whom they have received none. This Caution and Temper they ought certainly to use towards those who mind only their own Business, and are solicitous for nothing but that (whatever men think of them) they may worship God in that manner which they are persuaded is acceptable to him, and in which they have the strongest hopes of Eternal Salvation.

~~I have observed that in the management of Economy, the preservation of Body and Health, every man may consider what suits his own convenience, and follow what course he likes best. No man complains of the ill management of his Neighbour's Affairs. No man is angry with another for an Error committed in sowing his Land, or in marrying his Daughter.⁵³ No body corrects a Spend-thrift for consuming his Substance in Taverns. Let any man pull down, or build, or make whatsoever Expenses he pleases; no body murmurs, no body contends with him; he has his Liberty. But if any man do not frequent the Church; if he do not there conform his Behaviour exactly to the accustomed Ceremonies, or if he brings not his Children to be initiated in the Sacred Mysteries of this or the other Congregation; this immediately causes an Uproar; and the Neighbourhood is filled with noise and clamour. Every one is ready to be the Avenger of so great a Crime. And the Zealots hardly have patience to refrain from Violence and Rapine, till the Cause be heard, and the poor man be, according to the Law, condemned to the loss of Liberty, Goods, or Wife. Oh that~~

52. Popple omits: "even until seventy times seven," a quotation from Matthew 18:22.

53. "marrying his Daughter": note Locke's patriarchal assumption in respect of a daughter's marriage and his placement of this matter in the private sphere.

our Ecclesiastical Orators, of every Sect, would apply themselves with all the strength of Arguments that they are able, to the confounding of Errors! But let them spare their Persons. Let them not supply another want of Reasons with the Instruments of Force, which belong to another Jurisdiction, and do ill become a Church man's Hands. Let them not call in the Magistrate's Authority to the aid of their Prudence or Learning; lest, perhaps, whilst they pretend only Love of the Truth, this their intemperate Zeal, breathing nothing but the Word and Sword, betray their Ambition; and shew that what they desire is Temporal Dominion. For it will be very difficult to persuade men of Sense, that he, who, with dry Eyes, and satisfaction of Mind, can deliver his Brother unto the Executioner, to be burnt alive, does sincerely and heartily concern himself to save that Person from the Flames of Hell in the world to come.

In the last place. Let us now consider what is the Magistrate's Duty in the Business of Toleration; which certainly is very considerable.

We have already proved, That the Care of Souls does not belong to the Magistrate. Not a Magisterial Care, I mean, (if I may so call it) which consists in prescribing by Laws, and compelling by Punishments. But a charitable Care,⁵⁴ which consists in teaching, admonishing, and persuading, cannot be denied unto any man. The Care therefore of every man's Soul belongs unto himself, and is to be left unto himself. But what if he neglect the Care of his Soul? I answer, What if he neglect the Care of his Health, or of his Estate; which things are nearer related to the Government of the Magistrate than the other? Will the Magistrate provide by an express Law, That such a one shall not become poor or sick?⁵⁵ Laws provide, as much as is possible: That the Goods and Health of Subjects be not injured by the Fraud or Violence of others; they do not guard them from the Negligence or ill husbandry of the Possessors themselves. No man can be forced to be Rich or Healthful whether he will or no. Nay, God himself will not save men against their wills. Let us suppose, however, that some Prince were desirous to force his Subjects to accumulate

54. Note the distinction between magisterial and charitable care. Locke does not exclude the use of nonpenal proselytizing.

55. Locke's discussion here suggests a limited role for government in managing the well-being of citizens.

Riches, or to preserve the Health and Strength of their Bodies. Shall it be provided by Law, that they must consult none but *Roman* Physicians; and shall every one be bound to live according to their Prescriptions? What, shall no Potion, no Broth be taken, but what is prepared either in the *Vatican*, suppose, or in a *Geneva* Shop?⁵⁶ Or, to make these Subjects rich, shall they all be obliged by Law to become Merchants, or Musicians?⁵⁷ Or, shall every one turn Victualler, or Smith; because there are some that maintain their Families plentifully, and grow rich in those Professions? But it may be said, There are a thousand ways to Wealth, but only one way to Heaven. 'Tis well said indeed, especially by those that plead for compelling men into this or the other Way. For if there were several ways that lead thither, there would not be so much as a pretence left for Compulsion. But now if I be marching on with my utmost vigor, in that way which, according to the Sacred Geography, leads straight to *Jerusalem*; Why am I beaten and ill used by others, because, perhaps, I wear not Buskins;⁵⁸ because my Hair is not of the right Cut; because perhaps I have not been dipt⁵⁹ in the right Fashion; because I eat Flesh upon the Road, or some other Food which agrees with my stomach; because I avoid certain By-ways, which seem unto me to lead into Briars or Precipices; because amongst the several Paths that are in the same Road,⁶⁰ I chuse that to walk in which seems to be the straightest and cleanest; because I avoid to keep company with some Travellers that are less grave, and others that are more sower than they ought to be; or in fine, because I follow a Guide that either is, or is not, cloathed in White, and crowned with a Mitre?⁶¹ Certainly, if we consider right, we shall find that for the most part they are such frivolous things as these, that (without any prejudice to Religion, or the Salvation of Souls, if not accompanied with Superstition

56. *Geneva*: references to Geneva refer to Calvinism.

57. The reference to musicians makes sense when we note that the sentence should open, "Or, to provide his subjects with wealth and comfort at home."

58. *Buskins*: fashionable or outlandish footwear.

59. *dip*: baptized.

60. Popple omits: "and lead in the same direction."

61. *cloathed in White*: signifying the surplice, to which Puritans objected as popish, preferring the black "Geneva gown"; *crowned with a Mitre*: signifying episcopacy. See note 75, p. 33.

or Hypocisie) might either be observed or omitted; I say they are such like things as these, which breed implacable Enmities amongst Christian Brethren, who are all agreed in the substantial and truly fundamental part of Religion.

But let us grant unto these Zealots; who condemn all things that are not of their Mode, that from these Circumstances arise different Ends. What shall we conclude from thence? There is only one of these which is the true way to Eternal Happiness. But in this great variety of ways that men follow, it is still doubted which is this right one. Now neither the care of the Commonwealth, nor the Right of enacting Laws, does discover⁶² this way that leads to Heaven more certainly to the Magistrate, than every private mans Search and Study discovers it unto himself. I have a weak Body, sunk under a languishing Disease, for which (I suppose) there is one only Remedy, but that unknown: Does it therefore belong unto the Magistrate to prescribe me a Remedy; because there is but one, and because it is unknown? Because there is but one way for me to escape Death, will it therefore be safe for me to do whatsoever the Magistrate ordains? Those things that every man ought sincerely to enquire into himself, and by Meditation, Study, Search, and his own Endeavours, attain the knowledge of, cannot be looked upon as the peculiar Possession of any one sort of Men. Princes indeed are born superior unto other Men in Power, but in Nature equal. Neither the Right, nor the Art of Ruling, does necessarily carry along with it the certain Knowledge of other things; and least of all of the true Religion. For if it were so, how could it come to pass that the Lords of the Earth should differ so vastly as they do in Religious Matters? But let us grant that it is probable the way to Eternal Life may be better known by a Prince than by his Subjects; or at least, that in this incertitude of things, the safest and most commodious way for private Persons is to follow his Dictates. You will say, what then? If he should bid you follow Merchandise for your Livelihood, would you decline that Course for fear it should not succeed? I answer: I would turn Merchant upon the Princes Command, because in case I should have ill success in Trade, he is abundantly able to make up my Loss some other way. If it be true, as

62. *discover*: reveal.

he pretends, that he desires I should thrive and grow rich, he can set me up again when unsuccessful Voyages⁶³ have broke me. But this is not the Case in the things that regard the Life to come. If there I take a wrong Course, if in that respect I am once undone; it is not in the Magistrates Power to repair my Loss, to ease my Suffering; or to restore me in any measure, much less entirely, to a good Estate. What Security can be given for the Kingdom of Heaven?

~~God has provided a way that they do not suppose unless they are Jews. That all Men are bound to follow in the Affairs of Religion to be in the Civil Magistrate, but in the Church. What the Church has determined, that the Civil Magistrate orders to be observed; and he provides by his Authority that no body shall either act or believe in the business of Religion, otherwise than the Church teaches. So that the Judgment of those things is in the Church. The Magistrate himself yields Obedience thereunto, and requires the like Obedience from others. I answer; Who sees not how frequently the Name of the Church which was so venerable in the time of the Apostles, has been made use of to throw Dust in Peoples Eyes, in following Ages? But however in the present case it helps us not. The one only narrow way which leads to Heaven is not better known to the Magistrate than to private persons; and therefore I cannot safely take him for my Guide, who may probably be as ignorant of the way as my self, and who certainly is less concerned for my Salvation than I my self am. Amongst so many Kings of the Jews, how many of them were there whom any *Israelite*, thus blindly following, had not fallen into Idolatry, and thereby into Destruction? Yet nevertheless, you bid me be of good courage, and tell me that all is now safe and secure, because the Magistrate does not now enjoyn the observance of his own Decrees in matters of Religion, but only the Decrees of the Church. Of what Church I beseech you? Of that certainly which likes him best. As if he that compels me by Laws and Penalties to enter into this or the other Church, did not interpose his own Judgment in the matter. What difference is there whether he lead me himself, or deliver me over to be led by others? I depend both~~

63. "unsuccessful Voyages": alternatively, "ill fortune in trade." Popple, the former wine merchant, thinks in terms of high-risk investment in overseas trade.

ways upon his Will: and it is he that determines both ways of mortal State. Would an *Israelite*, that had worshipped *Baal*⁶⁴ upon the Command of his Kings, have been in any better condition, because some body had told him that the King ordered nothing in Religion upon his own Head, nor commanded any thing to be done by his Subjects in Divine Worship, but what was approved by the Counsel of Priests, and declared to be of Divine Right by the Doctors of their Church? If the Religion of any Church become therefore true and saving, because the Heads of that Sect, the Prelates and Priests, and those of that Tribe,⁶⁵ do all of them, with all their might, extol and praise it; what Religion can ever be accounted erroneous, false and destructive? I am doubtful concerning the Doctrine of the *Socinians*,⁶⁶ I am suspicious of the way of Worship practised by the *Papists*, or *Lutherans*? Will it be ever a jot the safer for me to joyn either unto the one or the other of those Churches, upon the Magistrates Command, because the Command is made by the Magistrate, and not by the Council and Counsel of Priests, or Doctors of that Church?

But to speak the truth, we must acknowledge that the Church (if a Convention of Clergy-men, making Canons, must be called by that Name)⁶⁷ is for the most part more apt to be influenced by the Court, than the Court by the Church. How the Church was under the Vicissitude of Orthodox and Arrian Emperors,⁶⁸ is very well known. Or if those things be too remote; The *English History*⁶⁹ affords us fresher Examples, in the

64. *Baal*: a Canaanite deity, often referred to in the Old Testament.

65. *Tribe*: a disparaging term for priests; Locke has "followers," pejorative also in the Latin (*assetae*).

66. *Socinians*: those who deny the doctrine of the Trinity. Named after the Italian theologian Fausto Soczini (Faustus Socinus) (1539–1604).

67. A strikingly anticlerical remark, questioning that "the church" is to be equated with the clergy. Canon law is church law.

68. *Arrian Emperors*: in the fourth century large parts of Christendom followed the teachings of Arius (d. 336), whose doctrine, if not entirely anti-Trinitarian, compromised the divinity of Christ; such emperors as Constantine II and Valens were Arians.

69. "The *English History*": the first edition has "our modern *English History*." The second edition is less felicitous but removes the word *our*, which identifies the author as English. It has been suggested that this amendment indicates Locke's own intervention in correcting the second edition.

Reigns of *Henry the 8th*, *Edward the 6th*, *Mary*, and *Elizabeth*, how easily and smoothly the Clergy changed their Decrees, their Articles of Faith, their Form of Worship, every thing, according to the inclination of those Kings and Queens.⁷⁰ Yet were those Kings and Queens of such different minds, in point of Religion, and enjoyed thereupon such different things, that no man in his Wits (I had almost said none but an Atheist) will presume to say that any sincere and upright Worshipper of God could, with a safe Conscience, obey their several Decrees. To conclude. It is the same thing whether a King that prescribes Laws to another mans Religion, pretend to do it by his own Judgment, or by the Ecclesiastical Authority and Advice of others. The Decisions of Churchmen, whose Differences and Disputes are sufficiently known, cannot be any sounder, or safer, than his. Nor can all their Suffrages joyned together add any new strength unto the Civil Power. Tho' this also must be taken notice of, that Princes seldom have any regard to the Suffrages of Ecclesiastics that are not Favourers of their own Faith and way of Worship.

But after all, The *Principal Consideration*, and which absolutely determines this Controversie, is this. Although the Magistrates Opinion in Religion be sound, and the way that he appoints be truly Evangelical, yet if I be not thoroughly perswaded thereof in my own mind, there will be no safety for me in following it. No way whatsoever that I shall walk in, against the Dictates of my Conscience, will ever bring me to the Mansions of the Blessed.⁷¹ I may grow rich by an Art that I take not delight in; I may be cured of some Disease by Remedies that I have not Faith in; but I cannot be saved by a Religion that I distrust, and by a Worship that I abhor. It is in vain for an Unbeliever to take up the outward shew of another Mans Profession. Faith only, and inward Sincerity, are the things that procure acceptance with God. The most likely and most approved

70. Henry VIII (r. 1509–47) enforced a Reformation in church governance, expelling the papacy, but regarded himself as an orthodox Catholic in theology; Edward VI (r. 1547–53) was a thoroughgoing Protestant; Mary (r. 1553–58) instituted a Counter-Reformation to restore Catholicism; and Elizabeth (r. 1558–1603) settled a "middle way" Reformation. Many clergy conformed to these religious revolutions, though Locke is scarcely fair in overlooking those who endured martyrdom for their beliefs.

71. "Mansions of the Blessed": proverb, associated with John 14:2.

Remedy can have no effect upon the Patient, if his Stomach reject it as soon as taken. And you will in vain cram a Medicine down a sick Mans Throat, which his particular Constitution will be sure to turn into Poison. In a word. Whatsoever may be doubtful⁷² in Religion, yet this at least is certain, that no Religion, which I believe not to be true, can be either true or profitable unto me. In vain therefore do Princes compel their Subjects to come into their Church-communion, under pretence of saving their Souls. If they believe, they will come of their own accord; if they believe not, their coming will nothing avail them. How great soever, in fine, may be the pretence of Good-will and Charity, and concern for the Salvation of Mens Souls; Men cannot be forced to be saved whether they will or no. And therefore, when all is done, they must be left to their own Consciences.

~~For the sake of God, Men should be left to their own Consciences in all matters of Religion, let us now consider what they are to do. As Men know and acknowledge that God ought to be publicly worshipped. Why otherwise do they compel one another unto the publick Assemblies? Men therefore constituted in this liberty are to enter into some Religious Society; that they may meet together, not only for mutual Edification, but to own to the World that they worship God, and offer unto his divine Majesty such service as they themselves are not ashamed of, and such as they think not unworthy of him, nor unacceptable to him; and finally that by the purity of Doctrine, Holiness of Life, and decent Form of Worship, they may draw others unto the love of the true Religion; and perform such other things in Religion as cannot be done by each private Man apart.~~

~~These Religious Societies are the Churches: and these I say the Magistrate ought to tolerate. For the business of these Assemblies of the People is nothing but what is lawful for every Man in particular to take care of; I mean the Salvation of their Souls. For in this case is there any difference between the National Church, and other separated Congregations. But as in every Church there are two things especially to be consid-~~

72. "doubtful": in quoting this in the *Second Letter*, Locke amends to "doubted."

73. "National Church": the term "Established Church" was not yet in use.

~~ered; The outward Form and Rites of Worship, And the Doctrines and Articles of Faith; These things must be handled each distinctly; that some whole matter of Toleration may the more clearly be understood.~~

~~Concerning outward Worship, I say (in the first place) that the Magistrate has no Power to enforce by Law, either in his own Church, or much less in another, the use of any Rites or Ceremonies whatsoever in the Worship of God. And this, not only because these Churches are free Societies; but because whatsoever is practiced in the Worship of God, is only so far justifiable as it is believed by those that practise it to be acceptable unto him. Whatsoever is not done with that Assurance of Faith, is neither well in it self,⁷⁴ nor can it be acceptable to God. To impose such things therefore upon any people, contrary to their own Judgment, is in effect to command them to offend God; Which, considering that the end of all Religion is to please him, and that Liberty is essentially necessary to that End, appears to be absurd beyond expression.~~

~~But perhaps it may be concluded from hence, that I deny unto the Magistrate all manner of Power about Indifferent things;⁷⁵ which if it be not granted, the whole Subject matter of Law-making is taken away. No, I readily grant that Indifferent Things, and perhaps none but such, are subjected to the Legislative Power. But it does not therefore follow, that the Magistrate may ordain whatsoever he pleases concerning any thing~~

74. "well in it self": alternatively, "lawful" (*licitum*).

75. "Indifferent things": The concept of "things indifferent" (to salvation), also called *adiaphora*, was central to theological discussion, and was distinguished from "things necessary" (to salvation). Whereas the latter were prescribed by God in Scripture and hence could not be altered by man, the former were open to human variation and local ordinance. Thus, it might be held that while God requires to be worshipped, he is indifferent as to whether it is done standing or kneeling, or wearing black or white garments. Two problems arose: what things in fact came under the heading "things indifferent"; and, in the sphere of "things indifferent," are we obliged to accept magisterial ordinances? Some held that, even in the sphere of "things indifferent," magistrates could impose conformity, for the sake of good order and concord. An adaphorist was theologically liberal (a "latitudinarian") in stressing the broad ambit of "things indifferent" but might nonetheless be politically illiberal in expecting obedience to human ordinances. This was Locke's own initial position in his *Tracts on Government* (1660-62); he had changed his mind by 1667. In the present passage, Locke makes clear that public safety (and not decency or aesthetic considerations) is the sole criterion for magisterial interference in worship.

of things, that the Interest of the Common-wealth requires all slaughter of Beasts should be forbidden for some while, in order to the increasing of the Stock of Cattel, that had been destroyed by some extraordinary Murrain;⁸⁹ Who sees not that the Magistrate, in such a case, may forbid all his Subjects to kill any Calves for any use whatsoever? Only 'tis to be observed, that in this case the Law is not made about a Religious, but a Political matter; nor is the Sacrifice, but the slaughter of Calves thereby prohibited.

By this we see what difference there is between the Church and the Common-wealth. Whatsoever is lawful in the Common-wealth, cannot be prohibited by the Magistrate in the Church. Whatsoever is permitted unto any one of his Subjects for their ordinary use, neither can, nor ought to be forbidden by him to any Sect of People for their Religious Uses. If any man may lawfully take Bread or Wine, either sitting or kneeling,⁹⁰ in his own house, the Law ought not to abridge him of the same Liberty in his Religious Worship; though in the Church the use of Bread and Wine be very different, and be there applied to the Mysteries of Faith, and Rites of Divine Worship. But those things that are prejudicial to the Common weal of a People in their ordinary use, and are therefore forbidden by Laws, those things ought not to be permitted to Churches in their Sacred Rites. Only the Magistrate ought always to be very careful, that he do not invade his Authority in the Church, or in any Church, under pretence of

It may be said; *What if a Church be Idolatrous, is that also to be tolerated by the Magistrate?* In answer, I ask; What Power can be given to the Magistrate for the suppression of an Idolatrous Church, which may not, in time and place, be made use of to the ruine of an Orthodox one? For it must be remembered that the Civil Power is the same every where, and the Religion of every Prince is Orthodox to himself. If therefore such a Power

89. *Murrain*: foot-and-mouth disease.

90. "sitting or kneeling": Puritans objected to kneeling to receive the Eucharist, for it involved excessive veneration and thereby implied the Catholic doctrine of transubstantiation.

91. Popple omits: "What is lawful in ordinary life, and outside the worship of God, cannot by civil law be forbidden in divine worship or in sacred places."

be granted unto the Civil Magistrate in Spirituals, as that at *Geneva* (for Example) he may extirpate, by Violence and Blood, the Religion which is there reputed Idolatrous;⁹² by the same Rule another Magistrate, in some neighbouring Country, may oppress the Reformed Religion; and, in *India*,⁹³ the Christian. The Civil Power can either change every thing in Religion, according to the Prince's pleasure, or it can change nothing. If it be once permitted to introduce any thing into Religion, by the means of Laws and Penalties, there can be no bounds put to it; but it will in the same manner be lawful to alter every thing, according to that Rule of Truth which the Magistrate has framed unto himself. No man whatsoever ought therefore to be deprived of his Terrestrial Enjoyments, upon account of his Religion. Not even *Americans*,⁹⁴ subjected unto a Christian Prince, are to be punished either in Body or Goods, for not embracing our Faith and Worship.⁹⁵ If they are perswaded that they please God in observing the Rites of their own Country, and that they shall obtain Happiness by that means, they are to be left unto God and themselves. Let us trace this matter to the bottom.⁹⁶

Thus it is. An inconsiderable and weak number of Christians, destitute of every thing, arrive in a Pagan Country. These Foreigners beseech the Inhabitants, by the bowels of Humanity,⁹⁷ that they would succour them

92. Calvin's Geneva was a theocracy, and hence could be seen as parallel to Catholicism in its fusion of civil and ecclesiastical authority. This passage indicates Locke's hostility as much to full-blown Calvinist or Presbyterian ecclesiology as to papist or episcopalian. Calvin's burning of Michael Servetus for heresy in 1553 was notorious.

93. Locke was aware of persecutions by the Mughal emperor Aurangzeb (1618-1707).

94. *Americans*: Native Americans.

95. See *The Constitutions of Carolina*, pp. 146-48.

96. "Let us trace this matter to the bottom": alternatively, "This is how it began" (*Rem ab origine retexam*). The significance of the following passage is not quite clear. It echoes a conventional Protestant denunciation of the cruelty of the Spanish (Catholic) conquest of South and Central America, but this message is apparently conveyed analogically in a hypothetical narrative about the English in North America, who initially had been dependent on the good will of the natives. The account may indeed not be hypothetical but reflect John Smith's experiences in the earliest settlement at Jamestown, Virginia, 1607-9. See note 100 in this selection.

97. "bowels of Humanity": alternatively, "in the name of common humanity."

with the necessaries of Life. Those necessities are given them; Habitations are granted; and they all joyn together, and grow up into one Body of People. The Christian Religion by this means takes root in that Country, and spreads it self; but does not suddenly grow the strongest. While things are in this condition, Peace, Friendship, Faith, and equal Justice, are preserved amongst them. At length the Magistrate becomes a Christian, and by that means their Party becomes the most powerful. Then immediately all Compacts are to be broken, all Civil Rights to be violated, that Idolatry may be extirpated; And unless these innocent Pagans, strict Observers of the Rules of Equity and of the Law of Nature, & no ways offending against the Laws of the Society,⁹⁸ I say unless they will forsake their ancient Religion, and embrace a new and strange one, they are to be turned out of the Lands and Possessions of their Forefathers, and perhaps deprived of Life it self. Then at last it appears what Zeal for the Church, joyned with the desire of Dominion, is capable to produce; and how easily the pretence of Religion, and of the care of Souls, serves for a Cloak to Covetousness, Rapine, and Ambition.

Now whosoever maintains that Idolatry is to be rooted out of any place by Laws, Punishments, Fire, and Sword, may apply this Story to himself.⁹⁹ For the reason of the thing is equal, both in *America* and *Europe*. And neither Pagans there, nor any Dissenting Christians here, can with any right be deprived of their worldly Goods, by the predominating Faction of a Court-Church: nor are any Civil Rights to be either changed or violated upon account of Religion in one place more than another.¹⁰⁰

98. "strict Observers . . . Society": alternatively, "strict observers of what is right, and in no way offending against good morals and the civil law."

99. Horace, *Satires*, i.69-70.

100. Locke's remarks about America are important for understanding his position regarding the legitimacy of European colonial settlement and the expropriation of native land. Locke denies any religious ground for interfering with property (a rule he elsewhere applies also to dealings with Jews and Muslims), for that would be a version of the iniquitous doctrine that "dominion is founded in grace" (see note 50, p. 23); being a Christian gives no right of dominion. It is commonly argued that while the *Two Treatises of Government* does seek to justify the superior property claims of European settlers, it does so on agriculturalist and not missionary grounds, namely that, whereas settlers cultivate the land industriously and render it fruitful, natives do not.

But *Idolatry* (say some) is a *Sin*, and therefore not to be tolerated. If they said, it were therefore to be avoided, the Inference were good. But it does not follow, that because it is a *Sin*, it ought therefore to be punished by the Magistrate. For it does not belong unto the Magistrate to make use of his Sword in Punishing every thing, indifferently, that he takes to be a *Sin* against God. Covetousness, Uncharitableness, Idleness, and many other things are sins, by the consent of all men, which yet no man ever said were to be punished by the Magistrate. The reason is, because they are not prejudicial to other mens Rights, nor do they break the publick Peace of Societies. Nay, even the Sins of Lying, and Perjury, are no where punishable by Laws; unless in certain cases in which the real Turpitude of the thing, and the Offence against God, are not considered, but only the Injury done unto mens Neighbours, and to the Commonwealth. And what if in another Country, to a Mahumetan, or a Pagan Prince, the Christian Religion seem false and offensive to God; may not the Christians, for the same reason, and after the same manner, be extirpated there?

But it may be urged further, *That by the Law of Moses, Idolaters were to be rooted out.*¹⁰¹ True indeed, by the Law of *Moses*: But that is not obligatory to us Christians. No body pretends that every thing, generally, enjoyned by the Law of *Moses*, ought to be practised by Christians. But there is nothing more frivolous than that common distinction of Moral, Judicial, and Ceremonial Law,¹⁰² which men ordinarily make use of. For no positive Law, whatsoever, can oblige any People, but those to whom it is given. *Hear O Israel*;¹⁰³ sufficiently restrains the Obligation of the Law of *Moses* only to that People: And this Consideration alone is Answer enough unto those that urge the Authority of the Law of *Moses*; for the inflicting of Capital Punishments upon Idolaters. ~~But I will not~~

~~Assert that the People more particularly~~

101. Locke here embarks on a proof that Christians are not bound by the Jewish law that idolaters be killed (Exodus 22:20-21). He may have found helpful John Spencer's *De legibus Hebraeorum* (1685), which supports the answer he gives.

102. Thomas Aquinas and Richard Hooker were among those who drew this tripartite distinction. Some held that while Christians were exempt from Jewish ceremonial law, they remained bound by the other parts. Locke held that Mosaic law in toto applied only to the Israelites.

103. Deuteronomy 5:1.

Commonwealth; by which all Idolatry was forbidden within the Borders of the Land of *Canaan*. But that Law (as I have said) did not reach to any of those Regions, however subjected unto the *Jews*, that were situated without those Bounds.

Thus far concerning outward Worship. Let us now consider *Articles of Faith*.

The *Articles of Religion*¹¹⁰ are some of them *Practical*, and some *Speculative*. Now, tho' both sorts consist in the Knowledge of Truth, yet these terminate simply in the Understanding. Those influence the Will and Manners. Speculative Opinions, therefore, and *Articles of Faith* (as they are called) which are required only to be believed, cannot be imposed on any Church by the Law of the Land. For it is absurd that things should be enjoined by Laws, which are not in mens power to perform. And to believe this or that to be true, does not depend upon our Will. But of this enough has been said already. But (will some say) let men at least profess that they believe. A sweet Religion indeed, that obliges men to dissemble, and tell Lies both to God and Man, for the Salvation of their Souls! If the Magistrate thinks to save men thus, he seems to understand little of the way of Salvation. And if he does it not in order to save them; Why

Further, The Magistrate ought not to forbid the Preaching or Professing of any Speculative Opinions in any Church; because they have no manner of relation to the Civil Rights of the Subjects. If a *Roman Catholic*¹¹¹ believe that to be really the Body of Christ, which another man calls Bread, he does no injury thereby to his Neighbour. If a *Jew* do not believe the New Testament to be the Word of God, he does not thereby alter any thing in mens Civil Rights. If a Heathen doubt of both Testaments, he is not therefore to be punished as a pernicious Citizen. The Power of the Magistrate, and the Estates of the People, may be equally secure, whether any man believe these things or no. I readily grant, that these Opinions are false and absurd. But the business of Laws is not to provide for the Truth of Opinions, but for the Safety and Security of the

110. "Articles of Religion": alternatively, "doctrines of churches."

111. "Roman Catholic": alternatively, "papist" (*pontificus*).

Commonwealth, and of every particular mans Goods and Person. And so it ought to be. For Truth certainly would do well enough, if she were once left to shift for her Self. She seldom has received, and I fear never will receive, much Assistance from the Power of Great men; to whom she is but rarely known, and more rarely welcome. She is not taught by Laws, nor has she any need of Force to procure her entrance into the minds of men. Errors indeed prevail by the assistance of foreign and borrowed Succours. But if Truth makes not her way into the Understanding by her own Light, she will be but the weaker for any borrowed force Violence can add to her. Thus much for Speculative Opinions. ~~Let us now proceed to Practicall ones.~~

~~A Good Life,¹¹² in which consists not the least part of Religion and true Piety, concerns also the Civil Government; and in it lies the safety both of Mens Souls, and of the Common wealth. Moral Actions belong therefore to the Jurisdiction both of the outward and inward Court.¹¹³ Both of the Civil and Domestick Governor; I mean, both of the Magistrate and Conscience. Here therefore is great danger, least¹¹⁴ one of these Jurisdictions intrench upon the other, and Disorder arise between the Keeper of the publick Peace, and the Overseers of Souls. But what has been already said concerning the Limits of both these Governments be rightly considered, it will easily remove all difficulty in this matter.~~

Every man has an Immortal Soul, capable of Eternal Happiness or Misery; whose Happiness depending upon his believing and doing those things in this Life, which are necessary to the obtaining of Gods Favour, and are prescribed by God to that end; it follows from thence, 1st, That the observance of these things is the highest Obligation that lies upon Mankind, and that our utmost Care, Application, and Diligence, ought to be exercised in the Search and Performance of them; Because there is nothing in this World that is of any consideration in comparison with Eternity, 2dly, That seeing one Man does not violate the Right of another, by his Erroneous Opinions, and undue manner of Worship, nor is his Per-

112. "A Good Life": alternatively, "moral rectitude" (*morum rectitudo*).

113. *outward and inward Court*: public jurisdiction and private conscience (*forum externum and forum internum*).

114. *least*: lest.

able to the Almighty, on whose good pleasure and acceptance depends his eternal Happiness. For Obedience is due in the first place to God, and afterwards to the Laws.

But some may ask, *What if the Magistrate should enjoy anything by his Authority that appears unlawful to the Conscience of a private Person?* I answer, That if Government be faithfully administered, and the Counsels of the Magistrate be indeed directed to the publick Good, this will seldom happen. But if perhaps it do so fall out; I say that such a private Person is to abstain from the Action that he judges unlawful; and he is to undergo the Punishment, which it is not unlawful for him to bear. For the private Judgment of any Person concerning a Law enacted in Political Matters, for the publick Good, does not take away the Obligation of that Law, nor deserve a Dispensation. But if the Law indeed be concerning things that lie not within the Verge of the Magistrate's Authority; (as for Example, that the People, or any Party amongst them, should be compell'd to embrace a strange Religion; and join in the Worship and Ceremonies of another Church), men are not in these cases obliged by that Law, against their Consciences. For the Political Society is instituted for no other end but only to secure every man his Possession of the things of this life. The care of each man's Soul, and of the things of Heaven, which neither does belong to the Commonwealth, nor can be subjected to it, is left entirely to every man's self. Thus the safeguard of mens lives, and of the things that belong unto this life, is the business of the Commonwealth; and the preserving of those things unto their Owners is the Duty of the Magistrate. And therefore the Magistrate cannot take away these worldly things from this man, or Party, and give them to that; nor change Propriety amongst Fellow-Subjects, (no not even by a Law) for the cause that has no relation to the end of Civil Government; I mean, for their Religion; which whether it be true or false, does no prejudice to the worldly concerns of their Fellow-Subjects,¹²² which are the things that only belong unto the care of the Commonwealth.

But what if the Magistrate believe such a Law as this to be for the publick Good? I answer: As the private Judgment of any particular Person,

122. "Fellow-Subjects": alternatively, "citizens" (*civibus*).

if erroneous, does not exempt him from the obligation of Law, so neither private Judgment (as I may call it) of the Magistrate does not give him any new Right of imposing Laws upon his Subjects; which neither was in the Constitution of the Government granted him, nor ever was in the power of the People to grant; and least of all, if he make it his business to enrich and advance his Followers and Fellow-sectaries, with the Spoils of others. *But what if the Magistrate believe that he has a Right to make such Laws, and that they are for the publick Good; and his Subjects believe the contrary? Who shall be Judge between them?* I answer, God alone. For there is no Judge upon earth between the Supreme Magistrate and the People.¹²³ God, I say, is the only Judge in this case; no will retribute unto every one at the last day according to his Deeds; that is, according to his sincerity and uprightness, in endeavouring to promote Piety, and the publick Weal and Peace of Mankind. *But what shall be done in the mean while?* I answer: The principal and chief care of every one ought to be of his own Soul first, and in the next place of the publick Peace: tho' yet there are very few will think 'tis Peace there where they see all laid waste.¹²⁴

There are two sorts of Contests amongst Men, the one manag'd by Law, the other by Force: and these are of that nature, that where the one ends, the other always begins.¹²⁵ But it is not my business to inquire into the Power of the Magistrate in the different Constitutions of Nations. I only know what usually happens where Controversies arise, without a Judge to determine them. You will say then the Magistrate being the strongest will have his Will, and carry his point. Without Doubt. But the Question is not here concerning the doubtfulness of the Event, but the Rule of Right.

But to come to the Point, what I say, First, No Opinions contrary to human Society, or to those moral Rules which are necessary to the preser-

123. See *Two Treatises of Government*, II, §§21, 168, 241.

124. "where they see all laid waste": alternatively, "where they see a desert made." Tacitus, *Agricola*, xxx.5: "They make a desolation and they call it peace."

125. See *Two Treatises of Government*, II, §202.

126. The edition of the *Letter* published at York in 1788 suppressed the following four paragraphs, in order to tone down Locke's objections against Roman Catholics. By that time public opinion was more supportive of toleration for Catholics, which was legislated in 1791.

vation of Civil Society, are to be tolerated by the Magistrate. But of these indeed Examples in any Church are rare. For no Sect can easily arrive to such a degree of madness, as that it should think fit to teach, for Doctrines of Religion, such things as manifestly undermine the Foundations of Society, and are therefore condemned by the Judgment of all Mankind: because their own Interest, Peace, Reputation, every Thing, would be thereby endangered.

Another more secret Evil, but more dangerous to the Commonwealth, is, when men arrogate to themselves, and to those of their own Sect, some peculiar Prerogative, covered over with a specious shew of deceitful words, but in effect opposite to the Civil Right of the Community. For Example: We cannot find any Sect that teaches expressly, and openly, that Men are not obliged to keep their Promise; that Princes may be dethroned by those that differ from them in Religion; or that the Dominion of all things belongs only to themselves. For these things, proposed thus nakedly and plainly, would soon draw on them the Eye and Hand of the Magistrate, and awaken all the care of the Commonwealth to a watchfulness against the spreading of so dangerous an Evil. But nevertheless, we find those that say the same things, in other words. What else do they mean, who teach *that Faith is not to be kept with Hereticks*?¹²⁷ Their meaning, forsooth, is that the privilege of breaking Faith belongs unto themselves: For they declare all that are not of their Communion to be Hereticks, or at least may declare them so whensoever they think fit. What can be the meaning of their asserting that *Kings excommunicated forfeit their Crowns and Kingdoms*?¹²⁸ It is evident that they thereby arrogate unto themselves the

¹²⁷ Protestants held that Catholics believed that "faith need not be kept with heretics"; in other words (to use a phrase a few lines earlier), "men are not obliged to keep their promise" (if made to a heretic). The classically cited instance was that of Jan Hus, promised a safe passage to the Council of Constance to put his case, but then arrested and burnt for heresy (1415). If such doctrine were indeed Catholic teaching, then Catholics were radically antinomian.

¹²⁸ Protestants held that this doctrine was fundamental to Catholicism and iniquitous. Compare Hobbes, *Leviathan*, chap. 42 (against the Counter-Reformation theologian Robert Bellarmine). In 1570 Pope Pius V excommunicated and deposed Queen Elizabeth. The Spanish Armada, and the Gunpowder Plot against her successor, were Catholic attempts to give effect to the papal deposition. However, some

Power of deposing Kings: because they challenge¹²⁹ the Power of Excommunication, as the peculiar Right of their Hierarchy. That *Dominion is founded in Grace*,¹³⁰ is also an Assertion by which those that maintain it do plainly lay claim to the possession of all things. For they are not so wanting to themselves as not to believe, or at least as not to profess, themselves to be the truly pious and faithful. These therefore, and the like, who attribute unto the Faithful, Religious and Orthodox; that is, in plain terms, unto themselves; any peculiar Privilege or Power above other Mortals, in Civil Concernments; or who, upon pretence of Religion, do challenge any manner of Authority over such as are not associated with them in their Ecclesiastical Communion; I say these have no right to be tolerated by the Magistrate; as neither those that will not own and teach the Duty of tolerating All men in matters of meer Religion.¹³¹ For what do all these and the like Doctrines signifie, but that those Men may, and are ready upon any occasion to seize the Government, and possess themselves of the Estates and Fortunes of their Fellow-Subjects; and that they only ask leave to be tolerated by the Magistrate so long, until they find themselves strong enough to effect it?¹³²

Catholics argued that the doctrine was not essential to their faith. The Oath of Allegiance (1606) required the taker to swear "that I do from my heart abhor, detest, and abjure as impious and heretical this damnable doctrine and position that princes which be excommunicated or deprived by the pope may be deposed or murdered by their subjects or any other whatsoever." Pope Sixtus V excommunicated Henry of Navarre, the future Henry IV of France; and the Calvinist theorist François Hotman published a famous retort, *Brutum Fulmen* (1585).

¹²⁹ *challenge*: claim.

¹³⁰ See note 50, p. 23.

¹³¹ *of meer Religion*: purely of religion. Note that Locke excludes from toleration those who do not themselves concede the principle of toleration.

¹³² Locke alludes to pleas by Catholics that they merit toleration because they are loyal subjects. Protestants commonly believed that this was a ruse, buying time until they had the power to turn the tables on their enemies. The point applied to religious minorities generally, who were apt to call for toleration when they were weak but deny it when strong. Thus, after the destruction of Anglicanism in the Civil War, the Anglican Jeremy Taylor called for toleration in his *Liberty of Prophesying* (1647); and, after the Restoration, Presbyterians called for toleration, whereas in the 1640s they had spoken ferociously against the radical sects. In Holland in the 1690s the exiled Huguenot Pierre Jurieu denounced French Catholic repression yet also upheld Calvinist coercive discipline.

Again; That Church can have no right to be tolerated by the Magistrate, which is constituted upon such a bottom, that all those who enter into it, do thereby, *ipso facto*, deliver themselves up to the Protection¹³³ and Service of another Prince. For by this means the Magistrate would give way to the settling of a foreign Jurisdiction in his own Country, and suffer his own People to be listed, as it were, for Soldiers against his own Government. Nor does the frivolous and fallacious distinction between the Court and the Church¹³⁴ afford any remedy to this Inconvenience; especially when both the one and the other are equally subject to the absolute Authority of the same Person; who has not only power to perswade the Members of his Church to whatsoever he lists, (either as purely Religious, or as in order thereunto) but can also enjoy it them on pain of Eternal Fire. It is ridiculous for any one to profess himself to be a *Mahumetan*¹³⁵ only in his Religion, but in every thing else a faithful Subject to a Christian Magistrate, whilst at the same time he acknowledges himself bound to yield blind obedience to the *Mufti*¹³⁶ of *Constantinople*; who himself is intirely obedient to the *Ottoman* Emperor, and frames the feigned Oracles of that Religion according to his pleasure. But this *Mahumetan* living amongst Christians, would yet more apparently renounce their Government, if he acknowledged the same Person to be Head of his Church who is the Supreme Magistrate in the State.¹³⁷

Lastly, Those are not at all to be tolerated who *deny the Being of a God*. Promises, Covenants, and Oaths, which are the Bonds of Humane

133. "Protection": alternatively, "allegiance" (*obedientiam*). See *Two Treatises of Government*, II, §217.

134. It was fashionable among English Catholics to distinguish between the "Church" and the "Court" of Rome, in an effort to show that moderate Catholicism could be detached from the aggrandizing politics of the papacy and the Jesuits.

135. It is unclear whether the following discussion of "Mahumetans" is to be taken literally, or as an allegory for Catholicism, or both.

136. *Mufti*: a Muslim teacher, but here specifically the Grand Mufti, the head of the religion of the Ottoman state.

137. "But this ... State": alternatively, "But this Turk among Christians would even more obviously repudiate Christian government if he acknowledged the same person to be the head of his church and also the supreme magistrate." Note the conditional *if*. As in the case of Catholics, Muslims could be good citizens provided they did not hold such a doctrine.

Society, can have no hold upon an Atheist.¹³⁸ The taking away of God, though but even in thought, dissolves all. Besides also, those that by their Atheism undermine and destroy all Religion, can have no pretence of Religion whereupon to challenge the Privilege of a Toleration. As for other Practical Opinions, though not absolutely free from all Error, yet if they do not tend to establish Domination over others, or Civil Impunity to the Church in which they are taught, there can be no Reason why they should not be tolerated.¹³⁹

~~It is not that they sometimes being vulgarly called, and perhaps having sometimes been *Conventicles*,¹⁴⁰ and Nurseries of Factions and Seditions, are thought to afford the strongest matter of Objection against this Doctrine of Toleration. But this has not hapned by any thing peculiar unto the Genius of such Assemblies, but by the unhappy Circumstances of an oppressed or ill-settled Liberty. These Accusations would soon cease, if the Law of Toleration were once so settled, that all Churches were obliged to lay down Toleration as the Foundation of their own Liberty; and teach that Liberty of Conscience is every mans natural Right,¹⁴¹ equally belonging to Dissenters as to themselves; and that no body ought to be compelled in matters of Religion, either by Law or Force. The Establishment of this one thing would take away all ground of Complaints and Tumults upon account of Conscience.~~

138. Locke holds that atheists are antinomians. His contemporaries Baruch Spinoza and Pierre Bayle did not share his view that atheists were intolerable.

139. "there can ... tolerated": alternatively, "there can be no reason why the churches in which they are taught should not be tolerated." Popple gives a more individualist twist to the sentiment. See note 141, below.

140. *Conventicles*: a term given wide currency by the Conventicle Acts (1664, 1670), which made any gathering of five or more people, other than a family, for non-Anglican worship a criminal offense. That conventicles were "Nurseries of Factions and Seditions" was common parlance in Anglican polemic. Locke's admission that some sects might indeed have been seditious echoes his own earlier view in his antitolerantist *Tracts*, but is negated by his following remark that it is only oppression that makes dissenters seditious. Popple's "conventicles" adds topical pertinence: Locke has "assemblies" (*coetivus*).

141. "and teach that Liberty of Conscience is every man's natural Right": Locke has only "the principle of toleration for others," where "others" refers to "other churches." There is no mention of "natural right," so Popple turns Locke's claim about churches into a claim about individual conscience.

Citizens; that they should not be permitted either to buy or sell, or live by their Callings; that Parents should not have the Government and Education of their own Children;¹⁴⁹ that they should either be excluded from the Benefit of the Laws, or meet with partial Judgments; can it be doubted but these Persons, thus distinguished from others by the Colour of their Hair and Eyes, and united together by one common Persecution, would be as dangerous to the Magistrate, as any others that had associated themselves merely upon the account of Religion. Some enter into Company for Trade and Profit: Others for want of Business, have their Clubs for Clarret;¹⁵⁰ Neighbourhood joins society, and Religion others. But there is one only thing which gathers People into Seditious Commotions, and that is Oppression.

You'll say; What, will you have People to meet at Divine Service against the Magistrates Will? I answer; Why, pray, against his Will? Is it not both lawful and necessary that they should meet? Against his Will, do you say? That's what I complain of. That is the very Root of all the Mischiefs.¹⁵¹ Why are Assemblies less sufferable in a Church than in a Theater or Market?¹⁵² Those that meet there are not either more vicious, or more turbulent, than those that meet elsewhere. The Business in that is, that they are ill used, and therefore they are not to be suffered. Take away the Partiality that is used towards them in matters of common Right; change the Laws, take away the Penalties unto which they are subjected; and all

149. Locke has in mind French edicts against Huguenots.

150. "Others, for want of Business, have their Clubs for Clarret": Popple's most striking extrapolation of Locke's text, which has "others, who are at leisure, for amusement" (*alios ad hilaritatem otium*). Popple had been a trader in claret. He had perhaps read Edward Whitaker's *Argument for Toleration* (1681), which remarks that "I see no cause of fearing any greater inconvenience in them [sects], to the church, or to the state, than is in so many several clubs of friendship, or companies of trade" (p. 15). Richard Baxter objected to definitions of a church that equated it with "a ship, a company of Christian merchants, or corporation" (*Answer to Stillingfleet*, 1681, p. 36). After "Clarret," Popple omits: "some meet for social intercourse because they live in the same city."

151. Popple omits: "and the disaster that has fallen on our estate." Livy, *History*, xxxix.15.

152. "Market": alternatively, "racecourse" (*circo*).

things will immediately become safe and peaceable. Nay, those that are adverse to the Religion of the Magistrate, will think themselves so much the more bound to maintain the Peace of the Commonwealth, as their Condition is better in that place than elsewhere; And all the several separate Congregations, like so many Guardians of the Publick Peace, will watch one another,¹⁵³ that nothing may be innovated or changed in the Form of the Government: Because they can hope for nothing better than what they already enjoy; that is, an equal Condition with their Fellow-Subjects, under a just and moderate Government. Now if that Church, which agrees in Religion with the Prince, be esteemed the chief Support of any Civil Government, and that for no other Reason (as has already been shewn) than because the Prince is kind, and the Laws are favourable to it; how much greater will be the Security of a Government, where all good Subjects, of whatsoever Church they be, without any Distinction upon account of Religion, enjoying the same Favour of the Prince, and the same Benefit of the Laws, shall become the common Support and Guard of it; and where none will have any occasion to fear the Severity of the Laws, but those that do injuries to their Neighbours, and offend against God?

That we may draw towards a Conclusion. The Sum of all we drive at is, That every Man may enjoy the same Rights that are granted to others. Is it permitted to worship God in the Roman manner? Let it be permitted to do it in the Geneva Form also. Is it permitted to speak *Latin* in the Market-place? Let those that have a mind to it, be permitted to do it also in the Church. Is it lawful for any man in his own House, to kneel, stand, sit, or use any other Posture; and to cloath himself in White or Black, in short or in long Garments? Let it not be made unlawful to eat Bread, drink Wine, or wash with Water, in the Church. In a Word: Whatsoever things are left free by Law in the common occasions of Life, let them remain free unto every Church in Divine Worship. Let no Mans Life, or Body, or House, or Estate, suffer any manner of Prejudice upon these Accounts. Can you allow of the *Presbyterian* Discipline? Why should not

153. A "reason of state" argument that a number of protoleration writers used: a plurality of denominations will tend to act as mutual checks and balances.

the *Episcopal* also have what they like?¹⁵⁴ Ecclesiastical Authority, whether it be administered by the Hands of a single Person, or many, is every where the same; and neither has any Jurisdiction in things Civil, nor any manner of Power of Compulsion, nor any thing at all to do with Riches and Revenues.

Ecclesiastical Assemblies, and Sermons, are justified by daily experience, and publick Allowance. These are allowed to People of some one Perswasion: Why not to all? If any thing pass in a Religious Meeting seditiously, and contrary to the Publick Peace, it is to be punished in the same manner, and no otherwise, than as if it had happened in a Fair or Market.¹⁵⁵ These Meetings ought not to be Sanctuaries for Factious and Flagitious¹⁵⁶ Fellows; Nor ought it to be less lawful for Men to meet in Churches than in Halls; Nor are one part of the Subjects to be esteemed more blameable, for their meeting together, than others. Every one is to be accountable for his own Actions; and no man is to be laid under a Suspicion, or Odium, for the Fault of another. Those that are Seditious, Murderers, Thieves, Robbers, Adulterers, Slanderers, &c. of whatsoever Church, whether National, or not, ought to be punished and suppressed. But those whose Doctrine is peaceable, and whose Manners are pure and blameless, ought to be upon equal Terms with their Fellow Subjects. Thus if Solemn Assemblies, Observations of Festivals, Publick Worship, be permitted to any one sort of Professors; all these things ought to be permitted to the *Presbyterians*, *Independents*, *Anabaptists*, *Arminians*, *Quakers*,¹⁵⁷ and others, with the same liberty. Nay if we may openly speak the Truth and as becomes one Man to another; neither *Pagan*, nor *Mahumetan*,

¹⁵⁴ During the Civil Wars of the 1640s, episcopacy was destroyed and Presbyterianism established in England. A new form of Presbyterian dominion was again established in 1689, this time in Scotland. Whereas the English Toleration Act allowed freedom of worship to non-Anglicans, the Scottish parliament in 1689 established a Presbyterian national church that denied toleration to Episcopalians. In Holland, Lutherans, who had a form of episcopacy, were scarcely tolerated. Locke again shows his hostility to Calvinism.

¹⁵⁵ Popple omits: "If a sermon in church contains anything seditious, it should be punished in the same way as if it had been preached in the market-place."
¹⁵⁶ *Flagitious*: vicious.

¹⁵⁷ This list is Popple's anglicization of Locke's different list: "Remonstrants,

nor *Jew*, ought to be excluded from the Civil Rights of the Commonwealth, because of his Religion.¹⁵⁸ The Gospel commands no such thing. The Church, which *judges not those that are without*, 1 Corinthians 5:12-13, wants it not. And the Commonwealth, which embraces indifferently all men that are honest, peaceable, and industrious, requires it not. Shall we suffer a *Pagan* to deal and trade with us, and shall we not suffer him to pray unto, and worship God? If we allow the *Jews* to have private Houses and Dwellings amongst us, Why should we not allow them to have Synagogues? Is their Doctrine more false, their Worship more abominable, or is the Civil Peace more endangered, by their meeting in publick, than in their private Houses? But if these things may be granted to *Jews* and *Pagans*, surely the condition of any Christians ought not to be worse than theirs in a Christian Commonwealth.

able to Factions, Tumults, and Civil Wars. I answer: It is the fault of the Christian Religion? If it be so, truly the Christian Religion is the worst of all Religions, and ought neither to be embraced by any particular Person, nor tolerated by any Commonwealth. For if this be the Genius, this the Nature of the Christian Religion, to be turbulent, and destructive to the Civil Peace; that Church in which the Magistrate indulges¹⁵⁹ will not always be innocent. But can be it from us to say any such thing of that Religion, which carries the greatest opposition to Covetousness, Ambition, Discord, Contention, and all manner of inordinate Desires; and is the most modest and peaceable Religion that ever was. We must therefore seek another Cause of those Evils that are charged upon Religion. And if we consider right, we shall find it to consist wholly in the Subject

Anti-Remonstrants, Lutherans, Anabaptists, or Socinians." *Anabaptists* (often synonymous with "Baptists"): those who rejected infant baptism. Popple's deletion of Socinians suggests that his chief objection to the Toleration Act was its maintaining civil disabilities on dissenters rather than its theological stricture against anti-Trinitarianism. The French edition of 1710 restored Locke's original list.

¹⁵⁸ Locke's toleration of Jews, Muslims, and others is categorical, though in the *Second Letter* he states that he hopes for their conversion. Much contemporary Christian philosemitism was grounded in apocalyptic aspiration for conversion.

¹⁵⁹ "indulges": alternatively, "favours." The meaning here is a church established or actively supported by the state.

Robert Weissberg,
Pernicious Tolerance
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Two Tolerance Visions: From John Locke to PBS

"We strive to include all persons without regard to sexual orientation, race, nationality, gender, family configuration, ethnic background, economic circumstances, difference in ability, culture or age."—Trinity Episcopal Church's Statement of Affirmation, Boston (cited in Ross Mackenzie, "On neckties, race, religion, NFL pat-downs, 24/7 sex, etc." Townhall.com. November 26, 2005).

Every era has its best and worst of times, but for religious souls in Europe during the sixteenth and seventeenth centuries, it was indisputably the worst of times. In contemporary society, where only well-schooled theologians might accurately depict theological quarrels among Christian sects, it is virtually unimaginable that seemingly arcane doctrinal divisions could inspire wholesale slaughter. The Protestant Reformation and the subsequent Catholic Counter-Reformation instigated a parade of bloodbaths, and the viciousness was hardly one-sided or confined to a few villages. Zealots took turns persecuting each other, and when that strife was occasionally inopportune, or religious antagonists were all vanquished, violent attention turned to sectarian cousins. Particularly as denominations proliferated following the Reformation, even miniscule disputes invited suppression. Some denominations compelled Bible reading as the path to heaven; elsewhere Bible possession was a crime, and owners were, with great fanfare, gruesomely dispatched to the hereafter.

A modest sampling might prove enlightening, given that this mayhem has largely receded from memory. Beginning on August 24, 1572, at the instigation of Catherine de Medici, the Catholic queen mother of Henry of Navarre, political intrigue coupled with avarice prompted what is now called the St. Bartholomew's Day Massacre. From August to October of 1572, Catholics, often spontaneously but also directed from above, enthusiastically murdered Huguenots (French Protestants, many of whom were wealthy) by the thousands, including entire families. Estimates range from 30,000 to 70,000 killed, and contemporary accounts describe rivers so overflowing with rotting corpses that fish became inedible. Countless Huguenots fled France, many never to return. Pope Gregory XIII, so enraptured by this bloody religious fervor, ordered Rome's church bells rung

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for an entire day while special commemorative medals honored the occasion. Huguenots meanwhile returned the barbarism and cruelly butchered thousands of Catholics. Peace eventually returned, but only as a truce—in 1685 violent prosecution of the Huguenots began anew, and with similarly brutal carnage.

The St. Bartholomew's Day Massacre was, however, just a prelude. The Thirty Years' War (1618-1648) involved nearly every continental country, punctuated by shifting alliances, generally pitting Catholics against Protestants, though multiple other quarrels intruded. Battles occurred largely on German soil, and the death toll from both the war itself and subsequent diseases (notably bubonic plague and typhus) and famine was devastating. Estimates of the German population loss range from 15 percent to 30 percent, and these figures are in addition to widespread rape, killing of animals, pillaging, and the destruction of schools and churches. The state of Württemberg's population declined from 400,000 to 48,000, and such desolation was commonplace. This religiously inspired chaos probably set German civilization back 200 years. Hostilities ceased in 1648 with the Treaty of Westphalia (though France and Spain battled on for another decade) which stipulated that princes could determine their subjects' religion, whether Catholic or Protestant.

England, too, experienced continuous religious discord during this era, periodically erupting into full-fledged civil war, and the twists and turns virtually guaranteed that today's pious souls would be tomorrow's persecuted heretics. Matters began in 1531 when Henry VIII, personally a faithful Catholic, abrogated the pope's religious authority in England so as to dissolve his union with Catherine of Aragon to marry Anne Boleyn. With Henry's Church of England formally established in 1534, religious opposition was outlawed, and dissidents were often burnt at the stake side by side: Catholics on one side, Lutherans on the other. Subsequent monarchs, whether Protestant or Catholic, imposed their spiritual orthodoxy and, in varying degrees, forcefully insisted on national uniformity. Religion soon resembled quick-changing fashion, but who could foretell the latest monarch's creed, so inattention literally risked life and limb. Queen Mary (who reigned from 1553-1558) was especially energetic in executing Protestants (hence the nickname, "Bloody Mary"); under Queen Elizabeth I who followed Mary, it was the Catholics who lived in fear. In this tumultuous context, holding a "generous" view of religious difference might mean permitting a chosen handful of not-too-different dissenters to worship freely, but only if they first obtained a license, took oaths of allegiances, all the while being barred from public office. The Toleration Act of May 27, 1689 did, in fact, permit this guarded acceptance, and was celebrated for calming civil discord.

John Locke and Religious Toleration

In the winter of 1685, the English doctor and philosopher, John Locke, then exiled in Amsterdam, hiding under an assumed name to avoid persecution in England for endorsing greater religious freedom, wrote *Epistola de Tolerantia*

(“A Letter Concerning Toleration”) to his friend, Philip von Limborch. Composed in Latin, with authorship only hinted at by obscure cryptic letters, the missive was so controversial by the era’s standards that Locke never fully acknowledged his authorship, though this paternity was eventually recognized. Published anonymously in the Dutch city of Gouda four years after its completion, and translated into English by William Popple, it was smuggled into England in 1689. By today’s hyper-generous standards of permissibility, it is, as we shall see, incredibly mild-mannered, but in its day it was widely denounced as extreme, opening the door to religious anarchy. A few fervent Protestants denounced the “Letter” as a Jesuit plot to restore papal domination, though Locke himself was a devoted Church of England follower.

Locke, to be sure, was not the period’s sole champion of religious tolerance, and this single appeal scarcely exhausted his views—he published two additional tolerance letters, portions of a fourth (unfinished due to his death in 1704), plus countless rejoinders to critics. And, admittedly, his earlier pronouncements were quite different. Still, this first “Letter” ranks among *the* classic defenses of tolerance, and to this day remains a compelling, and still relevant, benchmark for those hoping to quell civil discord. What is important for our purposes is how this justification, authored by a refugee from religious persecution, who personally risked his life for a modicum of religious freedom, differs from many of today’s more spirited, far more encompassing admonitions. To compare Locke’s pleas to today’s tolerance admonitions demonstrates just how far this undertaking has shifted and, as we shall see, this change is deceptively momentous, and new may not be “new and improved.” Perhaps writing under the imminent threat of death in exile, versus enjoying the luxury of unchallenged permissiveness encourages sensible thinking.

Locke was principally concerned with reducing, but not eliminating, the Crown’s (or Parliament’s) religious meddling. Officialdom, with its power to punish, even kill those who disagreed, required hobbling. By contrast, the religious fanatic intent on mayhem was less troublesome for he or she was subject to the criminal code. Nor was this a plea for some sweeping abstract religious equality, or a separation of Church and State (Locke to a degree accepted an official religion); the aim was merely to end vigorous state repression of Quakers, Presbyterians, Baptists, and other “non-conforming” Protestant religious bodies. And this assault was serious: sect members—about 10 percent of England’s population—often paid fines, had property confiscated, and so lost their livelihoods while thousands rotted in hellholes solely because they rejected the official Church of England faith. This war on heresy had even instigated political rebellion in 1661, 1663, and 1685, and the prospect of future bloody civil wars over doctrinal disputes was ever present.

Locke’s solution rested on civil government disregarding the outward signs of religious devotion, including matters of theology and internal church administration where the state lacked a compelling interest. A division of labor would

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bring calm: government would decide lawful behavior, even public morality, so as to promote its principle purpose—peace and security—while churches, with their own particular ceremonies and conventions, attended to their principle purpose—saving souls. For the Sovereign or Parliament to agree with every noxious religion in every aspect was unnecessary; Locke only argued that at least some dissenting dogmas and practices must be stomached since the alternative—perpetual civil chaos—was far worse. Why should the king fulminate about trifling details of ritual provided adherents heeded the law? Surely God had not granted the king or any other civil official power to adjudicate theological veracity, and the people themselves had not ceded this authority to rulers. Nor could king or Parliament discover the one true pathway to salvation and thereby justify imposing a single faith. Let church officials or congregants wrestle with such mysterious disputes, and if the religiously observant insisted upon disobeying the law, they should be willing to suffer the punishment. Furthermore, if these unorthodox rituals and customs displease divine authority, it is He, not the magistrate, who will punish miscreants in the hereafter. At most, admonitions and advice by fellow congregants might sway errant churchgoers, but legal punishment could only rile civil society.

Establishing tolerance was a practical matter. Locke held that it was futile for the king or Parliament to try and discern what people genuinely believed, and this inner faith was all that ultimately mattered in the eyes of God. Lying about one's true faith had existed since time immemorial, hypocrisy was everywhere, and not even torture could be trusted to expose true conviction. Religion could only be voluntary, and while the state might encourage conversion, even rightly ban abhorrent church practices (e.g., human sacrifice) as inimical to civil decorum, pushing further went nowhere. Moreover, since history clearly showed that a proclivity towards proliferating faiths was quintessentially human, and that fracturing was not subject to reasoned argument, no single "true" faith could triumph except by brute force. Even then, this triumph would be only momentary, schisms were irrepressible regardless of repression. To repeat, religious toleration was a *practical* tactic involving putting up with certain noxious religious practices, to avoid endless carnage, save where such exercises contradicted civil society.

By today's standards, Locke's appeal is quite limited, almost feeble. Tolerance narrowly concerned faith, not all matters about which people disagreed. This kindness was, moreover, less a sign of one's virtue than a concession to harsh reality: one suffered the disagreeable since the alternative—violence—was even worse. Its agenda was equally modest: only matters of dogma. Passionate racial and ethnic animosities certainly existed in Locke's day. Homosexuals were prosecuted, a few were even killed, but these antagonisms paled in comparison to religious strife. And, as we shall eventually see, even on religious matters Locke was stingy—some, like the Roman Catholics, *deserved* suppression in light of their untrustworthy political allegiances. Jews and atheists were likewise

abhorrent. Tolerance was also essentially negative—rulers must resist despotic urges, not accommodate, let alone praise, deviants, and even then, acquiescence was not *carte blanche*. Constructing some grand social utopia was absolutely not on the agenda.

Tolerance Three Hundred Years Later: PBS Extols Tolerance

Fast-forwarding to the beginning of the twenty-first century, we find, happily, that the kind of religious atrocities that left millions dead no longer plague Western civilization. Militant Islam is the notable exception, but even here, casualties pall by comparison. Virtually no one can accurately recall what the Spanish Inquisition sought, let alone the very idea of torturing religious heretics so as to please God. Holy wars still exist, as one can witness from Middle East news report, but at least in the United States, Europe, and much of the rest of the world, heretics no longer face immolation, and unorthodox sects hardly require licenses to practice their faith. Nor, blissfully, has any other division replaced religion as the source of deadly civil strife. Racial and ethnic disputes are largely peacefully fought politically though, admittedly, violent eruptions do occur. Losers now lose lawsuits or legislative battles, not their lives. There is nothing, absolutely nothing, in today's society that even remotely compares to Europe's sixteenth- and seventeenth-century carnage. Even the kookiest sects reside in peace unless they violate the criminal code.

Alas, 9/11 would again push religious tolerance to the forefront. The possibility that a handful of American Muslims might give their political allegiance to those seeking America's destruction, and are secretly plotting to overthrow the constitution and replace it with a Muslim theocracy oddly echoes Locke's seventeenth-century unease with Roman Catholics. Catholics, Locke argued, were subversive agents of the pope, of the French and Spanish kings scheming to topple England's Protestant regime, not just another sect deserving admission to civic life. Sedition justified exclusion, and this went to the heart of Catholicism given obligatory Catholic fidelity to an Italian pope.

Without reawakening the bloodshed of past centuries, how, then, should Americans confront this alleged Muslim enemy in our midst? Do we resurrect Locke and draw a sharp line between theological issues in which government has no compelling interest (e.g., which Muslim splinter sects best honor the Prophet's message) and instead confront only those plotting terrorism? Or, might Washington intrude further into the Muslim faith on the grounds that it is the theology itself, (e.g., the Koran's embrace of *jihad* and forced conversion) that comprises the true threat? If plunging into Islam itself is necessary to protect the peace, then toleration must be cautiously selective, a situation reminiscent of how the federal government wrestled with the Mormon faith in the nineteenth century: prohibiting polygamy while ignoring religious tenets antithetical to mainstream Christianity. Navigating these tolerance perplexities is, obviously, exceedingly demanding and quandaries are almost endless.

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Into this thicket of possibilities comes a tolerance lesson plan (“Tolerance in Times of Trial”) developed by the Public Broadcasting Service (PBS) aimed at middle and high school students. This is not a tightly argued philosophical treatise akin to Locke’s “Letter.” This plea is sufficiently simple for middle and high school students and their teachers. As such, no responsibility extends to confronting complicated disputes or offering sophisticated nostrums. Still, like Locke’s missive, it is, despite its brevity, a far-ranging solution to a palpable problem, i.e., how to confront, if at all, a religion in which many adherents preach a violent hatred of America both at home and worldwide. More is involved here than just acknowledging the “current events” that relate to the post-9/11 world. Chapter 3 will show, this PBS design is emblematic of dozens of similar ventures comprising a vast “tolerance industry” permeating America’s schools and thus illustrates a more pervasive transformation of “tolerance.”

To appreciate this particular remedy’s character, consider other potential menu items for post-9/11 pedagogy. For example, teachers could instruct students that abstract Islam, like other major world religions, warrants unqualified toleration but, that conceded, any anti-Americanism requires stern reprobation. Or, lessons could carefully separate “good” from “bad” Islamic theology, to wit, espousing Islam’s roots in the Judeo-Christian ethos is commendable, but the Koran’s message about killing polytheistic heretics deserves rejection. Or the Muslim threat could be skipped altogether as inappropriate for classroom discussion, a predicament better taken up by elected leaders, not ignorant teenagers or untrained educators. Conceivably, lessons could be practical anti-terrorism training: how to spot suspicious activity and what government agencies to contact. Finally, teachers might simply remind students that personal anger aside, vigilantism is illegal—leave fighting subversion to the police.

Compared to Locke’s modest admonitions, this PBS lesson plan is far more ambitious, if not revolutionary, in its sweep. Most plainly, the PBS framework envisions tolerance as centrally pertaining to individuals themselves, even at a tender age, not to a potentially repressive government. Whereas Locke (realistically) agonized over preventing kings from ordering heretics burnt at the stake, here the apprehension is over millions of youngsters, most of whom lack any contact with practicing Muslims, possibly abusing Muslims. This is a huge endeavor. The emphasis, and again diametrically opposed to Locke’s counsel, is *exclusively* on refashioning private attitudes and feelings (hate), not learning to control impulsive, possibly illegal behavior. Instilling tolerance is thus preventive, and is rooted in a particular psychological theory regarding the centrality of attitudes in foretelling actions. Simply put, tens of millions must exhibit “good thinking” if the world is to escape the religious carnage of yesteryear.

Since inner thoughts are the chief culprits of civil discord, lessons naturally demand expelling any, no matter how slight, aversion towards Muslims. This is not merely an admonition to “stop scheming to harm them.” Rather, the tolerance message is “don’t even think unkindly about them.” Students thus are counseled

against glibly associating the label “terrorist” with “Arab” or “Muslim.” Students further learn that blood-boiling TV footage following 9/11, that is, Palestinians publicly cheering the twin towers collapse, were atypical Middle Eastern reactions. Meanwhile, teachers are encouraged to explain how movies like *The Siege* or *True Lies* falsely link Arabs to terrorism. Also advised are field trips to places of worship, art exhibitions, and similar educational exposures that help breakdown negative ethnic stereotypes. A website link to an MSNBC story recounting how Arabs felt threatened post-9/11 further reiterates the point that Muslims require protection from awaiting mayhem. That humdrum criminal sanction, laws against assault, for example, not reshaped attitudes, might better inhibit aggressive behavior (as well as less violent discrimination, harassment and the like) passes totally unnoticed.

That government, not ordinary citizens, plausibly poses the greatest danger to those expressing heretical views receives short shrift. Conceivably, instruction could have celebrated America’s traditional commitment to limited government, rule of law, the sanctity of private religious beliefs, the potential troubles associated with expanded emergency police power, and strategies for curtailing unwelcome state intrusion. In this alternative tolerance pedagogical vision, ordinary people, perhaps by resisting media-hyped hysteria or voting against hate-mongering demagogues, serve as a bulwark against officially sponsored repression since, as we have already said, impromptu, bottom-up tyranny (e.g., torching mosques) is already legally prohibited (and there is little doubt that these protective laws will be enforced).

Significantly, when the specter of government-led repression does surface, it has zero to do with checking any impending, officially sanctioned threats to Muslims. Instead, PBS supplies this threat of imminent harm by resurrecting a dimly remembered, sixty-year-old event, specifically the federal government’s World War II treatment of people of Japanese and German ancestry—internment camps, xenophobic war effort propaganda, and the like. Teachers even “personalize” this internment by asking students to write diaries as if they were imprisoned in these camps. One can only assume that this history excursion intends to alert—even frighten—students that without a tolerance-loving citizenry America might slide into tyranny, that is ship innocent, demonized Muslims to internment camps.

What is revealing about this brief historical foray is its total historical irrelevance and, to anticipate a point we shall make repeatedly, its resurrection demonstrates how tolerance devotees consciously twist reality to advance an ideological agenda. This is, to be frank, factually incorrect mis-education, if not propaganda, albeit for what seems a high-minded purpose. Some simple fact checking will show that this internment did not arise from outside-the-law popular hysteria as is suggested in this PBS account. It was absolutely legal. Roosevelt’s Executive Order 9066 ordering the internment was issued pursuant to the Alien Enemies Act, and was signed after carefully considering other options. The U.S. Supreme Court upheld his action in 1944 as a wartime necessity.

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Equally relevant, though historians disagree on evaluating the evidence, little question exists that sabotage and spying by west coast residents of Japanese ancestry *was* a genuine threat, if not an actuality in light of captured documents and confessions. Japanese submarines had shelled California oil refineries, and other attacks were expected. Many of those relocated held dual U.S.-Japanese citizenship (which demanded loyalty to Japan in wartime). Meanwhile, military intelligence had tracked extensive Japanese efforts to recruit spies among those of Japanese ancestry, several west coast Japanese newspapers were adamantly pro-Japanese and the U.S. was relatively defenseless against internal threats when internment was implemented. That this serious threat was not publicized had more to do with protecting counter-intelligence success in cracking Japanese codes than a lack of proof (see Malkin 2004 for additional justifications). If this is not convincing, recall that events in Europe had clearly showed the dangers of a “Fifth Column.”

What this incomplete, lopsided PBS account offers is group victimization, not a balanced argument that, perhaps, these measures were just too heavy-handed and ineffectual. In a peculiar non-sequitur, this PBS tale announces that employment discrimination against those of German and Japanese ancestry—not potential as enemy spies or saboteurs—set the stage for mistreatment (actually, it was the employment of Japanese Americans in sensitive areas that made internment especially pressing). In the eyes of these PBS “historians,” wartime policies receive condemnation since they harmed distinctive ethnic/racial minorities; that they unnecessarily over-extended state authority apart from the victims’ identities is probably inconceivable. That is, since those who differ on race or ethnicity (assumedly) enjoy extra-special protection, these wartime actions were inherently odious. That internments and propaganda efforts were legal, implemented by democratically accountable officials, and based upon reasonable military intelligence, remains beyond discussion—victim ethnic traits are what counts in navigating tolerance quandaries.

Further infusing the lesson plan is the unchallenged assumption that the group today deserving tolerance, that is, Muslims, is totally blameless (just as those of Japanese or German ancestry were complete innocents during World War II). To be sure, establishing culpability would be an arduous quest, and may well be beyond what is possible in classrooms. Nevertheless, such complexity hardly warrants an unqualified “not guilty” verdict, and the PBS staff is certainly capable of doing the required research. Surely it would not be mean-spirited to admit that perhaps some Muslims are guilty, or that certain elements of Muslim dogma deserve reprimand.

Equally noteworthy is the unsupported supposition that ordinary Muslims residing in the U.S. are sufficiently seriously at risk that allocating considerable classroom time to heading off this catastrophe is justified. At most, a diligent teacher might recount to a small scattering of minor incidents whose veracity remains legally unproven, if not murky (chapter 5 will in fact show that many

of these initial claims were bogus). Of the utmost importance, these anxiety-generating attacks are certainly a far cry from past religious persecution, let alone state repression, in which thousands died daily. In fact, according to the FBI, for all of 2001 there were only 481 anti-Muslim hate incidents versus some 1,374 anti-religious incidents directed against Jews (“FBI: Racial prejudice top factor in hate crime” <http://msnbc.msn.com/id/10042601/>). These PBS experts just assumed that since the terrorists responsible for 9/11 were Muslims, Muslims would shortly be persecuted en masse, and educators (not police) must to guard against this forthcoming mob-led reign of terror—a modern-day St. Bartholomew’s Day Massacre in the making, so to speak, to be thwarted by public radio and TV.

Where the Lockean and PBS versions sharply diverge is the scope of tolerance. Recall that Locke was solely concerned with permitting specific Protestants religious liberty to espouse a limited menu of heretical views, and this graciousness would *not* include full civil freedom. Nor was Locke upset over repressing homosexuals, foreigners, the disabled, etc. etc, who suffered society’s forceful displeasure. By contrast, the PBS lesson is generous to the point of eschewing boundaries altogether. An infatuation with “diversity” and calls to banish stereotypes make graciousness indisputable—the welcome mat is out for everyone, no questions asked. Though “diversity” is mentioned eight times, diversity of what (e.g., ideological? theological? racial? socio-economic?) is unspecified. Vagueness also applies when identifying those groups, beyond Muslims, who might be at-risk from intolerance. Those potentially in jeopardy are merely “minority groups” or just “some groups.” One could reasonably surmise that all human variations deserve tolerance, even if proclivities entail risky behavior (e.g., the obese, smokers). When all is said and done, students learn that different groups and minorities require acceptance sans any details, a graciousness light years distant from Locke’s cautious, narrow plea.

Competing Appeals

These two visions are poles apart, and it is pointless to insist that one is “better” or “worse” than the other in some grand beauty pageant. Nonetheless, it is indisputable that when it comes to attracting modern-day tolerance crusaders, PBS-style pleas far outdraw Locke’s more restrained prescription. At least to pedagogues devising classroom messages, broadening probably appears as a natural evolution, a sign of progress akin to the advancement of modern medicine. This contemporary embrace coupled with the total abandonment of the Lockean view should come as no surprise in today’s cultural milieu where openness to “differences” seems the ultimate virtue. The PBS vision is a universal one, equally applicable to gays, the disabled, the destitute, those with controversial lifestyles, eccentrics, screwballs, or just about any group or person demanding acceptance. It further avoids all the opprobrium associated with being judgmental, let alone practicing discrimination against those who

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are disadvantaged, unfortunate, or might superficially appear unsavory. This across-the-board agreeableness is no small virtue in a society where banishing the disagreeable can bring contentious litigation. Overall, the PBS pedagogy (and countless similar prescriptions) invokes the upbeat image of one big non-antagonistic family, each member unique but still a valuable part of the human race, and who could argue with that alluring picture?

The stress on welcoming, not rejecting, would also appear to be a practical recipe for tranquility, if not for ending hate, at least in today's zeitgeist. The legal code with its anti-discrimination strictures plus countless accommodation requirements certainly reflects this inclusion-will-mitigate-conflict framework. Even apart from legal requirements, everyday terms like "marginalizing," "ostracizing," or "prohibiting" now possess an unsavory flavor and are clearly outshone by, say, "appreciating" or "being hospitable." This is a momentous, though rarely recognized shift in thinking from past eras when "differences" of almost any stripe—religion, language, ethnicity—were generally perceived as provoking civil dissension. In today's moral atmosphere, then, Locke's restrictive standards, his willingness to exclude dozens of prominent sects, let alone condemn those of unconventional sexuality and morality, seems almost mean-spirited, a narrow-mined recipe for making untold people feel undeservedly scorned. And, such scorned people cause trouble, and who wants trouble? Put generally, Locke saw divisions as troublesome but inescapable so there must be some limited tolerance; according to PBS, on the other hand, differences are not only inevitable, but they deserve a robust welcome, and the more the merrier.

These visions also differ in their intellectual demands. PBS's lesson plan—just celebrate diversity, banish stereotypes—is uncomplicated, readily grasped advice. Its inexactitude if not its total lack of boundaries regarding exactly who deserves welcoming further simplifies. Indeed, in this gracious perspective those insisting upon imposing distinctions regarding potentially unwelcome diversity (e.g., interrogating people of Japanese ancestry during World War II to uncover possible treason) only adds arduousness in addition to raising the specter of wicked intolerance. By contrast, following Locke demands assembling evidence, case by case, will surely overburden hurried students and teachers. And who wants to make schooling any more tedious, especially when lessons elsewhere are so burdensome? One can only imagine students and teachers wrestling with distinctions between abstract Islamic doctrine and its violence-laden interpretation by radical offshoots. Or the entire issue of collective guilt. In any case, delving into these quandaries is tough work, and tomorrow's events could change everything, so it is just easier to say, "always cherish differences."

The upshot in this "battle of visions" is that, thanks to countless professional educators and likeminded advocates, this easy-to-embrace PBS tolerance plan (and dozens of equivalent versions) quickly and invisibly triumphs. This achievement is consequential far beyond scholarly debates: tens of thousands of students yearly learn to celebrate tolerance, and that this newly interpreted

virtue now means appreciating freshly discovered diversity, banishing innumerable dangerous stereotypes, and otherwise thinking “good thoughts” about those who might pose dangers. It is difficult to challenge this message, even raise modest objections, since expelling all the antagonisms plaguing American society is doubtless a praiseworthy aim. At worst, idealistic educators are only squandering a few hours per week to improve the world, and such instruction, it would seem, certainly cannot hurt. No wonder that these tolerance advocates confidently march onward, one classroom after another, with only a handful of Christian fundamentalists far beyond the educational mainstream resisting.

A Different View

The analysis presented here sternly rejects this burgeoning “tolerance means celebrating diversity” perspective and instead advises returning to the more modest Lockean vision though, obviously, Locke’s views can only be adapted to contemporary issues, not mechanically applied to quarrels unimaginable centuries back. Rejection is largely practical: intentions aside, this facile “embrace differences” tolerance update cannot achieve tranquility nor cool any antagonisms. It is, moreover, a deceptively bogus, pernicious solution to problems better addressed by other means. It will probably exacerbate strife, and those who loathe America or want to stir the pot of racial animosities will not mend their ways if only we respect their cultures. Nor will schools become more peaceful by instructing students that there is no good or bad, just enviable differences.

The cost of PBS-like projects far outweigh squandering untold hours of classroom time when many students remain illiterate. Students absorbing these intellectually shallow lessons will lose their capacity for navigating tough moral dilemmas. Whatever the character of the latest arrival, whether virtuous or noxious, there will be a lazy proclivity to accept unconditionally since to exclude is to display the dreaded intolerance. There are also costs to schools over and above neglecting more important academic subjects. At least some parents alarmed at what arrives with this easy embrace will withdraw their children from schools rather than permit indoctrination of the underlying moral relativism. School administrators must also defend these divisive embraces at a time when support for public education is receding. The venerable adage that the road to hell is paved with good intentions indisputably applies here.

Challenging this contemporary tolerance enterprise is, we admit, no easy task given that contemporary educators seem totally infatuated by it while countless parents are easily seduced by any scheme that promises to “do good.” More is required than just disagreeing—the entire enterprise must be attacked assumption by assumption, datum by datum, while faulty arguments and their shoddy intellectual underpinnings are brought to light. Chapter 2 begins our sacrilegious endeavor by addressing complicated issues blithely evaded by those preaching glib accept differences tolerance. We begin by explicating varied conceptions of “tolerance” to show that what today’s educator-led embrace proposes is but

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one of many conceptual possibilities. This is not tolerance; it is only one of several different understandings of the term, and hardly the most useful. We then move on to dilemmas afflicting any tolerance promotion effort, for example, dealing with thin-skinned people who chronically feel unappreciated regardless of welcoming efforts. Does this hypersensitivity to alleged slights guarantee permanent intolerance? Similarly, how much coercion, and of what type, is permissible in a democracy to achieve tolerance? And who decides *precisely* what deserves tolerance? Are, for example, education experts authorized to determine that militant black civil rights organizations, but not the Ku Klux Klan, warrant appreciation? Such quandaries are conveniently slighted when extolling the benefits of tolerance to ninth graders, but such avoidance hardly resolves these perplexities.

Chapter 3 samples in detail what professional educators advance under the “promoting tolerance” banner. Our PBS example is but one outcropping in an energetic enterprise of lesson plans, workshops, and freely distributed reading materials that have already deeply penetrated classrooms. Sadly, this pedagogy often offers a highly unrealistic, if not bizarre, view of the world in the name of “promoting tolerance.” “Mis-education” is a more accurate depiction of this hectoring.

The quest to achieve tranquility is doomed at the onset, though this does not mean that the enterprise is without consequences. Chapter 4 argues that the project’s intrinsic nature, its need to refurbish millions of attitudes, invites failure. Youngsters may lack the intellectual maturity necessary to grasp the complexity of tolerance and, of the utmost importance, “appreciate differences” messages can easily be resisted by both parents and the children themselves. These messages are also so muddled and mired in contradictions that they will be unfathomable to those peeking below glib generalities. Moreover, to be effective, this instruction must be all-encompassing, and it is beyond belief to suppose that the hateful will mend their loathsome ways if only sufficiently admonished by public school teachers. There are better ways to constrain the dangerous fanatic.

Chapter 5 singles out one particularly prominent feature of this instruction, namely battling hate via the criminal code. Insofar as hatefulness toward differences is deeply ingrained in human nature, this quest for “hate free” humans is truly revolutionary. Not even the Soviet Union could refurbish human nature, and democratic societies are far more constrained when embracing social engineering as the pathway to betterment. It is also, we argue, an unnecessary campaign—comparable benefits are achievable at far less cost simply by focusing on outward behavior, not inner thought.

The futility of this expensive pursuit raises questions about whether achieving tolerance is the endeavor’s authentic aim. Chapter 6 argues that the quest has multiple agendas, including legitimizing plain old-fashioned sloth. More important, a radical ideological agenda likely often lurks behind all high-sound-

ing “appreciating diversity brings peace” rhetoric. Scanning lesson plan specifics shows that graciousness is selective—only those residing on the political spectrum’s left side appear to deserve tolerance. Even those in primary school learn, for example, that they should appreciate gays and civil rights groups but there is silence when it comes to fundamentalist Christians or the military. Liberal proselytizing need not, however, bring the hoped for tranquility and often engenders the very divisiveness it is supposed to eliminate.

A brief epilogue observes that the quest to eliminate alleged harm via promoting the acceptance of “differences” is futile. People will always feel slighted, demeaned, or stigmatized. More important, this brand of tolerance is a flight from drawing communal boundaries at time when the very idea of a United States, defined by common values, is under assault. Students taught that nothing is better than anything else, only “different” are rendered incapable of defending *any* value, and this stance can only create mayhem. The stakes here are momentous—in the name of inculcating tolerance, millions of impressionable children are indoctrinated into a multicultural flavored moral relativism that will eventually render them incapable of resisting truly subversive ideas. Refusing to make choices only guarantees weakness in defending against what is dangerous. If it is mean-spirited and “exclusionary” to condemn clearly dangerous drug addiction, how can we argue with those who insist that liberal democracy itself deserve extermination? Defending a democratic civil society requires certain habits of mind, a willingness to make distinctions, and a refusal to separate good from evil is not part of any sturdy defense. In the final analysis, this bogus “new and improved” tolerance can only weaken our communal ties, and such weakness will produce the very opposite of what its devotees desire.

the eighteenth century. Each delivered a powerful indictment of persecution and made an outstanding contribution to the collective achievement of the courageous minds of the sixteenth and seventeenth centuries who created the intellectual and moral foundations for the long-term development of religious tolerance, freedom, and pluralism in Western culture.

From Perez Zagari,
How the Idea of Religious
 Toleration Came to the
 West (Princeton, N.J.:
 Princeton University Press, 2003)

CHAPTER 8

Conclusion: The Idea of Religious

Toleration in the Enlightenment and After



In the battles over religious toleration that were so bitterly and widely waged in the sixteenth and seventeenth centuries, the idea of toleration was itself very largely inspired by religious values and was fundamentally religious in character. The proponents of toleration, whether Anabaptists, Sebastian Franck, and other sectarians, or Castellio, Socinians, Dutch Arminians, Roger Williams, Milton, and others of similar mind, might have been seen by their Catholic and orthodox Protestant adversaries as either dangerous heretics or doctrinally deviant, but there could be no question that they were nevertheless profoundly Christian in their thought and ideals. It is only stating the obvious to say that in advocating a policy of peace and tolerance toward religious differences, their supreme concern was the welfare of religion itself. They acted from the primary conviction that persecution was contrary to the mind of Christ and a terrible evil which did great harm to Christianity. When they maintained that princes and civil magistrates had neither a right nor a duty to punish heresy, nor any responsibility for the care of religion, they were striving to put an end to coercion in enforcing religious belief or church affiliation, but they certainly did not intend to banish religion from the polity

or common life. Such a thought could hardly have occurred to them, nor could they ever have imagined as a proper setting for religious freedom a completely secular society in which the Christian religion had ceased to be a dominant public presence and a pervasive force in morals and conduct and was largely relegated to the realm of personal and private belief.

With John Locke and Pierre Bayle, we reach a point of transition in the concept of toleration, for, as we have seen, they stood between the age of faith that was passing and the age of the Enlightenment that was dawning. Although both were deeply affected by the Calvinist Protestant environment in which they grew up and remained genuinely religious thinkers, they emancipated themselves from doctrinal dogmatism and religious intolerance, coming to support religious pluralism in the hope of a world in which the Christian state favored no church and left religion free. In the years following their death the two held a prominent position among the Enlightenment's culture heroes not only for their commitment to tolerance but, in the case of Locke, also for his sensationalist philosophy, with its critique of the existence of innate ideas and his conception of a reasonable Christianity, and, in Bayle's case, for his critical rationalism, skepticism, and antipathy to superstition.

The Enlightenment in Europe spanned the intermediate decades of the eighteenth century until the beginning of the French Revolution. It was a cultural-intellectual movement fed by many tributary streams of unorthodox thought in the preceding era. Highly cosmopolitan and yet also inflected by marked national differences, it nonetheless stood for certain general attitudes, beliefs, and values. Its significance for its contemporaries was summed up near its end in the notable work of 1784 by the German philosopher Immanuel Kant, *What Is Enlightenment?* Kant defined it as humanity's release from self-imposed tutelage to external authority and readiness to use its independent reason: "Dare to know. Have courage to use your own reason—that is the motto of enlightenment."¹

The carriers and disseminators of the Enlightenment on the European continent comprised a great variety of thinkers and

writers, some of whom the French called *philosophes*, a term that denoted not professional philosophers but persons with broad general interests and ideas on many different subjects who addressed themselves mainly to a public of members of the middle and upper bourgeoisie and aristocracy. Among them were men of letters, scientists, statesmen and government officials, scholars, and journalists, as well as an underground of radical authors producing irreligious publications that circulated clandestinely in defiance of censorship. The most famous of them was Voltaire, the preeminent *philosophe* of the age, a thinker and writer of extraordinary versatility. All these people formed a small but increasingly influential intellectual minority in France and other countries.

The Enlightenment stood for a constellation of themes that marked something of a break with the past. They included confidence in the power of untrammelled reason and denial of original sin; a critical attitude toward traditional authority; the idea of progress; contract and consent as the origins of government; the oneness of human nature; humanitarianism and opposition to slavery and torture; the beneficence of science; and an image of the universe ruled by natural laws such as were exemplified in Newton's discovery of the laws of motion. High among these tenets was also the principle of religious toleration. In the course of the eighteenth-century Enlightenment, many of Europe's foremost intellectuals, those in the vanguard of the thought of their time, arrayed themselves against the Christian theory of persecution and endorsed the idea of toleration in one form or another. Under the influence of Enlightenment ideas, a number of rulers of the later eighteenth century—such as Frederick the Great, king of Prussia, and the emperor Joseph II of Austria—promoted the growth of toleration in their kingdoms.²

The ultimate importance of the Enlightenment lay in its long-run contribution to the gradual secularization and liberalization of Western society. Secularization in the eighteenth and nineteenth centuries meant chiefly the decline of the dominance of the Christian religion and churches over individual minds and in political and social life. It also meant the displacement of Chris-

tian otherworldliness by the values of earthly happiness, pleasure, and utility. The thinkers of the Enlightenment were on the whole more critical and destructive than constructive. Many were deists, devotees of natural religion, and freethinkers who could not accept the Christian faith; some were philosophical materialists and atheists. Of all the forces that they combated, what they most detested was supernatural religion, ecclesiastical authority and dogmas, persecution, priestcraft, fanaticism and superstition, clerical tyranny and obscurantism, religious censorship—in a word, everything in the Christian religion and established churches that seemed unjust and antithetical to reason. In France, the center of the Enlightenment, the *philosophes* made the Catholic Church a prime object of their criticism for its promotion of superstition and its history of persecution. Although they believed in enlightened government and the rule of law, they were not democrats, and some among them even agreed with the age-old idea that religion and superstition were necessary for preserving social order and keeping the lower classes in quiescent subordination to rulers and superiors. Their dedication to enlightenment and the sovereignty of reason pointed nevertheless in the direction of a humane and liberal society based on freedom of thought, the dissolution of orthodox religion as a coercive power, the rule of law, and political and religious liberty.³

It was in this context that some of the thinkers of the Enlightenment carried on the struggle for toleration. Their writings on the subject contained little that was original. In their hands, however, the concept of toleration underwent considerable secularization. During the eighteenth century it became largely separated from its religious roots and thus drained of the religious inspiration and vital preoccupation with the spiritual welfare of the Christian religion that had provided the most powerful motive in the earlier defense of toleration since the advent of the Protestant Reformation. The concept of toleration was now frequently extended to unite religious with intellectual freedom. This was a quite novel move, for while the tolerationist literature of the sixteenth and seventeenth centuries did sometimes encompass the necessity of

freedom of thought and debate—as seen, for instance, in some of the writings of Castelli and Coornhert, the praise of free discussion in Milton's *Areopagitica*, and Spinoza's emphasis upon the principle of intellectual freedom—its understanding of toleration was for the most part limited to the demand for acceptance of freedom to differ in religion. Locke, for instance, while he would have been averse to any type of ecclesiastical or other censorship and was wholly committed to freedom of worship, had little to say in his *Letter concerning Toleration* in behalf of freedom of thought in general.⁴ Toleration and freedom of the religious conscience also came to be more and more justified during the Enlightenment primarily as a natural right associated with other natural rights. These developments infused the idea of toleration with an increasingly secular character.

VOLTAIRE AND TOLERATION

There were many noted advocates of toleration during the Enlightenment. In England they included deists and freethinkers like John Toland, Matthew Tindal, Anthony Collins, and Tom Paine, and radical religious dissenters such as Joseph Priestley and Richard Price. In Germany one of the greatest beside Kant was the poet, dramatist, critic, and philosopher Gotthold Lessing. In France Montesquieu, Voltaire, Turgot, Diderot, Rousseau, Condorcet, and other prominent thinkers were in favor of tolerance and pluralism in religion. A great blot on the tolerant outlook of some of them, however, which must not be overlooked, was their anti-Semitism.⁵ One of these, unhappily, was Voltaire, who, though he believed in toleration for the Jews, reviled their religion and detested them collectively as a fanatical, avaricious people who hated all other nations and were hated by them.⁶ On the other hand, certain major figures of the Enlightenment, like Toland and Lessing, were philosemites whose disposition toward the Jews was sympathetic and liberal. Toland published a pamphlet in 1714 to support the granting of naturalization and rights of citizenship to

the Jews in Britain. He called his work "a defence of the Jews against all vulgar prejudices in all countries"; it was intended to encourage "affection" for the "Jewish Nation."⁷ Lessing was a close friend of the Jewish philosopher Moses Mendelssohn, a leading contributor to the Enlightenment in Germany. Lessing's humanity embraced the Jews equally with people of other religions, as all engaged in a common search for truth, and his famous play *Nathan the Wise* (1779), whose principal character was a Jew, was a plea for general tolerance.⁸

At the forefront of the Enlightenment movement for religious toleration stood Voltaire (1694-1778), the head of "the party of humanity," a writer renowned throughout Europe and its most celebrated opponent of intolerance. The son of a bourgeois family, he was born in Paris and educated by the Jesuits. While still in his twenties, he won literary and social success for his poems and plays, and he was reputed for many years to be the best dramatist in France. A deist who believed in an unknowable Supreme Being, Voltaire disliked metaphysics and theology. He deprecated speculation into remote, useless truths and was often biting and irreverent toward supernatural religion. His well-known battle cry, "écrasez l'infamé" (crush the infamous thing), expressed his undying enmity toward religious fanaticism, superstition, and persecution. For him the essence of religion was morality. Although a humanist who spoke for the rights of the free intelligence and reason, he was also conscious of the limitations of the human mind. His erudition, skepticism, wit, charm, worldliness, variety, and humor, his easy style and accessibility, and his basic seriousness of purpose made a profound and lasting impression on his own and subsequent generations. He was an endlessly prolific author, a satirist and fighter against persecution, many of whose works contributed directly or indirectly to further the cause of toleration.⁹

His *Lettres philosophiques* or *Lettres anglaises* (*Philosophical Letters* or *Letters on England*), which he published in 1734 after being forced to leave France and spending nearly three years in England, has been called the first bomb thrown at the *ancien régime*. A partial account of various aspects of English life, which it tacitly

compared with France, it praised England for its free political institutions and the broad religious tolerance visible in the peaceful coexistence of its many denominations. England, Voltaire wrote in it, "is the land of sects. An Englishman, as a free man, goes to heaven by whatever route he likes."¹⁰ His *Dictionnaire philosophique* (*Philosophical Dictionary*) of 1763 contained a number of articles relating to toleration, including the ones on Antitrinitarianism, fanaticism, freedom of thought, the Inquisition, and persecution. This book, whose tone was reasonable, moderate, and conversational, and which often made use of sharp, witty dialogue, was thoroughly destructive of orthodox Christianity.¹¹ In its article on toleration, a virtue Voltaire called "the prerogative of humanity," he deplored the intolerance of Christians and stated that "of all religions, the Christian is undoubtedly that which should instill the greatest toleration, although so far the Christians have been the most intolerant of all men." Stressing how far present-day Christians were from the teachings of Jesus, he pointed out that "the Parsee, the Jew, the Mohammedan, the Chinese deist, the Greek Christian, the Roman Christian, the Protestant Christian, the Quaker Christian trade with each other in the stock exchanges of Amsterdam, London, Surat, or Basra; they do not raise their daggers against one another to win souls for their religions." "Why then," he asked, "have we butchered each other almost without interruption since the Council of Nicaea?" He appealed for kindness and charity between people and declared that every person who persecuted another because the two disagreed was a monster. "We are all steeped in weaknesses and errors," he said; therefore "let us forgive one another's follies, it is the first law of nature."¹²

Voltaire's *Traité sur la tolérance* (*Treatise on Toleration*) was his most sustained discussion of this subject. After its first appearance in 1763, it went through a number of French editions, one of which in 1764 also contained a French translation of Locke's *A Letter concerning Toleration* with a preface recommending this work by the "celebrated John Locke" for upholding "the utility of universal toleration."¹³ It was the notorious Calas case that prompted Voltaire to write this treatise. After the revocation of the Edict of

Nantes, there were still many Protestants remaining in France during the eighteenth century who, though their religion had no legal existence, adhered to it secretly in the face of persecution. In 1762 Jean Calas, a Protestant cloth merchant in Toulouse, was atrociously executed after being convicted on the false charge that he had murdered his son to prevent him from converting to Catholicism. The son had actually committed suicide. Persuaded to take up Calas's cause as a matter of justice, Voltaire pursued it so effectively that in 1765 Louis XV's Council of State reversed the verdict of the Toulouse judges and affirmed his innocence. Although the *Traité sur Toleration* included an account of *l'affaire Calas*, it was mainly concerned with toleration in its general aspects and advanced a plea for freedom of thought as well as for religious toleration of the Protestants and other minorities.¹⁴

Voltaire argued with historical examples that toleration was in the interest of the state, and that persecution was wicked and immoral. Toleration was also necessitated, he believed, by the advance of European civilization. Reason had been making progress owing to the spread of fine literature; manners were more gentle and so was society. "The whole face of Europe had changed" in the past fifty years, as "the influence of reason," growing stronger, smothered discord, affirmed virtue, and made obedience to law agreeable without coercion. This, of course, was a considerable idealization, but as an instance he cited the treatment of the Catholics in England, who, other than paying double taxes, he said, enjoyed the rights of citizens. He also mentioned the toleration prevailing in the Ottoman Turkish Empire and in China, as well as in the American colonies of Carolina and Pennsylvania. While toleration had never caused civil war, he noted, intolerance had covered the earth with blood.¹⁵

In a very short chapter, he explained toleration as a "human right" founded on natural law, the universal principle of both being the rule "Do unto others what you would have done unto yourself." In light of this principle, Voltaire found it impossible to understand how one man could tell another, "Believe that which

I believe and you cannot believe, or you will die." If everyone acted in accord with the latter doctrine, the Japanese, Chinese, Indians, Mongols, Hindus, Persians, and Turks would all hate each other and also hurl themselves against the Christians, who had been killing one another for a very long time. Therefore, he concluded, any law sanctioning intolerance was "absurd and barbaric," since it was a law of wild animals but even more horrible, because animals killed only to eat, whereas men have exterminated each other over verbal formulae.¹⁶

Voltaire's fundamental position was that "each individual citizen . . . be permitted to believe" and "to think only what his reason . . . may dictate," whether correct or mistaken.¹⁷ To those who were horrified by this proposal, he declared that it was very necessary as long as no one disturbed the civil order, since everyone was expected to respect the laws of his country. But if it were thought a crime not to believe the dominant religion, then the persons who held this view also accused their ancestors, the first Christians, and justified the latter's persecutors who delivered them to execution. He took note of the answer of those who would insist that there was a complete difference between the Catholic and other religions, because the first was the work of God. To such people he put the question of whether they wished in good faith that the Catholic religion, because it was divine, should rule by means of hatred, ferocity, prisons, tortures, and murders. If God founded it, he assured them, God would preserve it, "while intolerance begets either hypocrites or rebels." Did Catholics therefore "want to maintain by executioners the religion of a God who died at the hands of executioners and preached only gentleness and patience?"¹⁸ It was always "la douceur" (gentleness) that Voltaire ascribed to Christ; he devoted a chapter to showing that Jesus was tolerant, and that his command in the parable in the Gospel of Luke, "Compel them to come in," did not authorize intolerance or persecution. Because tolerance was the divine law, he advised those "who want to be like Jesus Christ" to be martyrs, not hangmen.¹⁹

In the midst of his treatise, Voltaire inserted a discussion of the question of whether it was useful to keep the people in superstition. His answer was that "mankind always needs a bridle," and that the human race was so perverse and weak that it was better for it to be subjugated by superstitions, provided they weren't murderous, than to live without religion. Thus it was more reasonable for men to adore fantastic images and hold false ideas of divinity than to be atheists. But once they had come to embrace a pure and holy religion, then superstition became not only useless but very dangerous. He went on to note instances of superstition in Christian practices and the decline of superstition in France owing to the progress of reason, which "daily seeps into tradesmen's shops" and "into the grand mansions of the nobility." The worst, most dangerous of all superstitions, he said, was the one that demanded that "we hate our neighbor on account of his opinion." Rather than persecute one's brother, it was indeed more reasonable to adore the holy navel and the milk and robe of the Virgin Mary.²⁰

The high point of Voltaire's work was an appeal for "universal toleration." Not only should Christians tolerate one another, but "we ought to regard every man as our brother," meaning the Turk, the Chinese, the Jew, the Siamese, and all others. This was certain without a doubt, he maintained, for "aren't we all children of the same Father and creatures of the same God?" His sarcasm was never sharper than when, after asking his Christian readers to picture the Day of Judgment, he inquired whether they were sure God would send to hell wise and virtuous men like Confucius, Solon, Pythagoras, Socrates, Plato, and other famous pagans who were models of mankind, while bestowing eternal bliss upon the Catholic assassins who murdered Henry IV and attempted the life of Louis XV.²¹ He followed these exhortations with a prayer beseeching God that all men should love each other as brothers and hold in horror the tyranny of persecution.²²

Voltaire's *Traitee on Toleration* said nothing about the rights of the erring conscience and avoided discussion of the relationship between the state and church or religion. Assuming a Catholic

state in France, it sought to overcome Catholic resistance to toleration. In collaboration with the efforts made by others, its discussion of the case of Jean Calas and condemnation of persecution bore some fruit in 1787, when Louis XVI issued an edict of toleration to those who did not profess the Catholic religion. This decree restored the civil status of France's Protestants by granting them liberties that were said to derive from nature: the right to marry, to hold and inherit property, to exercise their occupations, and to have their children born in legitimacy. It did not, however, give them freedom of worship.²³ Voltaire urged the toleration of Christian religious minorities and non-Christian peoples in the name of both reason and morality. One might wonder whether it was his ridicule of superstition and persistent skepticism toward Christian dogma or his moral condemnation of persecution that had the greater effect in inculcating the principle of toleration. He endeavored through satire and argument to expose the injustice and inefficacy of intolerance. While he invoked the ethic of the gospel and the example of Christ to persuade his readers to treat religious differences with charity, he conceived of toleration fundamentally as the natural right of individuals to express their minds and opinions freely in matters of religion. By grounding the concept of toleration in natural right and natural law, he helped to give it a universality which associated it with other natural rights that justified men's freedom.

THE PROGRESS OF RELIGIOUS TOLERATION FROM THE END OF THE EIGHTEENTH CENTURY TO THE PRESENT

The development of religious toleration in the modern age from the Enlightenment onward was a long, complicated, and tortuous process that was nevertheless marked by the steady growth of the idea in Western consciousness, and by the expanding recognition of toleration as a right to be afforded all human beings and religions. Its gradual progress and realization in law and institutions were part of the evolution of most of western and central Europe

and the Americas in the direction of political freedom, democracy, and—in the widest, least doctrinaire sense—toward a liberal society protective of individual rights. This process, which involved many national variations in church-state relationships, was, of course, always imperfect; it was never complete or final or without local contradictions, exceptions, and calamitous retrogressions in particular countries. Nor was it identical on the psychological and social plane with the elimination of prejudice and hateful attitudes toward other religions on the part of individuals, miscellaneous groups, and political organizations and parties. Anti-Protestantism, anti-Catholicism, and anti-Semitism have all flourished at different times in the nations of Western society, although they also greatly declined during the later twentieth century, certainly in their public expression. Over the long term, therefore, the advance of religious toleration has constituted one of the main lines of change and progress within Western society in the past two centuries. This advance took the form of the undermining of the confessional or denominational state, which existed everywhere in Europe in the seventeenth and eighteenth centuries, and its slow replacement by the full recognition of religious pluralism and, in many instances in the later twentieth century, by the separation of church and state.

The growth of toleration suffered a hideous reverse in the first half of the twentieth century through the coming to power of one-party totalitarian and authoritarian regimes of political and religious intolerance and persecution in Soviet Russia, Italy, Germany, and some other countries of Europe and Latin America. The phenomenon of modern anti-Semitism based on doctrines of racial difference and inferiority, a further development in the centuries-old anti-Judaism and hatred of the Jews fostered by the Catholic and other Christian churches, reached its height in Germany under Nazi rule after 1933. Its monstrously inhuman culmination occurred during the Second World War when the Nazi regime put into effect the policy of genocide aiming at the total destruction of the Jewish people. As a result, however, of the defeat of fascism and Nazism in the Second World War, the containment of commu-

nism in the ensuing Cold War, and the ultimate collapse of the Soviet communist system and empire at the end of the twentieth century, religious toleration has become a universal value with global impact and is seen as one of a number of basic rights and freedoms to which human beings are entitled.

In the progress of the idea of religious toleration toward its current status in Western society and its present worldwide significance, certain milestones point the way, and I shall note some of the most important of them in bringing this work to a conclusion.²⁴

Developments in colonial America and the early United States were of great significance in the history of toleration and contributed to making the United States in the course of time the most religiously diverse and tolerant country in the world. In the seventeenth century, the colonies of Maryland, Rhode Island, and Pennsylvania, founded respectively by Catholics, Baptists, and Quakers, introduced legal regimes of freedom of conscience and worship for differing religious beliefs.²⁵ During the eighteenth century the principle of religious toleration became rooted in the concept of natural rights, the doctrine that inspired the American Declaration of Independence of 1776. The ordaining of religious freedom in the Pennsylvania state constitution of 1776 stated that "all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understandings," and prohibited all compulsion in religion or deprivation of the civil rights of any citizen on account of religious belief or mode of worship.²⁶ Most notable was the Virginia Statute for Religious Freedom, drafted by Thomas Jefferson in 1777 and passed by the Virginia legislature in 1786 through the efforts of James Madison and the pressure of the dissenting sects led by the Baptists. Madison's *Memorial and Remonstrance against Religious Assessments*, which he wrote in 1785, preceded its passage as a major elaboration of the view that freedom of religion was an inalienable right of nature existing prior to civil society. It asserted that the "free exercise of . . . Religion according to the dictates of conscience is held by the same tenure with all . . . other rights," and that religion was exempt from the authority of the civil magis-

trate.²⁷ Both Jefferson and Madison were men of the Enlightenment whose ideas on toleration were strongly influenced by Locke's *Letter concerning Toleration*.²⁸ Always conscious of the danger of ecclesiastical tyranny, both were opposed to any state church. The Virginia Statute disestablished the Anglican Church as the state-supported church in Virginia. Its text was a memorable expression of the claim to freedom of religion as a part of the freedom of the mind and as a natural right derived from God. Denying that the ruler or legislator was empowered to impose his religion upon other men, it provided for complete freedom of religious opinion, belief, and worship. Its concluding clause, which declared that the religious freedoms previously enumerated were "the natural rights of mankind," contained the warning that if any future legislature should ever revoke the statute, it would be guilty of violating natural right.²⁹

Reinforcing the natural-rights ideology were the conditions of American life in the later colonial period and earlier nineteenth century, which were highly conducive to the growth of religious freedom. The de facto limitations on formal authority in America due to the great distances and spread of settlement; the weakness of ecclesiastical authority and organization; the ability of dissident religious communities to move on to other parts of the country where they were free of control; and the continual arrival of growing numbers of immigrants of different religious affiliations—all these factors created a fluid situation favorable to the emergence of new religious bodies and popular movements and caused the United States to become "a free market of religion."³⁰

Religious freedom was enshrined as a fundamental American principle in the federal constitution of the United States ratified in 1789. Article VI of the Constitution barred all religious tests as a qualification for holding any office or public trust under the United States. Two years later, the Bill of Rights proposed by James Madison, which comprised the first ten amendments incorporated in the Constitution, provided for complete freedom of religious belief and practice.³¹ The First Amendment declared that the Congress of the United States "shall make no law respecting

**An ACT for establishing RELIGIOUS FREEDOM,
passed in the Assembly of Virginia in the beginning
of the year 1786.**

WE are aware that Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy Author of our religion, who, being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do; that the impious presumption of legislators and rulers civil, as well as ecclesiastical who, being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible; and as such endeavouring to impose them on others, hath established and maintained false religions over the greatest part of the world, and through all time: That to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose

First page of the Virginia Statute for Religious Freedom, drafted by Thomas Jefferson and passed by the Virginia legislature in 1786. Courtesy of The Albert and Shirley Small Special Collections Library, University of Virginia Library.

an establishment of Religion, or prohibiting the free exercise thereof." It is significant that the amendment linked these provisions to other rights by also barring Congress from making a law abridging freedom of speech, the press, and the people's right to assemble peaceably and to petition the government for redress of grievances. The newly born United States of America was thus unique as the first Western country whose basic law contained in its Constitution excluded any state-supported national church.³²

The conception of religious freedom as a natural right, of which no authority, church, or government could justly deprive any human being, gave the struggle for toleration a new character. Henceforth it was commonly demanded as a right, often along with other rights, as a condition of freedom. This change, exemplified by the American Constitution, was also reflected in contemporaneous developments in France after the beginning of the French Revolution in 1789. The Declaration of the Rights of Man and Citizen, adopted in August 1789 by the revolutionary French National Assembly, was premised on the proposition that "men are born and remain free and equal in rights." It proclaimed liberty, property, security, and resistance to oppression as "natural, inalienable, and sacred rights of man." On the subject of religion, it did not speak of religious liberty but affirmed that "no one is to be disquieted because of his opinions, even religious, provided their manifestation does not disturb the public order established by law."³³ In other actions, the National Assembly opened all civil and military offices to non-Catholics and extended the rights of citizenship to the Jews of France. The Constitution of 1791, the first written constitution in France's history, guaranteed various natural and civil rights to French citizens, including freedom to speak, write, print, and publish their opinions without being subject to any prepublication censorship, and to worship as they pleased.³⁴ In contrast to the separation of church and state in the United States, the French Revolution destroyed the old religious order in France through the Civil Constitution of the Clergy in 1790, which placed the Catholic Church completely under the national state's control. The church's property was confiscated by

the state, while bishops and priests became salaried officials of the government and were persecuted if they refused to accept their new status. Catholicism continued to be the state religion, but with toleration for other religions and civil liberty and equality for non-Catholics.³⁵

The spread of the doctrines of the revolution, which was aided by France's territorial expansion under the first French Republic and the subsequent conquests of Napoleon Bonaparte as French emperor, was among the factors that helped to undermine the institutions of the *ancien régime* in Italy, Germany, Spain, and other parts of Europe. The coupling of the ideas of political and religious freedom in the nineteenth century led to the gradual removal of legal disabilities upon religious denominations outside the state churches, the growing acceptance of religious pluralism, and the recognition of religious freedom as a right of citizens. During this period, and especially in the pontificate of Pope Pius IX (1846-1878), the papacy and Catholic Church remained steadfastly opposed to the principle of religious toleration and to any compromise with growing political liberalism and aspirations to democratic government. Within the church, nevertheless, a significant movement of liberal Catholicism emerged in the earlier nineteenth century that protested against the split between the church and the modern world. Represented by such well-known Catholic thinkers as Montalembert and Lamennais in France and Lord Acton in England, it advocated political and religious liberty in opposition to the church's ideological conservatism, intolerance, and support of reactionary governments.³⁶

In England toleration prevailed in the course of the eighteenth century, with both Protestant dissenters from Anglicanism and Catholics left free in the main to practice their faith. In 1828 the British Parliament finally repealed the Test and Corporation Acts, the last remaining penal laws against the dissenters, and in the following year it removed the disabilities against the Catholics.³⁷ The English philosopher John Stuart Mill's famous *On Liberty*, published in 1859, was one of the strongest, most influential statements by any thinker of the nineteenth century urging the widest

possible extent of individual freedom, political, religious, and intellectual. Mill recognized not only the close interrelationship of the three but the debt that the struggle for political and intellectual freedom owed to the earlier struggle for religious freedom. It was on "the [religious] battlefield, almost solely," he wrote,

that the rights of the individual against society have been asserted on broad grounds of principle, and the claim of society to exercise authority over dissentients openly controverted. The great writers to whom the world owes what liberty it possesses, have most asserted freedom of conscience as an indefeasible right, and denied absolutely that a human being is accountable to another for his religious belief.³⁸

The late eighteenth century and the nineteenth also saw the political emancipation of the Jews of western Europe, which began with the French Revolution. Their former pariah status as an oppressed alien people within Christian society came to an end as they were gradually accorded full legal equality and the rights of citizenship in England, France, and other European countries. In the United States, Jews, although long liable to prejudice and discrimination, always enjoyed civil equality and citizen rights. Jewish emancipation meant deliverance not only from the ghetto and legal intolerance but also from the bonds of the traditional religious community and the strict mandates of orthodox observance. It coincided with the increasing dissemination of Enlightenment and secular values in Jewish life and resulted in gradual Jewish assimilation into the wider cultures of the nations of which they were part. In the process they became French, Americans, English, Italians, Germans, Austrians, and the like. Such assimilation, though it never led to their complete acceptance by Christian society in the nineteenth and earlier twentieth centuries, entailed their departure from the ancestral religious beliefs and practices that had held them together as a people; this was the price they paid for emancipation.³⁹

By the end of the twentieth century the principle of religious tolerance and freedom, even if by no means always honored in

practice, had come to be seen throughout Western society as a basic legal and human right. In almost every country except Great Britain, moreover, its acceptance was accompanied by the constitutional separation of church and state. The war of 1939-1945 against fascism and Nazism and the conflict of the second half of the century with Soviet communism confirmed the Western world's belief in religious freedom as one of its supreme values. The same period also witnessed the increasing penetration of the concept of political, religious, and other rights within non-Western societies throughout the globe. These rights were commonly designated as human rights. Two major events in particular must be reckoned as the outstanding symbols of the extraordinary ascent of human rights, including those pertaining to religion, to their preeminent normative position on a global scale in the later twentieth century. One was the United Nations General Assembly's adoption in 1948 of the Universal Declaration of Human Rights; the other was the Declaration on Religious Freedom in 1965 by the Second Vatican Council of the Catholic Church.

When the United Nations created its Commission on Human Rights in 1946, the new body had a broad membership representing a number of countries of different cultures and political systems. The main work in drafting the Universal Declaration was done by the commission's American chair, Eleanor Roosevelt, the widow of President Franklin D. Roosevelt, and a small group of United Nations delegates who were among the members of the commission. These were a Chinese diplomat, writer, and Confucian scholar, P. C. Chung; a Lebanese Christian professor and philosopher, Charles Malik; a French Jew, distinguished jurist, and future Nobel Peace Prize laureate, Jean Cassin; and an Indian legislator, nationalist, and Hindu, Mrs. Hansi Mehta. In its concept of human rights, the Universal Declaration included not only civil, political, and religious, but social, economic, and cultural rights as well. Beside rights, its other fundamental concepts were the dignity of man and the basic unity of the human race. In his speech presenting the final document to the General Assembly of the United Nations in December 1948, Malik described the

Universal Declaration of Human Rights as a "composite synthesis" of all existing rights traditions; he said it had been designed on an international basis in which "no regional philosophy or way of life was permitted to prevail." The General Assembly accepted it unanimously, with eight abstentions.⁴⁰

Its preamble began with this statement: "The inherent dignity and the equal and inalienable rights of all members of the human family [are] the foundation of freedom, justice and peace in the world." It also referred to the famous Four Freedoms that had been outlined by President Roosevelt in 1941: freedom of speech and belief, freedom from fear and from want. Going on to articulate the body of rights to which all human beings were entitled, the Universal Declaration pronounced in Article 18 that "[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religious belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." The following article provided for freedom of opinion and expression in all forms and all media.⁴¹ These two articles, particularly the first, may be considered a summation of all that the advocates and champions of toleration and religious freedom had collectively striven for over the past four hundred years. Of course, the Universal Declaration of Human Rights is only words. It has no provision for enforcing its principles and is not legally binding on the member states of the United Nations. At the beginning of the twenty-first century, religious tolerance and freedom are sadly lacking in various parts of the world. The Universal Declaration serves nevertheless as a standard for international organizations, governments, and great numbers of people everywhere. Many experts believe that it has become part of international customary law and provides a moral, political, and quasi-legal framework to which countries belonging to the United Nations have an obligation to adhere.⁴²

The Second Vatican Council of the Roman Catholic Church, which met in 1962, was convened by Pope John XXIII and was continued after his death in 1963 by his successor Pope Paul VI.

The council's Declaration on Religious Freedom bears the subtitle "On the Right of the Person and of Communities to Social and Civil Freedom in Religious Matters." When debated, it met with considerable resistance from some Vatican officials and a number of bishops.⁴³ It drew inspiration, however, from John XXIII's well-known encyclical of 1963 on world peace and justice, *Pacem in Terris*, which spoke of "universal, inviolable, inalienable rights and duties" and used the phrase "the dignity of the human person" over thirty times.⁴⁴ Among its chief intellectual sponsors and promoters was the American Jesuit philosopher John Courtney Murray, who was called to Rome during the council's proceedings to serve as one of its theological experts. Having written extensively on religious freedom, Murray was convinced of the need for the church to update its teachings on the subject in the light of twentieth-century insight. In an essay circulated to the American bishops on the right of the human person to religious liberty, he characterized the opposing view in the Catholic Church in recent times as "intolerance wherever possible, tolerance wherever necessary."⁴⁵

In December 1965, the Second Vatican Council passed the Declaration on Religious Freedom, also known from the opening words of its Latin text as *Dignitatis humanae personae*, by an overwhelming majority. Of all the council's documents, this was the only one addressed to the entire world and all faiths. After referring in its exordium to the increasing contemporary consciousness of the dignity of the human person and to the church's scrutiny of its sacred tradition and doctrine in order to draw forth new things in harmony with the old, it stated that "the human person has a right to religious freedom." In defining this freedom, it asserted that "all men are to be immune from coercion" by individuals, social groups, or "any human power," so that "in matters religious no one is forced to act in a manner contrary to his own beliefs. Nor is anyone to be restrained from acting in accordance with his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits." It perceived the foundation of this right in "the very dignity of the human person" as known through "the revealed word of God and by reason itself."

The one limit the Declaration placed on the free exercise of religion was "the just requirements of public order." In the case of particular countries that recognized a state religion, it pointed out the imperative obligation to secure all citizens and other religious bodies in their right to religious freedom. Looking at religious freedom in the light of revelation, it affirmed that God created man to enjoy freedom, and that Christ and the apostles had appealed only to conscience, never using force to compel belief. It took note of the importance of the rights of the Catholic Church in a pluralistic society, emphasizing the church's own need of freedom to perform its spiritual mission. The Declaration also acknowledged that in "the vicissitudes of history," the church had acted at times in ways "which were less in accord with the gospel and even opposed to it." In its conclusion, finally, it stressed the necessity of universal religious freedom "in the present condition of the human family," in which the different nations, cultures, and religions of the world were coming together in closer relationships.⁴⁶

The Catholic theologian John Courtney Murray said of this document that "in all honesty it must be admitted" that the church was "late in acknowledging the validity of the principle" of religious freedom.⁴⁷ Indeed, it was very late. Moreover, the document was far from confronting with complete candor the Catholic Church's long history of cruel intolerance and far from expressing any contrition or apology for its record of religious persecution. In spite of these faults, the Declaration on Religious Freedom was an accomplishment of world importance. It signified a complete reversal of the Catholic Church's former inimical attitude to toleration and announced its adherence to religious freedom as a universal principle and contemporary obligation and necessity.

In his work on the political theory of justice and liberalism, the distinguished American philosopher John Rawls has observed that one of the most important roots of the liberal society lay in "the long controversies over religious toleration in the sixteenth and seventeenth centuries." It was then, he notes, that "something like the modern understanding of liberty of conscience and freedom

of thought began."⁴⁸ As I have assumed and often pointed out in this book, the ideas of toleration and religious freedom are ultimately not separable. Wherever tolerance has been recognized as more than a temporary expedient, wherever it has been advocated for religious, moral, and humanitarian reasons, it has also had a relation to and tended to develop in the direction of religious freedom. The succession of thinkers and publicists who conceived and worked out the theory of religious toleration in early modern Europe all had some concept of religious freedom in their minds as they strove to deliver Christian dissenters from persecution at the hands of the representatives of the Catholic and Protestant state churches. The poet Goethe once wrote, "What you have inherited from your fathers / You must work on, that you may possess it."⁴⁹ During the twentieth century, religious freedom and pluralism became largely a reality in Western society and inseparable from political and other freedoms. We in the Western world, especially if we are at all conscious of the long hard struggle that lies behind the achievement of our religious and other freedoms, can never permit ourselves to take them for granted and must always strive to protect them. We must also hope that despite the many adverse signs at present, we shall in time, and with the help of Western example, see the right to the free exercise of religion, together with political freedom and freedom of thought and expression, accepted and embraced in those places—including considerable parts of the Islamic world and the few remaining communist countries—where they do not exist today.

enduring tension between individual and group, citizen and member. Postmodernity requires a similarly enduring tension with modernity itself: between citizens and members on the one hand and the divided self, the cultural stranger, on the other. Radical freedom is thin stuff unless it exists within a world that offers it significant resistance.

But if this is right, then my earlier claim that toleration works as well with any attitude on the continuum of resignation, indifference, stoicism, curiosity, and enthusiasm may have been falsified in our own time. It is only if groups are self-sustaining that resignation, indifference, or stoic acceptance will suffice for coexistence. That, indeed, has been the assumption of all the regimes: that religious, national, and ethnic groups are simply there, that they command strong loyalties that must, if anything, be modified to make room for patriotism and a common citizenship. But if groups are weak and need to be helped (as I will argue for the American case in the epilogue), then some mix of curiosity and enthusiasm is necessary. Nothing less will motivate the help they need. Free and fragmented individuals in democratic societies won't provide that help themselves, or authorize their governments to provide it, unless they recognize the importance of groups (their own and all the others) in the formation of individuals like themselves—unless they acknowledge that the point of toleration is not, and never was, to abolish "us" and "them" (and certainly not to abolish "me") but to ensure their continuing peaceful coexistence and interaction. The divided selves of postmodernity complicate that coexistence, but they also depend upon it for their own creation and self-understanding.

Michael Walzer On Toler New Haven

EPILOGUE

Reflections on American Multiculturalism

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Two powerful centrifugal forces are at work in the United States today. One breaks loose whole groups of people from a presumptively common center; the other sends individuals flying off. Both these decentering, separatist movements have their critics, who argue that the first is driven by a narrow-minded chauvinism and the second by mere selfishness. The separated groups appear to these critics as exclusive and intolerant tribes, the separated individuals as rootless, lonely, and intolerable egotists. Neither of these views is entirely wrong, but neither is quite right. The two movements have to be considered together, set against the background of an immigrant society and a democratic politics that together allow these centrifugal forces to act. Understood in context, the two seem to me, despite the laws of physics, to be each the other's remedy.

The first of these forces is an increasingly strong articulation of group difference. It's the articulation that is new, obviously, because difference itself—pluralism, even multiculturalism—has been a feature of American life from very early on. John Jay, in one of the *Federalist Papers* (no. 2), de-

scribes the Americans as a people "descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in manners and customs." These lines were already inaccurate when Jay wrote them in the 1780s, and they were utterly falsified in the course of the nineteenth century. Mass immigration turned the United States into a land of many different ancestors, languages, religions, manners and customs. Political principles, maxims of toleration: these constitute our only stable and common commitment. Democracy and liberty fix the limits and set the ground rules for American pluralism.

The contrasts that I have been making within the typology of regimes can help us grasp the radical character of this pluralism. Consider, first, the (relative) homogeneity of nation-states like France, Holland, Norway, Germany, Japan, and China, where, whatever regional differences exist, the great majority of the citizens share a single ethnic identity and celebrate a common history. And consider, second, the territorially based heterogeneity of the old multinational empires and then of the states that are their contemporary heirs—like the former Yugoslavia, the new Ethiopia, the new Russia, Nigeria, Iraq, India, and so on—where a number of ethnic and religious minorities claim ancient homelands (even if the boundaries are always in dispute). The United States differs from both these sets of countries: it isn't homogeneous nationally or locally; it's heterogeneous everywhere—a land of dispersed diversity that is (except for the remaining Native Americans) no one's homeland. Of course, there are local patterns of segregation, voluntary and involuntary; there are ethnic neighborhoods and places inexactly but evocatively called "ghettos." But none of our groups, with the partial and temporary exception of the Mormons

in Utah, has ever achieved anything like stable geographical predominance. There is no American Slovenia, Quebec, or Kurdistan. Even in the most protected environments, Americans experience difference every day.

And yet the full-scale and fervent articulation of difference in the United States is a fairly recent phenomenon. A long history of prejudice, subordination, and fear worked against any public affirmation of minority "manners and customs" and so served to conceal the radical character of American pluralism. I want to be very clear about this history. At its extremes it was brutal, as conquered Native Americans and transported black slaves can testify; at its center, with regard to religion and ethnicity rather than race, it was relatively benign. An immigrant society welcomed new immigrants or at least made room for them, tolerated their beliefs and practices with a degree of reluctance considerably below the standards set elsewhere. Nonetheless, all our minorities learned to be quiet: timidity has been the mark of minority politics until recent times. The full realization of what it means to live among immigrants came very slowly.

I remember, for example, how in the 1930s and 1940s any sign of Jewish assertiveness—even the appearance of "too many" Jewish names among New Deal Democrats, union organizers, or socialist or communist intellectuals—was greeted among Jews with a collective shudder. The communal elders said, "Sha!" Don't make noise; don't attract attention; don't push yourself forward; don't say anything provocative. This was the way they understood the advice given by the prophet Jeremiah to the first Jewish exiles in Babylonia more than two millennia earlier and frequently repeated since: "Seek the peace of the city whither I have caused you to be carried away" (Jer. 29:7)—that is, be loyal to the powers that be and keep a low political profile. Jew-

ish immigrants thought of themselves as exiles, guests of the (real) Americans, long after they had become American citizens.

Today all that is, as they say, history. The United States in the 1990s is socially, though not economically, a more egalitarian place than it was fifty or sixty years ago. The contrast between social and economic equality is very important, and I will come back to it; but let me focus now on the social side. No one is shushing us anymore; no one is intimidated or quiet. Old racial and religious identities have taken on greater prominence in our public life; gender and sexual preference have been added to the mix; and the current wave of immigration from Asia and Latin America makes for significant new differences among American citizens and potential citizens. And all this is expressed, so it seems, all the time. The voices are loud, the accents various, and the result is not harmony—as in the old image of pluralism as a symphony, with each group playing its own instrument (but who wrote the music?); the result is a jangling discord. It is very much like the dissidence of Protestant dissent in the early years of the Reformation, with many sects dividing and subdividing and many prophets and would-be prophets all talking at once. Hence the centrality of toleration as a political issue, manifest in the noisy arguments about political correctness, hate speech, multicultural curricula, first and second languages, immigration, and so on.

In response to this cacophony, another group of prophets—liberal and neoconservative intellectuals, academics, and journalists—wring their hands and assure us that the country is falling apart, that our fiercely articulated pluralism is dangerously divisive, and that we desperately need to reassert the hegemony of a single culture. Curiously, this supposedly necessary and necessarily singular culture is

often described as a high culture, as if it is our shared commitment to Shakespeare, Dickens, and James Joyce that has been holding us together all these years. But surely high culture divides us, as it always has—and probably always will in any country with a strong egalitarian and populist strain. Doesn't anyone remember Richard Hofstadter's *Anti-Intellectualism in American Life*?¹ Political movements aimed at unity are more likely to invoke a vulgar and inauthentic nativism whose cultural content is certain to be low. These movements do not appeal to the literary or philosophical canon. But there is a better response to pluralism, it seems to me: democratic politics itself, where all the members of all the groups are (in principle) equal citizens who have not only to argue with one another but also, somehow, to come to an agreement. What they learn in the course of the necessary negotiations and compromises is probably more important than anything they might get from studying the canon. We need to think about how this practical, democratic learning can be advanced.

But isn't this learning already well advanced—given that multicultural conflicts take place in the democratic arena and require of their protagonists a wide range of characteristically democratic skills and performances? If one studies the history of ethnic, racial, and religious associations in the United States, one sees, I think, that they have served again and again as vehicles of individual and group integration—despite (or, perhaps, because of) the political conflicts they generated.² Even if the aim of associational life is to sustain difference, that aim has to be achieved under American conditions, and the result is commonly a new and unintended kind of differentiation. I have already cited one example of this phenomenon: the differentiation of American Catholics and Jews not so much from one another or from the Protes-

tant majority as from Catholics and Jews in other countries. Minority groups adapt themselves to the local political culture: they become hyphenated Americans. And if their primary aim is self-defense, toleration, civil rights, a place in the sun, the result of their success is more clearly still an Americanization of whatever differences are being defended.

But the same thing happens to "nativist" or majority groups: they too are forced to adapt to an America filled with strangers. Imagining themselves as the original Americans, they too are slowly and painfully "Americanized." I don't mean to suggest that differences are quietly accepted or quietly defended. Quietness is not one of our political conventions; becoming an American often means learning not to be quiet. Nor is the success that is sought by one group always compatible with the success of all (or any of) the others. The conflicts are real, and even small-scale victories can be widely threatening. This is an important point: toleration brings an end to persecution and fearfulness, but it is not a formula for social harmony. The newly tolerated groups, insofar as they are really different, will often also be antagonistic, and they will seek political advantage.

The greater difficulties, however, come from disadvantage and failure, especially reiterated failure. It is associational weakness, and the anxieties and resentments it breeds, that pull people apart in dangerous ways and produce new forms of intolerance and bigotry—as in the more fierce and puritanical versions of "political correctness" and the more farfetched claims of ethnic and racial mythology. The noisiest groups in our contemporary cacophony, and the groups that make the most extreme demands, are also the weakest and the poorest. In American cities today, poor people, mostly members of minority groups, find it difficult to work together in any coherent way. Mutual assistance, cultural

preservation, and self-defense are loudly affirmed but ineffectively enacted. The contemporary poor have no strongly based or well-funded institutions to focus their energies or to discipline wayward members. They are socially exposed, and vulnerable.

What has happened in the United States these last decades is both unexpected and disturbing—but also, just possibly, in a way that I need to explain, heartening. The economic gap has widened even as the social gap has narrowed; inequalities of income and resources are greater today than they were a half century ago. But they do not consistently produce in the lower fourth or fifth of the social order the "appropriate" consciousness, the mental reflection of defeat: resignation and deference. There is no pervasive culture of compliance, no group of people morally prepared to be tractable and uncomplaining, like the "respectable poor" of—so it seems—long ago. Or if there are such people, they are, more than they ever were before, invisible—culturally as well as politically inarticulate and unrepresented. What we see is certainly depressing enough: a large number of disconnected, powerless, and often demoralized men and women who are spoken for, and also exploited by, a growing company of racial and religious demagogues and tinhorn charismatics. But at least these people are not silent, crushed, broken, so that one feels that some of them, at least, might be available for a more hopeful mobilization in a different political environment.

The political environment, however, is what it is, and it does not offer much short-term hope. Weakness is the general, if uneven, feature of associational life in today's America; any program for political renewal must start from this reality. Unions, churches, interest groups, ethnic organizations, political parties and sects, societies for self-improve-

ment and good works, local philanthropies, neighborhood clubs and cooperatives, religious sodalities, brotherhoods and sisterhoods: American civil society is wonderfully multitudinous. Most of these associations, however, are precariously established, skimpily funded, and always at risk. They have less reach and holding power than they once did.³ The number of Americans who are unorganized, inactive, and underfunded (though still angry and noisy) is on the rise. Why is this so?

The answer has to do in part with the second of the centrifugal forces at work in contemporary American society. This country is not only a pluralism of groups but also a pluralism of individuals; its regime of toleration is focused, as we have seen, on personal choices and lifestyles rather than on common ways of life. It is perhaps the most individualist society in human history. Compared to the men and women of any earlier, old-world country, we are all radically liberated. We are free to plot our own course; to plan our own lives; to choose a career, a partner (or a succession of partners), a religion (or no religion), a politics (or an antipolitics), a lifestyle (any style)—we are free to “do our own thing.” Personal freedom and the radical forms of toleration that go with it are certainly the most extraordinary achievements of the “new order of the ages” celebrated on the Great Seal of the United States. The defense of this freedom against puritans and bigots is one of the enduring themes of American politics and makes for its most zestful moments; the celebration of this freedom, and of the individuality and creativity it allows, is one of the enduring themes of our literature.

Nonetheless, personal freedom is not an unalloyed delight, for many Americans lack the means and the power to “do their own thing” or even to find their own things to do. Empowerment is more often a familial, class, or communal

achievement than an individual one. Resources have to be accumulated, cooperatively, over generations. And without resources, individual men and women find themselves hard-pressed by economic dislocations, natural disasters, governmental failures, and personal crises. Many of them live every day with the frustrations of failure. They can't count on steady or significant familial or communal support. Often they are on the run from family, class, or community, seeking new lives and new identities in this new world. If they make good their escape, they never look back; if they need to look back, they are likely to find the people they left behind barely able to support themselves. These are the excitements of postmodernity, but they often make for a sad story—or, better, a series of similar but unrelated sad stories.

Consider for a moment the cultural (ethnic, racial, and religious) groups that constitute our supposedly fierce and divisive multiculturalism. All of these are voluntary associations, with a core of militants, activists, and believers and a wide periphery of more passive men and women who are, in effect, cultural free-riders. These people claim an identity (or more than one) that they don't pay for with money, time, or energy. When they find themselves in trouble, they look for help from similarly identified men and women. But the help is uncertain, for these identities are mostly unearned, without depth. Footloose individuals are not reliable members. There are no borders around our cultural groups and, of course, no border police. Men and women are free to participate or not as they please, to come and go, to withdraw entirely, or simply to fade away into the peripheral distances. They are free to mix and mingle in the different cultures, to explore and challenge all the boundaries. This freedom, again, is one of the advantages of an immigrant society; at the same time, however, it doesn't make for strong or cohe-

sive associations. Ultimately, I'm not sure that it makes for strong or self-confident individuals.

Rates of disengagement from cultural association and identity for the sake of the private pursuit of happiness (or the desperate search for economic survival) are so high these days that all the groups worry about how to hold the periphery and ensure their own future. They are constantly fund-raising; recruiting; scrambling for workers, allies, and endorsements; preaching against the dangers of assimilation, intermarriage, passing, or passivity. Lacking any sort of coercive power and unsure of their own persuasiveness, some of these groups demand governmental programs (targeted entitlements or quota systems) that will help them press their own members into line. From their perspective, the real alternative to multicultural toleration is not a strong and substantive Americanism (as if America were an old-world nation-state), but an empty or randomly filled individualism, a great drift of human flotsam and jetsam away from every creative center.

This is, again, a one-sided perspective on individual freedom in an immigrant society, but it isn't entirely wrong-headed. Despite appearances, the critical conflict in American life today is not between multiculturalism and some kind of cultural hegemony or singularity, not between pluralism and unity or the many and the one. We live instead with the peculiarly modernist and postmodernist conflict between the manyness of groups and of individuals. And this is a conflict in which we have no choice except to affirm the value of both sides. The two pluralisms make America what it is or sometimes is and set the pattern for what it should be. Taken together, but only together, they are entirely consistent with a common democratic citizenship.

Consider now the increasingly dissociated individuals of

contemporary American society. Surely we ought to worry about the processes that produce dissociation and are its products (even though these are also, some of them, emancipatory processes).⁴

- the high divorce rate, steadily rising until very recently, when it seems to have leveled off;
- the still rising number of children being raised by single, and often frighteningly young, mothers;
- the recent increase in reports of child abuse and abandonment;
- the growing number of people living alone (in what the census calls "single person households");
- the decline in memberships—in labor unions; in the older, more established churches (though evangelical churches and sects are on the rise); and in philanthropic societies, parent-teacher organizations, and neighborhood clubs;
- the long-term decline in voting rates and party loyalty (perhaps most dramatically demonstrated in local elections);
- the high rate of geographic mobility, which undercuts neighborhood cohesiveness;
- the sudden appearance of homeless men and women; and
- the rising tide of random violence.

The apparent stabilization of high levels of unemployment and underemployment among young people and minority groups intensifies all these processes and aggravates their effects. Unemployment makes family ties brittle, cuts people off from unions and interest groups, drains communal resources, leads to political alienation and withdrawal, and increases the temptation of a criminal life. The old maxim about idle hands and the devil's work isn't necessarily true, but it becomes true whenever idleness is a condition that no one would freely choose.

I am inclined to think that these processes, on balance, are more worrying than the multicultural cacophony—if only because, in a democratic society, action in common is better than withdrawal and solitude, tumult is better than passivity, and shared purposes (even when we don't approve) are better than private listlessness. It is probably true, moreover, that many of these dissociated individuals are available for far-right, ultranationalist, fundamentalist, or xenophobic mobilizations of a sort that democracies ought to avoid if they can. There are writers today, of course, who claim that multiculturalism is itself the product of such mobilizations: American society in their eyes stands at the brink not only of dissolution but also of “Bosnian” civil war.⁵ In fact, we have had, so far, only intimations of an openly chauvinist and racist politics. More Americans are involved in weird religious cults than in far-right political groups (though these sometimes overlap). We are at a point where we can still safely bring the pluralism of groups to the rescue of the pluralism of dissociated individuals.

Individuals are stronger, more confident, more savvy, when they are participants in a common life, when they are responsible to and for other people. No doubt this relation doesn't hold for every common life; I am not recommending the weird religious cults—though even these have to be tolerated, within whatever limits are set by our ideas about citizenship and individual rights. Perhaps men and women who manage to pass through such groups will be strengthened by the experience, educated for a more modest commonality. For it is only in the context of associational activity that individuals learn to deliberate, argue, make decisions, and take responsibility. This is an old argument, first made on behalf of Protestant congregations and conventicles, which served, so we are told, as schools of democracy in nineteenth-century

Great Britain, despite the intense and exclusive bonds they created and their frequently expressed doubts about the salvation of nonbelievers.⁶ Individuals were indeed saved by congregational membership—saved from isolation, loneliness, feelings of inferiority, habitual inaction, incompetence, and a kind of moral vacancy—and turned into useful citizens. It is equally true, of course, that Britain was saved from Protestant repression by the strong individualism of these same useful citizens: that was a large part of their usefulness.

But no regime of toleration can be built solely on such “strong” individuals, for they are the products of group life and won't, by themselves, reproduce the connections that made their own strength possible. So we need to sustain and enhance associational ties, even if these ties connect some of us to some others and not everyone to everyone else. There are many ways of doing this. First and foremost among them are government policies that create jobs and that sponsor and support unionization on the job. For unemployment is probably the most dangerous form of dissociation, and unions are not only training grounds for democratic politics but also instruments of “countervailing power” in the economy and of local solidarity and mutual aid.⁷ Almost as important are programs that strengthen family life, not only in its conventional but also in its unconventional versions—in any version that produces stable relationships and networks of support.

But I want to focus again on cultural associations, because these are the ones thought to be so threatening today. It is the weakness of these associations, not their strength, it seems to me, that threatens our common life. One reason for the decline of unions in contemporary America is the virtual disappearance of a distinctive working-class culture—or, rather, of the set of working-class cultures (Irish, Italian,

Slavic, Scandinavian, and so on) that made labor radicalism possible in the late nineteenth and early twentieth centuries. Men and women need the ties that come with language and memory, with familiar rituals of celebration and mourning, with common practices, even with common games and songs, if they are to work together over a long period of time. Civil religion provides some of these ties for the citizens as a whole, but the vitality and discipline of an immigrant society depend on the more intense connections provided by its constituent groups. So we need more cultural associations, not fewer, and more powerful and cohesive ones, too, with a wider range of responsibilities.

Associations of this sort are not the objects of toleration in immigrant societies, but they can be made the objects—or better, the ends—of government policy. Consider, for example, the current set of federal programs—including tax exemptions, matching grants, subsidies, and entitlements—that enable religious communities to run their own hospitals, old age homes, schools, day care centers, and family services. Here are welfare societies within a decentralized (and still unfinished) American welfare state. Tax money is used to second charitable contributions in ways that reinforce the patterns of mutual assistance and cultural reproduction that arise spontaneously within civil society. But these patterns need to be greatly extended, because coverage at present is radically unequal. And more groups must be brought into the business of welfare provision: racial and ethnic as well as religious groups (and why not unions, co-ops, and corporations too?).

We also need to find other programs through which the government acts indirectly to support citizens acting directly in local communities: these might include “charter schools” designed and run by teachers and parents; ten-

ant self-management and co-op buy-outs of public housing; experiments in workers' ownership and control of factories and companies; locally initiated building, clean-up, and crime prevention projects; and communally based museums, youth centers, radio stations, and athletic leagues. Programs like these will often create or enhance parochial communities, and they will generate conflicts over the state budget and local struggles for control of political space and institutional functions. Toleration, remember, is not a formula for harmony: it legitimates previously repressed or invisible groups and so enables them to compete for available resources. But the presence of these groups, in force, will also increase the amount of political space and the number and range of institutional functions and, therefore, the opportunities for individual participation. And participating individuals, with a growing sense of their own effectiveness, are our best protection against the parochialism and intolerance of the groups in which they participate.

Engaged men and women tend to be widely engaged—active in many different associations both locally and nationally. This is one of the most common findings of political scientists and sociologists (and one of the most surprising: where do these people find the time?).⁸ It helps to explain why engagement works, in a pluralist society, to undercut racist or chauvinist political commitments and ideologies. The same people show up for union meetings, neighborhood projects, political canvassing, church committees, and—most reliably—in the voting booth on election day. They are, most of them, articulate, opinionated, skillful, sure of themselves, and fairly steady in their commitments. Some mysterious combination of responsibility, ambition, and meddlesomeness carries them from one meeting to another. Everyone complains (I mean all of them com-

plain) that there are so few of them. Is their small number an inevitability of social life, so that an increase in associations would only stretch out the competent people more and more thinly? I suspect that demand-side economists have a better story to tell about this "human capital:" multiply the calls for competent people, and the people will appear. Multiply the opportunities for action in common, and activists will emerge to seize the opportunities. Some of them, no doubt, will be narrow-minded and bigoted, interested in nothing beyond the advancement of their own group, but the greater their number and the more diverse their activities, the less likely it is that narrow-mindedness and bigotry will prevail.

A certain sort of stridency is a feature of what we may one day come to recognize as *early* multiculturalism; it is especially evident among the newest and weakest, the poorest and least organized, groups, where economic deprivation goes hand in hand with minority status — where class is, not entirely but in large part, a function of race and culture. This stridency is the product of a historical period when the social equality promised (and, in part, delivered) by our regime of toleration is steadily being undercut by economic inequality.

Stronger organizations, capable of collecting resources and delivering real benefits to their members, will gradually move these groups toward mutual toleration and a democratically inclusive politics. No doubt there is a tension between members and citizens, between particular interests and the common interest, but there is also real continuity between them. Citizens committed to the common interest don't come out of nowhere. They are the members of groups that feel themselves to have a stake in the country as a whole, first of all in the regime of toleration itself and then in the broader politics of the regime. And so they look to participate in national decision-making.

Remember that this has happened before, in the course of ethnic and class conflict. When groups consolidate, the center holds the periphery and turns it into a political constituency. So union militants, say, begin on the picket line and the strike committee and move on to the school board and the city council. Or religious and ethnic activists begin by defending the interests of their own community and end up in political coalitions, fighting for a place on "balanced" tickets and talking (at least) about the common good. The cohesiveness of the group invigorates its members, and the ambition and mobility of the most vigorous members liberalizes the group.

Some of these members will flee their own groups, join others, or undertake complicated cross-cultural careers. They will seize on the possibilities of dissociation and commingling. They will act as radically free individuals, pursuing their own material or spiritual interests. But if they act against a background of group strength, they will also be agents of cultural innovation and mutual learning. Postmodern vagabonds, when they don't replace but live alongside members and citizens, are unlikely to find themselves talking only to themselves, endlessly self-absorbed; they will be participants in interesting conversations.

These conversations should take place everywhere, but perhaps especially in the public schools (and in public and private colleges and universities), which have historically been marked, at least in the major immigrant centers, by an integrative mode of association. Public schools bring together the children of parents committed to different religious and ethnic communities—as well as the children of parents who have escaped or are in the process of escaping from such commitments. Themselves supposedly neutral with reference to the communities and their escaped members, the

schools ought to provide a sympathetic account of the history and philosophy of our own regime of toleration, which can hardly avoid specifying its particularist (English Protestant) origins. They ought to teach the American civil religion and aim to produce American citizens, and so they will inevitably challenge cultural communities where citizenship of that sort is unfamiliar.

Should public schools do more than this? Should they help children escape from such communities and wander on their own through the cultural world? Should they aim to produce more vagabonds? Certainly, it is tempting to imagine democratic education as a training in critical thought, so that the students can undertake an independent, preferably skeptical, evaluation of all established belief systems and cultural practices: for aren't critics the best citizens?⁹ Maybe so; in any case we need more of them. And yet they may not be the most tolerant fellow citizens; they may not be resigned or indifferent to the parochial loyalties of their fellows—or even stoically accepting of them. Democracies need critics who possess the virtue of tolerance, which probably means critics who have loyalties of their own and some sense of the value of associational life. The schools can help meet this latter need simply by recognizing the plurality of cultures and by teaching something about the different groups (even uncritically: the experience of difference will itself encourage critical exchange). For the state system should also have a second aim, which is entirely compatible with the first: to produce hyphenated citizens, men and women who will defend toleration within their different communities while still valuing and reproducing (and rethinking and revising) the differences.

I don't mean to sound like the famous Pollyanna. These outcomes won't come about by chance; perhaps they won't

come about at all. Everything is harder now—family, class, and community are less cohesive than they once were; governments and philanthropies command fewer resources; the street world of crime and drugs is more frightening; and individual men and women seem more adrift. There is one further difficulty that we ought, however, to welcome. In the past, organized groups have succeeded in entering the American mainstream only by leaving other groups (and the weakest of their own members) behind. And the men and women left behind commonly accepted their fate or at least failed to make much noise about it. Today, as I have argued, the level of resignation is considerably lower, and if much of the subsequent noise is incoherent and futile, it serves nonetheless to remind the rest of us that there is a larger social agenda than our own success. Multiculturalism as an ideology is a program for greater social and economic equality. No regime of toleration will work for long in an immigrant, pluralist, modern, and postmodern society without some combination of these two: a defense of group differences and an attack upon class differences.

If we want the mutual reinforcements of community and individuality to serve a common interest, we will have to act politically to make them effective. They require certain background or framing conditions that can only be provided by state action. Group life won't rescue individual men and women from dissociation and passivity unless there is a political strategy for mobilizing, organizing, and if necessary subsidizing the right sort of groups. And strong-minded individuals won't diversify their commitments and extend their ambitions unless there are opportunities—jobs, offices, and responsibilities—open to them in the larger world. The centrifugal forces of culture and selfhood will correct one another only if the correction is planned. It is necessary to

aim at a balance of the two. This means that we can never be consistent defenders of multiculturalism or individualism; we can never be simply communitarians or liberals, or modernists or postmodernists, but must be now one, now the other, as the balance requires. It seems to me that the best name for the balance itself—the political creed that defends the framework, supports the necessary forms of state action, and so sustains the modern regimes of toleration—is social democracy. If multiculturalism today brings more trouble than hope, it does so in part because of the weakness of social democracy (in this country, left liberalism). But that is another, longer story.



Notes

INTRODUCTION: HOW TO WRITE ABOUT TOLERATION

1. I have written critically about this approach in "A Critique of Philosophical Conversation," in Michael Kelly, ed., *Hermeneutics and Critical Theory in Ethics and Politics* (Cambridge, Mass.: MIT Press, 1990), pp. 182–96. Cf. Georgia Warnke's "Reply," pp. 197–203 of this same book, which offers a partial defense of the theory of Jürgen Habermas.
2. Thomas Scanlon explains why sayings of this sort matter in "Contractualism and Utilitarianism," in Amartya Sen and Bernard Williams, eds., *Utilitarianism and Beyond* (Cambridge: Cambridge University Press, 1982), esp. p. 116.
3. Stuart Hampshire, *Morality and Conflict* (Cambridge, Mass.: Harvard University Press, 1983), pp. 146–48.
4. It may be useful if I list, early on, some of the contributions to this debate that have inspired my own: John Higham, *Strangers in the Land: Patterns of American Nativism 1860–1925*, 2d ed. (New Brunswick, N.J.: Rutgers University Press, 1988); Orlando Patterson, *Ethnic Chauvinism: The Reactionary Impulse* (New York: Stein and Day, 1977); Stephen Steinberg, *The Ethnic Myth: Race, Ethnicity, and Class in America* (Boston: Beacon, 1981); Arthur M. Schlesinger, Jr., *The Disuniting of America* (New York: Norton, 1992); David Hollinger, *Postethnic America* (New York: Basic Books, 1995); Todd Gitlin, *The Twilight of Common Dreams* (New York: Henry Holt, 1995); and Charles Taylor, *Multiculturalism and "the Politics of Recognition"* (Princeton, N.J.: Princeton University Press, 1994). Taylor is a near neighbor, and his defense of "deep diversity" in Canada has figured centrally in my own thinking about the United States.

John Stuart Mill On Liberty (1859)

CHAPTER II: Of the Liberty of Thought and Discussion ←

THE TIME, it is to be hoped, is gone by, when any defence would be necessary of the “liberty of the press” as one of the securities against corrupt or tyrannical government. No argument, we may suppose, can now be needed, against permitting a legislature or an executive, not identified in interest with the people, to prescribe opinions to them, and determine what doctrines or what arguments they shall be allowed to hear. This aspect of the question, besides, has been so often and so triumphantly enforced by preceding writers, that it needs not be specially insisted on in this place. Though the law of England, on the subject of the press, is as servile to this day as it was in the time of the Tudors, there is little danger of its being actually put in force against political discussion, except during some temporary panic, when fear of insurrection drives ministers and judges from their propriety;* and, speaking [229] generally, it is not, in constitutional countries, to be apprehended, that the government, whether completely responsible to the people or not, will often attempt to control the expression of opinion, except when in doing so it makes itself the organ of the general intolerance of the public. Let us suppose, therefore, that the government is entirely at one with the people, and never thinks of exerting any power of coercion unless in agreement with what it conceives to be their voice. But I deny the right of the people to exercise such coercion, either by themselves or by their government. The power itself is illegitimate. The best government has no more title to it than the worst. It is as noxious, or more noxious, when exerted in accordance with public opinion, than when in opposition to it. If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind. Were an opinion a personal possession of no value except to the owner; if to be obstructed in the enjoyment of it were simply a private injury, it would make some difference whether the injury was inflicted only on a few persons or on many. But the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.  

It is necessary to consider separately these two hypotheses, each of which has a distinct branch of the argument corresponding to it. We can never be sure that the opinion we are endeavouring to stifle is a false opinion; and if we were sure, stifling it would be an evil still.

First: the opinion which it is attempted to suppress by authority may possibly be true. Those who desire to suppress it, of course deny its truth; but they are not infallible. They have no authority to decide the question for all mankind, and exclude every other person from the means of judging. To refuse a hearing to an opinion, because they are sure that it is false, is to assume that *their* certainty is the same thing as *absolute*

certainty. All silencing of discussion is an assumption of infallibility. Its condemnation may be allowed to rest on this common argument, not the worse for being common.

Unfortunately for the good sense of mankind, the fact of their fallibility is far from carrying the weight in their practical judgment, which is always allowed to it in theory; for while every one well knows himself to be fallible, few think it necessary to take any precautions against their own fallibility, or admit the supposition that any opinion, of which they feel very certain, [230] may be one of the examples of the error to which they acknowledge themselves to be liable. Absolute princes, or others who are accustomed to unlimited deference, usually feel this complete confidence in their own opinions on nearly all subjects. People more happily situated, who sometimes hear their opinions disputed, and are not wholly unused to be set right when they are wrong, place the same unbounded reliance only on such of their opinions as are shared by all who surround them, or to whom they habitually defer: for in proportion to a man's want of confidence in his own solitary judgment, does he usually repose, with implicit trust, on the infallibility of "the world" in general. And the world, to each individual, means the part of it with which he comes in contact; his party, his sect, his church, his class of society: the man may be called, by comparison, almost liberal and large-minded to whom it means anything so comprehensive as his own country or his own age. Nor is his faith in this collective authority at all shaken by his being aware that other ages, countries, sects, churches, classes, and parties have thought, and even now think, the exact reverse. He devolves upon his own world the responsibility of being in the right against the dissentient worlds of other people; and it never troubles him that mere accident has decided which of these numerous worlds is the object of his reliance, and that the same causes which make him a Churchman in London, would have made him a Buddhist or a Confucian in Pekin. Yet it is as evident in itself, as any amount of argument can make it, that ages are no more infallible than individuals; every age having held many opinions which subsequent ages have deemed not only false but absurd; and it is as certain that many opinions, now general, will be rejected by future ages, as it is that many, once general, are rejected by the present.

The objection likely to be made to this argument, would probably take some such form as the following. There is no greater assumption of infallibility in forbidding the propagation of error, than in any other thing which is done by public authority on its own judgment and responsibility. Judgment is given to men that they may use it. Because it may be used erroneously, are men to be told that they ought not to use it at all? To prohibit what they think pernicious, is not claiming exemption from error, but fulfilling the duty incumbent on them, although fallible, of acting on their conscientious conviction. If we were never to act on our opinions, because those opinions may be wrong, we should leave all our interests uncared for, and all our duties unperformed. An objection which applies to all conduct, can be no valid objection to any conduct in particular. It is the duty of governments, and of individuals, to form the truest opinions they can; to form them carefully, and never impose them upon others unless they are quite sure of being right. But when they are sure (such reasoners may say), it is not conscientiousness but cowardice to shrink from acting on their [231] opinions, and allow doctrines which they honestly think dangerous to the welfare of mankind, either in this life or in another, to be scattered abroad without restraint, because other people, in less

enlightened times, have persecuted opinions now believed to be true. Let us take care, it may be said, not to make the same mistake: but governments and nations have made mistakes in other things, which are not denied to be fit subjects for the exercise of authority: they have laid on bad taxes, made unjust wars. Ought we therefore to lay on no taxes, and, under whatever provocation, make no wars? Men, and governments, must act to the best of their ability. There is no such thing as absolute certainty, but there is assurance sufficient for the purposes of human life. We may, and must, assume our opinion to be true for the guidance of our own conduct: and it is assuming no more when we forbid bad men to pervert society by the propagation of opinions which we regard as false and pernicious.

I answer, that it is assuming very much more. There is the greatest difference between presuming an opinion to be true, because, with every opportunity for contesting it, it has not been refuted, and assuming its truth for the purpose of not permitting its refutation. Complete liberty of contradicting and disproving our opinion, is the very condition which justifies us in assuming its truth for purposes of action; and on no other terms can a being with human faculties have any rational assurance of being right.

When we consider either the history of opinion, or the ordinary conduct of human life, to what is it to be ascribed that the one and the other are no worse than they are? Not certainly to the inherent force of the human understanding; for, on any matter not self-evident, there are ninety-nine persons totally incapable of judging of it, for one who is capable; and the capacity of the hundredth person is only comparative: for the majority of the eminent men of every past generation held many opinions now known to be erroneous, and did or approved numerous things which no one will now justify. Why is it, then, that there is on the whole a preponderance among mankind of rational opinions and rational conduct? If there really is this preponderance—which there must be unless human affairs are, and have always been, in an almost desperate state—it is owing to a quality of the human mind, the source of everything respectable in man either as an intellectual or as a moral being, namely, that his errors are corrigible. He is capable of rectifying his mistakes, by discussion and experience. Not by experience alone. There must be discussion, to show how experience is to be interpreted. Wrong opinions and practices gradually yield to fact and argument: but facts and arguments, to produce any effect on the mind, must be brought before it. Very few facts are able to tell their own story, without comments to bring out their meaning. The whole strength and value, then, of human judgment, depending on the one property, that it can be set right [232] when it is wrong, reliance can be placed on it only when the means of setting it right are kept constantly at hand. In the case of any person whose judgment is really deserving of confidence, how has it become so? Because he has kept his mind open to criticism of his opinions and conduct. Because it has been his practice to listen to all that could be said against him; to profit by as much of it as was just, and expound to himself, and upon occasion to others, the fallacy of what was fallacious. Because he has felt, that the only way in which a human being can make some approach to knowing the whole of a subject, is by hearing what can be said about it by persons of every variety of opinion, and studying all modes in which it can be looked at by every character of mind. No wise man ever acquired his wisdom in any mode but this; nor is it in the nature of human intellect to become wise in any other manner. The steady habit of correcting and

completing his own opinion by collating it with those of others, so far from causing doubt and hesitation in carrying it into practice, is the only stable foundation for a just reliance on it: for, being cognisant of all that can, at least obviously, be said against him, and having taken up his position against all gainsayers—knowing that he has sought for objections and difficulties, instead of avoiding them, and has shut out no light which can be thrown upon the subject from any quarter—he has a right to think his judgment better than that of any person, or any multitude, who have not gone through a similar process.

It is not too much to require that what the wisest of mankind, those who are best entitled to trust their own judgment, find necessary to warrant their relying on it, should be submitted to by that miscellaneous collection of a few wise and many foolish individuals, called the public. The most intolerant of churches, the Roman Catholic Church, even at the canonization of a saint, admits, and listens patiently to, a “devil’s advocate.” The holiest of men, it appears, cannot be admitted to posthumous honours, until all that the devil could say against him is known and weighed. If even the Newtonian philosophy were not permitted to be questioned, mankind could not feel as complete assurance of its truth as they now do. The beliefs which we have most warrant for, have no safeguard to rest on, but a standing invitation to the whole world to prove them unfounded. If the challenge is not accepted, or is accepted and the attempt fails, we are far enough from certainty still; but we have done the best that the existing state of human reason admits of; we have neglected nothing that could give the truth a chance of reaching us: if the lists are kept open, we may hope that if there be a better truth, it will be found when the human mind is capable of receiving it; and in the meantime we may rely on having attained such approach to truth, as is possible in our own day. This is the amount of certainty attainable by a fallible being, and this the sole way of attaining it.

Strange it is, that men should admit the validity of the arguments for free [233] discussion, but object to their being “pushed to an extreme;” not seeing that unless the reasons are good for an extreme case, they are not good for any case. Strange that they should imagine that they are not assuming infallibility, when they acknowledge that there should be free discussion on all subjects which can possibly be *doubtful*, but think that some particular principle or doctrine should be forbidden to be questioned because it is *asoa* certain, that is, because *they are certain* that it is certain. To call any proposition certain, while there is any one who would deny its certainty if permitted, but who is not permitted, is to assume that we ourselves, and those who agree with us, are the judges of certainty, and judges without hearing the other side.

In the present age—which has been described as “destitute of faith, but terrified at scepticism”[*]—in which people feel sure, not so much that their opinions are true, as that they should not know what to do without them—the claims of an opinion to be protected from public attack are rested not so much on its truth, as on its importance to society. There are, it is alleged, certain beliefs, so useful, not to say indispensable to well-being, that it is as much the duty of governments to uphold those beliefs, as to protect any other of the interests of society. In a case of such necessity, and so directly in the line of their duty, something less than infallibility may, it is maintained, warrant, and

even bind, governments, to act on their own opinion, confirmed by the general opinion of mankind. It is also often argued, and still oftener thought, that none but bad men would desire to weaken these salutary beliefs; and there can be nothing wrong, it is thought, in restraining bad men, and prohibiting what only such men would wish to practise. This mode of thinking makes the justification of restraints on discussion not a question of the truth of doctrines, but of their usefulness; and flatters itself by that means to escape the responsibility of claiming to be an infallible judge of opinions. But those who thus satisfy themselves, do not perceive that the assumption of infallibility is merely shifted from one point to another. The usefulness of an opinion is itself matter of opinion: as disputable, as open to discussion, and requiring discussion as much, as the opinion itself. There is the same need of an infallible judge of opinions to decide an opinion to be noxious, as to decide it to be false, unless the opinion condemned has full opportunity of defending itself. And it will not do to say that the heretic may be allowed to maintain the utility or harmlessness of his opinion, though forbidden to maintain its truth. The truth of an opinion is part of its utility. If we would know whether or not it is desirable that a proposition should be believed, is it possible to exclude the consideration of whether or not it is true? In the opinion, not of bad men, [234] but of the best men, no belief which is contrary to truth can be really useful: and can you prevent such men from urging that plea, when they are charged with culpability for denying some doctrine which they are told is useful, but which they believe to be false? Those who are on the side of received opinions, never fail to take all possible advantage of this plea; you do not find *them* handling the question of utility as if it could be completely abstracted from that of truth: on the contrary, it is, above all, because their doctrine is *b*the "truth,"*b* that the knowledge or the belief of it is held to be so indispensable. There can be no fair discussion of the question of usefulness, when an argument so vital may be employed on one side, but not on the other. And in point of fact, when law or public feeling do not permit the truth of an opinion to be disputed, they are just as little tolerant of a denial of its usefulness. The utmost they allow is an extenuation of its absolute necessity, or of the positive guilt of rejecting it.

In order more fully to illustrate the mischief of denying a hearing to opinions because we, in our own judgment, have condemned them, it will be desirable to fix down the discussion to a concrete case; and I choose, by preference, the cases which are least favourable to me—in which the argument against freedom of opinion, both on the score of truth and on that of utility, is considered the strongest. Let the opinions impugned be the belief in a God and in a future state, or any of the commonly received doctrines of morality. To fight the battle on such ground, gives a great advantage to an unfair antagonist; since he will be sure to say (and many who have no desire to be unfair will say it internally), Are these the doctrines which you do not deem sufficiently certain to be taken under the protection of law? Is the belief in a God one of the opinions, to feel sure of which, you hold to be assuming infallibility? But I must be permitted to observe, that it is not the feeling sure of a doctrine (be it what it may) which I call an assumption of infallibility. It is the undertaking to decide that question *for others*, without allowing them to hear what can be said on the contrary side. And I denounce and reprobate this pretension not the less, if put forth on the side of my most solemn convictions. However positive any one's persuasion may be, not only of the falsity but of the pernicious consequences—not only of the pernicious consequences, but (to adopt expressions

which I altogether condemn) the immorality and impiety of an opinion; yet if, in pursuance of that private judgment, though backed by the public judgment of his country or his cotemporaries, he prevents the opinion from being heard in its defence, he assumes infallibility. And so far from the assumption being less objectionable or less dangerous because the opinion is called immoral or impious, this is the case of all others in which it is most fatal. These are exactly the occasions on which the men of one generation commit [235] those dreadful mistakes, which excite the astonishment and horror of posterity. It is among such that we find the instances memorable in history, when the arm of the law has been employed to root out the best men and the noblest doctrines; with deplorable success as to the men, though some of the doctrines have survived to be (as if in mockery) invoked, in defence of similar conduct towards those who dissent from *them*, or from their received interpretation.

Mankind can hardly be too often reminded, that there was once a man named Socrates, between whom and the legal authorities and public opinion of his time, there took place a memorable collision. Born in an age and country abounding in individual greatness, this man has been handed down to us by those who best knew both him and the age, as the most virtuous man in it; while *we* know him as the head and prototype of all subsequent teachers of virtue, the source equally of the lofty inspiration of Plato and the judicious utilitarianism of Aristotle, "*i maestri di color che sanno*," [236] the two headsprings of ethical as of all other philosophy. This acknowledged master of all the eminent thinkers who have since lived—whose fame, still growing after more than two thousand years, all but outweighs the whole remainder of the names which make his native city illustrious—was put to death by his countrymen, after a judicial conviction, for impiety and immorality. Impiety, in denying the gods recognised by the State; indeed his accuser asserted (see the *Apologia*) that he believed in no gods at all. Immorality, in being, by his doctrines and instructions, a "corrupter of youth." [237] Of these charges the tribunal, there is every ground for believing, honestly found him guilty, and condemned the man who probably of all then born had deserved best of mankind, to be put to death as a criminal.

To pass from this to the only other instance of judicial iniquity, the mention of which, after the condemnation of Socrates, would not be an anti-climax: the event which took place on Calvary rather more than eighteen hundred years ago. The man who left on the memory of those who witnessed his life and conversation, such an impression of his moral grandeur, that eighteen subsequent centuries have done homage to him as the Almighty in person, was ignominiously put to death, as what? As a blasphemer. Men did not merely mistake their benefactor; they mistook him for the exact contrary of what he was, and treated him as that prodigy of impiety, which they themselves are now held to be, for their treatment of him. The feelings with which mankind now regard these lamentable transactions, especially the later of the two, render them extremely unjust [238] in their judgment of the unhappy actors. These were, to all appearance, not bad men—not worse than men commonly are, but rather the contrary; men who possessed in a full, or somewhat more than a full measure, the religious, moral, and patriotic feelings of their time and people: the very kind of men who, in all times, our own included, have every chance of passing through life blameless and respected. The high-priest who rent his garments when the words were pronounced, [239] which, according to all

the ideas of his country, constituted the blackest guilt, was in all probability quite as sincere in his horror and indignation, as the generality of respectable and pious men now are in the religious and moral sentiments they profess; and most of those who now shudder at his conduct, if they had lived in his time, and been born Jews, would have acted precisely as he did. Orthodox Christians who are tempted to think that those who stoned to death the first martyrs must have been worse men than they themselves are, ought to remember that one of those persecutors was Saint Paul.^[7]

~~Let us add, for example, the most striking of all, if the impossibility of an error is measured by the wisdom and virtue of him who falls into it. If ever any one, possessed of power, had grounds for thinking himself the best and most enlightened among his cotemporaries, it was the Emperor Marcus Aurelius. Absolute monarch of the whole civilized world, he preserved through life not only the most unblemished justice, but what was less to be expected from his Stoical breeding, the tenderest heart. The few failings which are attributed to him, were all on the side of indulgence: while his writings, the highest ethical product of the ancient mind, differ scarcely perceptibly, if they differ at all, from the most characteristic teachings of Christ. This man, a better Christian in all but the dogmatic sense of the word, than almost any of the ostensibly Christian sovereigns who have since reigned, persecuted Christianity. Placed at the summit of all the previous attainments of humanity, with an open, unfettered intellect, and a character which led him of himself to embody in his moral writings the Christian ideal, he yet failed to see that Christianity was to be a good and not an evil to the world, with his duties to which he was so deeply penetrated. Existing society he knew to be in a deplorable state. But such as it was, he saw, or thought he saw, that it was held together, and prevented from being worse, by belief and reverence of the received divinities. As a ruler of mankind, he deemed it his duty not to suffer society to fall in pieces: and saw not how, if its existing ties were removed, any others could be formed which could again knit it together. The new religion openly aimed at dissolving these ties: unless, therefore, it was his duty to adopt that religion, it seemed to be his duty to put it down. Inasmuch then as the [237] theology of Christianity did not appear to him true or of divine origin: inasmuch as this strange history of a crucified God was not credible to him, and a system which purported to rest entirely upon a foundation to him so wholly unbelievable, could not be foreseen by him to be that renovating agency which, after all abatements, it has in fact proved to be; the gentlest and most amiable of philosophers and rulers, under a solemn sense of duty, authorized the persecution of Christianity. To my mind this is one of the most tragical facts in all history. It is a bitter thought, how different a thing the Christianity of the world might have been, if the Christian faith had been adopted as the religion of the empire under the auspices of Marcus Aurelius instead of those of Constantine. But it would be equally unjust to him and false to truth, to deny, that no one plea which can be urged for punishing anti-Christian teaching, was wanting to Marcus Aurelius for punishing, as he did, the propagation of Christianity. No Christian more firmly believes that Atheism is false, and tends to the dissolution of society, than Marcus Aurelius believed the same things of Christianity: he who, of all men then living, might have been thought the most capable of appreciating it. Unless any one who approves of punishment for the promulgation of opinions, flatters himself that he is a wiser and better man than Marcus Aurelius—more deeply versed in the wisdom of his time, more elevated in his intellect above it—more earnest in his search~~

~~for truth, even being blinded in his devotion to it when found;—let him abstain from that assumption of the joint infallibility of himself and the multitude, which the great Antoninus made with so unfortunate a result.~~

Aware of the impossibility of defending the use of punishment for restraining irreligious opinions, by any argument which will not justify Marcus Antoninus, the enemies of religious freedom, when hard pressed, occasionally accept this consequence, and say, with Dr. Johnson, that the persecutors of Christianity were in the right;[*] that persecution is an ordeal through which truth ought to pass, and always passes successfully, legal penalties being, in the end, powerless against truth, though sometimes beneficially effective against mischievous errors. This is a form of the argument for religious intolerance, sufficiently remarkable not to be passed without notice.

A theory which maintains that truth may justifiably be persecuted because persecution cannot possibly do it any harm, cannot be charged with being intentionally hostile to the reception of new truths; but we cannot commend the generosity of its dealing with the persons to whom mankind are indebted for them. To discover to the world something which deeply concerns it, and of which it was previously ignorant; to prove to it that it had been mistaken on some vital point of temporal or spiritual interest, is [238] as important a service as a human being can render to his fellow-creatures, and in certain cases, as in those of the early Christians and of the Reformers, those who think with Dr. Johnson believe it to have been the most precious gift which could be bestowed on mankind. That the authors of such splendid benefits should be requited by martyrdom; that their reward should be to be dealt with as the vilest of criminals, is not, upon this theory, a deplorable error and misfortune, for which humanity should mourn in sackcloth and ashes, but the normal and justifiable state of things. The propounder of a new truth, according to this doctrine, should stand, as stood, in the legislation of the Locrians, the proposer of a new law, with a halter round his neck, to be instantly tightened if the public assembly did not, on hearing his reasons, then and there adopt his proposition.[*] People who defend this mode of treating benefactors, cannot be supposed to set much value on the benefit; and I believe this view of the subject is mostly confined to the sort of persons who think that new truths may have been ~~discoverable once, but that we have had enough of them since.~~

But, indeed, the dictum that truth always triumphs over persecution, is one of those pleasant falsehoods which men repeat after one another till they pass into commonplaces, but which all experience refutes. History teems with instances of truth put down by persecution. If not suppressed for ever, it may be thrown back for centuries. To speak only of religious opinions: the Reformation broke out at least twenty times before Luther, and was put down. Arnold of Brescia was put down. Fra Dolcino was put down. Savonarola was put down. The Albigeois were put down. The Vaudois were put down. The Lollards were put down. The Hussites were put down. Even after the era of Luther, wherever persecution was persisted in, it was successful. In Spain, Italy, Flanders, the Austrian empire. Protestantism was rooted out; and, most likely, would have been so in England, had Queen Mary lived, or Queen Elizabeth died. Persecution has always succeeded, save where the heretics were too strong a party to be

effectually persecuted. No reasonable person can doubt that Christianity might have been extirpated in the Roman Empire. It spread, and became predominant, because the persecutions were only occasional, lasting but a short time, and separated by long intervals of almost undisturbed propagandism. It is a piece of idle sentimentality that truth, merely as truth, has any inherent power denied to error, of prevailing against the dungeon and the stake. Men are not more zealous for truth than they often are for error, and a sufficient application of legal or even of social penalties will generally succeed [239] in stopping the propagation of either. The real advantage which truth has, consists in this, that when an opinion is true, it may be extinguished once, twice, or many times, but in the course of ages there will generally be found persons to rediscover it, until some one of its reappearances falls on a time when from favourable circumstances it escapes persecution until it has made such head as to withstand all subsequent attempts to suppress it.

It will be said, that we do not now put to death the introducers of new opinions: we are not like our fathers who slew the prophets, we even build sepulchres to them. It is true we no longer put heretics to death; and the amount of penal infliction which modern feeling would probably tolerate, even against the most obnoxious opinions, is not sufficient to extirpate them. But let us not flatter ourselves that we are yet free from the stain even of legal persecution. Penalties for opinion, or at least for its expression, still exist by law; and their enforcement is not, even in these times, so unexampled as to make it at all incredible that they may some day be revived in full force. In the year 1857, at the summer assizes of the county of Cornwall, an unfortunate man,* said to be of unexceptionable conduct in all relations of life, was sentenced to twenty-one months' imprisonment, for uttering, and writing on a gate, some offensive words concerning Christianity. Within a month of the same time, at the Old Bailey, two persons, on two separate occasions,+ were rejected as jurymen, and one of them grossly insulted by the judge and by one of the counsel, because they honestly declared that they had no theological belief; and a third, a foreigner,‡ for the same reason, was denied justice against a thief. This refusal of redress took place in virtue of the legal doctrine, that no person can be allowed to give evidence in a court of justice, who does not profess belief in a God (any god is sufficient) and in a future state; which is equivalent to declaring such persons to be outlaws, excluded from the protection of the tribunals; who may not only be robbed or assaulted with impunity, if no one but themselves, or persons of similar opinions, be present, but any one else may be robbed or assaulted with impunity, if the proof of the fact depends on their evidence. The assumption on which this is grounded, is that the oath is worthless, of a person who does not believe in a future state; a proposition which betokens much ignorance of history in those who assent to it (since it is historically true that a large proportion of infidels in all ages have been persons of distinguished integrity and honour); and would be maintained by no one who had the smallest conception how many of the persons in greatest repute with the world, both for virtues and for attainments, are [240] well known, at least to their intimates, to be unbelievers. The rule, besides, is suicidal, and cuts away its own foundation. Under pretence that atheists must be liars, it admits the testimony of all atheists who are willing to lie, and rejects only those who brave the obloquy of publicly confessing a detested creed rather than affirm a falsehood. A rule thus self-convicted of absurdity so far as regards its professed purpose, can be kept in force only as a badge of hatred, a

relic of persecution; a persecution, too, having the peculiarity, that the qualification for undergoing it, is the being clearly proved not to deserve it. The rule, and the theory it implies, are hardly less insulting to believers than to infidels. For if he who does not believe in a future state, necessarily lies, it follows that they who do believe are only prevented from lying, if prevented they are, by the fear of hell. We will not do the authors and abettors of the rule the injury of supposing, that the conception which they have formed of Christian virtue is drawn from their own consciousness.

These, indeed, are but rags and remnants of persecution, and may be thought to be not so much an indication of the wish to persecute, as an example of that very frequent infirmity of English minds, which makes them take a preposterous pleasure in the assertion of a bad principle, when they are no longer bad enough to desire to carry it really into practice. But unhappily there is no security in the state of the public mind, that the suspension of worse forms of legal persecution, which has lasted for about the space of a generation, will continue. In this age the quiet surface of routine is as often ruffled by attempts to resuscitate past evils, as to introduce new benefits. What is boasted of at the present time as the revival of religion, is always, in narrow and uncultivated minds, at least as much the revival of bigotry; and where there is the strong permanent leaven of intolerance in the feelings of a people, which at all times abides in the middle classes of this country, it needs but little to provoke them into actively persecuting those whom they have never ceased to think proper objects of persecution.*

[241] For it is this—it is the opinions men entertain, and the feelings they cherish, respecting those who disown the beliefs they deem important, which makes this country not a place of mental freedom. For a long time past, the chief mischief of the legal penalties is that they strengthen the social stigma. It is that stigma which is really effective, and so effective is it, that the profession of opinions which are under the ban of society is much less common in England, than is, in many other countries, the avowal of those which incur risk of judicial punishment. In respect to all persons but those whose pecuniary circumstances make them independent of the good will of other people, opinion, on this subject, is as efficacious as law; men might as well be imprisoned, as excluded from the means of earning their bread. Those whose bread is already secured, and who desire no favours from men in power, or from bodies of men, or from the public, have nothing to fear from the open avowal of any opinions, but to be ill-thought of and ill-spoken of, and this it ought not to require a very heroic mould to enable them to bear. There is no room for any appeal *ad misericordiam* in behalf of such persons. But though we do not now inflict so much evil on those who think differently from us, as it was formerly our custom to do, it may be that we do ourselves as much evil as ever by our treatment of them. Socrates was put to death, but the Socratic philosophy rose like the sun in heaven, and spread its illumination over the whole intellectual firmament. Christians were cast to the lions, but the Christian church grew up a stately and spreading tree, overtopping the older and less vigorous growths, and stifling them by its shade. Our merely social intolerance kills no one, roots out no opinions, but induces men to disguise them, or to abstain from any active effort for their diffusion. With us, heretical opinions do not perceptibly gain, or even lose, ground in each decade or generation; they never blaze out far and wide, but continue to smoulder in the narrow circles of thinking and studious persons among whom they originate, without ever lighting up the general affairs of mankind with either a true or a deceptive light. And

thus is kept up a state of things very satisfactory to some minds, because, without the unpleasant process of fining or imprisoning anybody, it maintains all prevailing opinions outwardly undisturbed, while it does not absolutely interdict the exercise of reason by dissentients afflicted with the malady of [242] thought. A convenient plan for having peace in the intellectual world, and keeping all things going on therein very much as they do already. But the price paid for this sort of intellectual pacification, is the sacrifice of the entire moral courage of the human mind. A state of things in which a large portion of the most active and inquiring intellects find it advisable to keep the ^{egenerale} principles and grounds of their convictions within their own breasts, and attempt, in what they address to the public, to fit as much as they can of their own conclusions to premises which they have internally renounced, cannot send forth the open, fearless characters, and logical, consistent intellects who once adorned the thinking world. The sort of men who can be looked for under it, are either mere conformers to commonplace, or time-servers for truth, whose arguments on all great subjects are meant for their hearers, and are not those which have convinced themselves. Those who avoid this alternative, do so by narrowing their thoughts and interest to things which can be spoken of without venturing within the region of principles, that is, to small practical matters, which would come right of themselves, if but the minds of mankind were strengthened and enlarged, and which will never be made effectually right until then: while that which would strengthen and enlarge men's minds, free and daring speculation on the highest subjects, is abandoned.

Those in whose eyes this reticence on the part of heretics is no evil, should consider in the first place, that in consequence of it there is never any fair and thorough discussion of heretical opinions; and that such of them as could not stand such a discussion, though they may be prevented from spreading, do not disappear. But it is not the minds of heretics that are deteriorated most, by the ban placed on all inquiry which does not end in the orthodox conclusions. The greatest harm done is to those who are not heretics, and whose whole mental development is cramped, and their reason cowed, by the fear of heresy. Who can compute what the world loses in the multitude of promising intellects combined with timid characters, who dare not follow out any bold, vigorous, independent train of thought, lest it should land them in something which would admit of being considered irreligious or immoral? Among them we may occasionally see some man of deep conscientiousness, and subtle and refined understanding, who spends a life in sophisticating with an intellect which he cannot silence, and exhausts the resources of ingenuity in attempting to reconcile the promptings of his conscience and reason with orthodoxy, which yet he does not, perhaps, to the end succeed in doing. No one can be a great thinker who does not recognise, that as a thinker it is his first duty to follow his intellect to whatever conclusions it may lead. Truth gains more even by the errors of one who, with due study and preparation, thinks for himself, than by the true opinions [243] of those who only hold them because they do not suffer themselves to think. Not that it is solely, or chiefly, to form great thinkers, that freedom of thinking is required. On the contrary, it is as much and even more indispensable, to enable average human beings to attain the mental stature which they are capable of. There have been, and may again be, great individual thinkers, in a general atmosphere of mental slavery. But there never has been, nor ever will be, in that atmosphere, an intellectually active people. *When* any people has made a temporary approach to such a character, it has been because the

dread of heterodox speculation was for a time suspended. Where there is a tacit convention that principles are not to be disputed; where the discussion of the greatest questions which can occupy humanity is considered to be closed, we cannot hope to find that generally high scale of mental activity which has made some periods of history so remarkable. Never when controversy avoided the subjects which are large and important enough to kindle enthusiasm, was the mind of a people stirred up from its foundations, and the impulse given which raised even persons of the most ordinary intellect to something of the dignity of thinking beings. Of such we have had an example in the condition of Europe during the times immediately following the Reformation; another, though limited to the Continent and to a more cultivated class, in the speculative movement of the latter half of the eighteenth century; and a third, of still briefer duration, in the intellectual fermentation of Germany during the Goethian and Fichtean period. These periods differed widely in the particular opinions which they developed; but were alike in this, that during all three the yoke of authority was broken. In each, an old mental despotism had been thrown off, and no new one had yet taken its place. The impulse given at these three periods has made Europe what it now is. Every single improvement which has taken place either in the human mind or in institutions, may be traced distinctly to one or other of them. Appearances have for some time indicated that all three impulses are well nigh spent; and we can expect no fresh start, until we again assert our mental freedom.

Let us now pass to the second division of the argument, and dismissing the supposition that any of the received opinions may be false, let us assume them to be true, and examine into the worth of the manner in which they are likely to be held, when their truth is not freely and openly canvassed. However unwillingly a person who has a strong opinion may admit the possibility that his opinion may be false, he ought to be moved by the consideration that however true it may be, if it is not fully, frequently, and fearlessly discussed, it will be held as a dead dogma, not a living truth.

There is a class of persons (happily not quite so numerous as formerly) [244] who think it enough if a person assents undoubtingly to what they think true, though he has no knowledge whatever of the grounds of the opinion, and could not make a tenable defence of it against the most superficial objections. Such persons, if they can once get their creed taught from authority, naturally think that no good, and some harm, comes of its being allowed to be questioned. Where their influence prevails, they make it nearly impossible for the received opinion to be rejected wisely and considerately, though it may still be rejected rashly and ignorantly; for to shut out discussion entirely is seldom possible, and when it once gets in, beliefs not grounded on conviction are apt to give way before the slightest semblance of an argument. Waving, however, this possibility—assuming that the true opinion abides in the mind, but abides as a prejudice, a belief independent of, and proof against, argument—this is not the way in which truth ought to be held by a rational being. This is not knowing the truth. Truth, thus held, is but one superstition the more, accidentally clinging to the words which enunciate a truth.

If the intellect and judgment of mankind ought to be cultivated, a thing which Protestants at least do not deny, on what can these faculties be more appropriately exercised by any one, than on the things which concern him so much that it is

considered necessary for him to hold opinions on them? If the cultivation of the understanding consists in one thing more than in another, it is surely in learning the grounds of one's own opinions. Whatever people believe, on subjects on which it is of the first importance to believe rightly, they ought to be able to defend against at least the common objections. But, some one may say, "Let them be *taught* the grounds of their opinions. It does not follow that opinions must be merely parroted because they are never heard controverted. Persons who learn geometry do not simply commit the theorems to memory, but understand and learn likewise the demonstrations; and it would be absurd to say that they remain ignorant of the grounds of geometrical truths, because they never hear any one deny, and attempt to disprove them." Undoubtedly: and such teaching suffices on a subject like mathematics, where there is nothing at all to be said on the wrong side of the question. The peculiarity of the evidence of mathematical truths is, that all the argument is on one side. There are no objections, and no answers to objections. But on every subject on which difference of opinion is possible, the truth depends on a balance to be struck between two sets of conflicting reasons. Even in natural philosophy, there is always some other explanation possible of the same facts; some geocentric theory instead of heliocentric, some phlogiston instead of oxygen; and it has to be shown why that other theory cannot be the true one: and until this is shown, and until we know how it is shown, we do not understand the grounds of our opinion. But when we turn to subjects infinitely more complicated, to morals, [245] religion, politics, social relations, and the business of life, three-fourths of the arguments for every disputed opinion consist in dispelling the appearances which favour some opinion different from it. The greatest orator, save one,^[*] of antiquity, has left it on record that he always studied his adversary's case with as great, if not with still greater, intensity than even his own. What Cicero practised as the means of forensic success, requires to be imitated by all who study any subject in order to arrive at the truth. He who knows only his own side of the case, knows little of that. His reasons may be good, and no one may have been able to refute them. But if he is equally unable to refute the reasons on the opposite side; if he does not so much as know what they are, he has no ground for preferring either opinion. The rational position for him would be suspension of judgment, and unless he contents himself with that, he is either led by authority, or adopts, like the generality of the world, the side to which he feels most inclination. Nor is it enough that he should hear the arguments of adversaries from his own teachers, presented as they state them, and accompanied by what they offer as refutations. That is not the way to do justice to the arguments, or bring them into real contact with his own mind. He must be able to hear them from persons who actually believe them; who defend them in earnest, and do their very utmost for them. He must know them in their most plausible and persuasive form; he must feel the whole force of the difficulty which the true view of the subject has to encounter and dispose of; else he will never really possess himself of the portion of truth which meets and removes that difficulty. Ninety-nine in a hundred of what are called educated men are in this condition; even of those who can argue fluently for their opinions. Their conclusion may be true, but it might be false for anything they know: they have never thrown themselves into the mental position of those who think differently from them, and considered what such persons may have to say; and consequently they do not, in any proper sense of the word, know the doctrine which they themselves profess. They do not know those parts of it which explain and justify the remainder; the considerations which show that a fact

which seemingly conflicts with another is reconcilable with it, or that, of two apparently strong reasons, one and not the other ought to be preferred. All that part of the truth which turns the scale, and decides the judgment of a completely informed mind, they are strangers to; nor is it ever really known, but to those who have attended equally and impartially to both sides, and endeavoured to see the reasons of both in the strongest light. So essential is this discipline to a real understanding of moral and human subjects, that if opponents of all important truths do not exist, it is indispensable to imagine them, and supply them with the strongest arguments which the most skilful devil's advocate can conjure up.

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To abate the force of these considerations, an enemy of free discussion may be supposed to say, that there is no necessity for mankind in general to know and understand all that can be said against or for their opinions by philosophers and theologians. That it is not needful for common men to be able to expose all the misstatements or fallacies of an ingenious opponent. That it is enough if there is always somebody capable of answering them, so that nothing likely to mislead uninstructed persons remains unrefuted. That simple minds, having been taught the obvious grounds of the truths inculcated on them, may trust to authority for the rest, and being aware that they have neither knowledge nor talent to resolve every difficulty which can be raised, may repose in the assurance that all those which have been raised have been or can be answered, by those who are specially trained to the task.

Conceding to this view of the subject the utmost that can be claimed for it by those most easily satisfied with the amount of understanding of truth which ought to accompany the belief of it; even so, the argument for free discussion is no way weakened. For even this doctrine acknowledges that mankind ought to have a rational assurance that all objections have been satisfactorily answered; and how are they to be answered if that which requires to be answered is not spoken? or how can the answer be known to be satisfactory, if the objectors have no opportunity of showing that it is unsatisfactory? If not the public, at least the philosophers and theologians who are to resolve the difficulties, must make themselves familiar with those difficulties in their most puzzling form: and this cannot be accomplished unless they are freely stated, and placed in the most advantageous light which they admit of. The Catholic Church has its own way of dealing with this embarrassing problem. It makes a broad separation between those who can be permitted to receive its doctrines on conviction, and those who must accept them on trust. Neither, indeed, are allowed any choice as to what they will accept; but the clergy, such at least as can be fully confided in, may admissibly and meritoriously make themselves acquainted with the arguments of opponents, in order to answer them, and may, therefore, read heretical books; the laity, not unless by special permission, hard to be obtained. This discipline recognises a knowledge of the enemy's case as beneficial to the teachers but finds means, consistent with this, of denying it to the rest of the world: thus giving to the *élite* more mental culture, though not more mental freedom, than it allows to the mass. By this device it succeeds in obtaining the kind of mental superiority which its purposes require; for though culture without freedom never made a large and liberal mind, it can make a clever *nisi prius* advocate of a cause. But in

countries professing Protestantism, this resource is denied; since Protestants hold, at least in theory, that the responsibility for the choice of a religion must be borne by each for himself, and cannot be thrown off upon teachers. Besides, in the [247] present state of the world, it is practically impossible that writings which are read by the instructed can be kept from the uninstructed. If the teachers of mankind are to be cognisant of all that they ought to know, everything must be free to be written and published without restraint.

If, however, the mischievous operation of the absence of free discussion, when the received opinions are true, were confined to leaving men ignorant of the grounds of those opinions, it might be thought that this, if an intellectual, is no moral evil, and does not affect the worth of the opinions, regarded in their influence on the character. The fact, however, is, that not only the grounds of the opinion are forgotten in the absence of discussion, but too often the meaning of the opinion itself. The words which convey it, cease to suggest ideas, or suggest only a small portion of those they were originally employed to communicate. Instead of a vivid conception and a living belief, there remain only a few phrases retained by rote; or, if any part, the shell and husk only of the meaning is retained, the finer essence being lost. The great chapter in human history which this fact occupies and fills, cannot be too earnestly studied and meditated on.

~~It is illustrated in the experience of almost all ethical doctrines and religious creeds. They are all full of meaning and vitality to those who originate them, and to the direct disciples of the originators. Their meaning continues to be felt in undiminished strength, and is perhaps brought out into even fuller consciousness, so long as the struggle lasts to give the doctrine or creed an ascendancy over other creeds. At last it either prevails, and becomes the general opinion, or its progress stops; it keeps possession of the ground it has gained, but ceases to spread further. When either of these results has become apparent, controversy on the subject flags, and gradually dies away. The doctrine has taken its place, if not as a received opinion, as one of the admitted sects or divisions of opinion: those who hold it have generally inherited, not adopted it; and conversion from one of these doctrines to another, being now an exceptional fact, occupies little place in the thoughts of their professors. Instead of being, as at first, constantly on the alert either to defend themselves against the world, or to bring the world over to them, they have subsided into acquiescence, and neither listen, when they can help it, to arguments against their creed, nor trouble dissentients (if there be such) with arguments in its favour. From this time may usually be dated the decline in the living power of the doctrine. We often hear the teachers of all creeds lamenting the difficulty of keeping up in the minds of believers a lively apprehension of the truth which they nominally recognise, so that it may penetrate the feelings, and acquire a real mastery over the conduct. No such difficulty is complained of while the creed is still fighting for its existence; even the weaker combatants then know and feel what they are fighting for, and the difference between it and other doctrines; and in [248] that period of every creed's existence, not a few persons may be found, who have realized its fundamental principles in all the forms of thought, have weighed and considered them in all their important bearings, and have experienced the full effect on the character, which belief in that creed ought to produce in a mind thoroughly imbued with it. But when it has come to be an hereditary creed, and to be received passively, not~~

actively—when the mind is no longer compelled, in the same degree as at first, to exercise its vital powers on the questions which its belief presents to it, there is a progressive tendency to forget all of the belief except the formularies, or to give it a dull and torpid assent, as if accepting it on trust dispensed with the necessity of realizing it in consciousness, or testing it by personal experience; until it almost ceases to connect itself at all with the inner life of the human being. Then are seen the cases, so frequent in this age of the world as almost to form the majority, in which the creed remains as it were outside the mind, incrusting and petrifying it against all other influences addressed to the higher parts of our nature; manifesting its power by not suffering any fresh and living conviction to get in, but itself doing nothing for the mind or heart, except standing sentinel over them to keep them vacant.

To what an extent doctrines intrinsically fitted to make the deepest impression upon the mind may remain in it as dead beliefs, without being ever realized in the imagination, the feelings, or the understanding, is exemplified by the manner in which the majority of believers hold the doctrines of Christianity. By Christianity I here mean what is accounted such by all churches and sects—the maxims and precepts contained in the New Testament. These are considered sacred, and accepted as laws, by all professing Christians. Yet it is scarcely too much to say that not one Christian in a thousand guides or tests his individual conduct by reference to those laws. The standard to which he does refer it, is the custom of his nation, his class, or his religious profession. He has thus, on the one hand, a collection of ethical maxims, which he believes to have been vouchsafed to him by infallible wisdom as rules for his government; and on the other, a set of everyday judgments and practices, which go a certain length with some of those maxims, not so great a length with others, stand in direct opposition to some, and are, on the whole, a compromise between the Christian creed and the interests and suggestions of worldly life. To the first of these standards he gives his homage; to the other his real allegiance. All Christians believe that the blessed are the poor and humble, and those who are ill-used by the world; that it is easier for a camel to pass through the eye of a needle than for a rich man to enter the kingdom of heaven; that they should judge not, lest they be judged; that they should swear not at all; that they should love their neighbour as themselves; that if one take their cloak, they should give him their coat also; that they should take no thought for the morrow; [249] that if they would be perfect, they should sell all that they have and give it to the poor. [†] They are not insincere when they say that they believe these things. They do believe them, as people believe what they have always heard lauded and never discussed. But in the sense of that living belief which regulates conduct, they believe these doctrines just up to the point to which it is usual to act upon them. The doctrines in their integrity are serviceable to pelt adversaries with; and it is understood that they are to be put forward (when possible) as the reasons for whatever people do that they think laudable. But any one who reminded them that the maxims require an infinity of things which they never even think of doing, would gain nothing but to be classed among those very unpopular characters who affect to be better than other people. The doctrines have no hold on ordinary believers—are not a power in their minds. They have an habitual respect for the sound of them, but no feeling which spreads from the words to the things signified, and forces the mind to take *them* in, and make them conform to the formula. Whenever conduct is concerned, they look round for Mr. A and B to direct them how far to go in obeying Christ.

Now we may be well assured that the case was not thus, but far otherwise, with the early Christians. Had it been thus, Christianity never would have expanded from an obscure sect of the despised Hebrews into the religion of the Roman empire. When their enemies said, "See how these Christians love one another"^[1] (a remark not likely to be made by anybody now), they assuredly had a much livelier feeling of the meaning of their creed than they have ever had since. And to this cause, probably, it is chiefly owing that Christianity now makes so little progress in extending its domain, and after eighteen centuries, is still nearly confined to Europeans and the descendants of Europeans. Even with the strictly religious, who are much in earnest about their doctrines, and attach a greater amount of meaning to many of them than people in general, it commonly happens that the part which is thus comparatively active in their minds is that which was made by Calvin, or Knox, or some such person much nearer in character to themselves. The savings of Christ coexist passively in their minds, producing hardly any effect beyond what is caused by mere listening to words so amiable and bland. There are many reasons, doubtless, why doctrines which are the badge of a sect retain more of their vitality than those common to all recognised sects, and why more pains are taken by teachers to keep their meaning alive; but one reason certainly is, that the peculiar doctrines are more questioned, and have to be oftener defended against open gainsayers. [250] Both teachers and learners go to sleep at their post, as soon as there is no enemy in the field.

The same thing holds true, generally speaking, of all traditional doctrines—those of prudence and knowledge of life, as well as of morals or religion. All languages and literatures are full of general observations on life, both as to what it is, and how to conduct oneself in it; observations which everybody knows, which everybody repeats, or hears with acquiescence, which are received as truisms, yet of which most people first truly learn the meaning, when experience, generally of a painful kind, has made it a reality to them. How often, when smarting under some unforeseen misfortune or disappointment, does a person call to mind some proverb or common saying, familiar to him all his life, the meaning of which, if he had ever before felt it as he does now, would have saved him from the calamity. There are indeed reasons for this, other than the absence of discussion: there are many truths of which the full meaning *cannot* be realized, until personal experience has brought it home. But much more of the meaning even of these would have been understood, and what was understood would have been far more deeply impressed on the mind, if the man had been accustomed to hear it argued *pro* and *con* by people who did understand it. The fatal tendency of mankind to leave off thinking about a thing when it is no longer doubtful, is the cause of half their errors. A contemporary author has well spoken of "the deep slumber of a decided opinion."

But what! (it may be asked) Is the absence of unanimity an indispensable condition of true knowledge? Is it necessary that some part of mankind should persist in error, to enable any to realize the truth? Does a belief cease to be real and vital as soon as it is generally received—and is a proposition never thoroughly understood and felt unless some doubt of it remains? As soon as mankind have unanimously accepted a truth, does the truth perish within them? The highest aim and best result of improved intelligence, it has hitherto been thought, is to unite mankind more and more in the acknowledgment

of all important truths: and does the intelligence only last as long as it has not achieved its object? Do the fruits of conquest perish by the very completeness of the victory?

I affirm no such thing. As mankind improve, the number of doctrines which are no longer disputed or doubted will be constantly on the increase: and the well-being of mankind may almost be measured by the number and gravity of the truths which have reached the point of being uncontested. The cessation, on one question after another, of serious controversy, is one of the necessary incidents of the consolidation of opinion; a consolidation as salutary in the case of true opinions, as it is dangerous and noxious when the opinions are erroneous. But though this gradual narrowing of the bounds of diversity of opinion is necessary in both senses of the term, being at once [251] inevitable and indispensable, we are not therefore obliged to conclude that all its consequences must be beneficial. The loss of so important an aid to the intelligent and living apprehension of a truth, as is afforded by the necessity of explaining it to, or defending it against, opponents, though not sufficient to outweigh, is no trifling drawback from, the benefit of its universal recognition. Where this advantage can no longer be had, I confess I should like to see the teachers of mankind endeavouring to provide a substitute for it; some contrivance for making the difficulties of the question as present to the learner's consciousness, as if they were pressed upon him by a dissentient champion, eager for his conversion.

~~But instead of seeking contrivances for this purpose, they have lost those they formerly had. The Socratic dialectics, so magnificently exemplified in the dialogues of Plato, were a contrivance of this description. They were essentially a negative discussion of the great questions of philosophy and life, directed with consummate skill to the purpose of convincing any one who had merely adopted the commonplaces of received opinion, that he did not understand the subject—that he as yet attached no definite meaning to the doctrines he professed; in order that, becoming aware of his ignorance, he might be put in the way to attain a stable belief, resting on a clear apprehension both of the meaning of doctrines and of their evidence. The school disputations of the middle ages had a somewhat similar object. They were intended to make sure that the pupil understood his own opinion, and (by necessary correlation) the opinion opposed to it, and could enforce the grounds of the one and confute those of the other. These last-mentioned contests had indeed the incurable defect, that the premises appealed to were taken from authority, not from reason; and, as a discipline to the mind, they were in every respect inferior to the powerful dialectics which formed the intellects of the "Socratici viri:" [252] but the modern mind owes far more to both than it is generally willing to admit, and the present modes of education contain nothing which in the smallest degree supplies the place either of the one or of the other. A person who derives all his instruction from teachers or books, even if he escape the besetting temptation of contenting himself with cram, is under no compulsion to hear both sides; accordingly it is far from a frequent accomplishment, even among thinkers, to know both sides; and the weakest part of what everybody says in defence of his opinion, is what he intends as a reply to antagonists. It is the fashion of the present time to disparage negative logic—that which points out weaknesses in theory or errors in practice, without establishing positive truths. Such negative criticism would indeed be poor enough as an ultimate result; but as a means [252] to attaining any positive knowledge or conviction worthy the~~

~~name, it cannot be valued too highly; and until people are again systematically trained to it, there will be few great thinkers, and a low general average of intellect, in any but the mathematical and physical departments of speculation. On any other subject no one's opinions deserve the name of knowledge, except so far as he has either had forced upon him by others, or gone through of himself, the same mental process which would have been required of him in carrying on an active controversy with opponents. That, therefore, which when absent, it is so indispensable, but so difficult, to create, how worse than absurd ^{it is} to forego, when spontaneously offering itself! If there are any persons who contest a received opinion, or who will do so if law or opinion will let them, let us thank them for it, open our minds to listen to them, and rejoice that there is some one to do for us what we otherwise ought, if we have any regard for either the certainty or the vitality of our convictions, to do with much greater labour for ourselves.~~

It still remains to speak of one of the principal causes which make diversity of opinion advantageous, and will continue to do so until mankind shall have entered a stage of intellectual advancement which at present seems at an incalculable distance. We have hitherto considered only two possibilities: that the received opinion may be false, and some other opinion, consequently, true; or that, the received opinion being true, a conflict with the opposite error is essential to a clear apprehension and deep feeling of its truth. But there is a commoner case than either of these; when the conflicting doctrines, instead of being one true and the other false, share the truth between them; and the nonconforming opinion is needed to supply the remainder of the truth, of which the received doctrine embodies only a part. Popular opinions, on subjects not palpable to sense, are often true, but seldom or never the whole truth. They are a part of the truth; sometimes a greater, sometimes a smaller part, but exaggerated, distorted, and disjoined from the truths by which they ought to be accompanied and limited. Heretical opinions, on the other hand, are generally some of these suppressed and neglected truths, bursting the bonds which kept them down, and either seeking reconciliation with the truth contained in the common opinion, or fronting it as enemies, and setting themselves up, with similar exclusiveness, as the whole truth. The latter case is hitherto the most frequent, as, in the human mind, one-sidedness has always been the rule, and many-sidedness the exception. Hence, even in revolutions of opinion, one part of the truth usually sets while another rises. Even progress, which ought to superadd, for the most part only substitutes, one partial and incomplete truth for another; improvement consisting chiefly in this, that the new fragment of truth is [253] more wanted, more adapted to the needs of the time, than that which it displaces. Such being the partial character of prevailing opinions, even when resting on a true foundation, every opinion which embodies somewhat of the portion of truth which the common opinion omits, ought to be considered precious, with whatever amount of error and confusion that truth may be blended. No sober judge of human affairs will feel bound to be indignant because those who force on our notice truths which we should otherwise have overlooked, overlook some of those which we see. Rather, he will think that so long as popular truth is one-sided, it is more desirable than otherwise that unpopular truth should have one-sided asserters too; such being usually the most energetic, and the most likely to compel reluctant attention to the fragment of wisdom which they proclaim as if it were the whole.

Thus, in the eighteenth century, when nearly all the instructed, and all those of the uninstructed who were led by them, were lost in admiration of what is called civilization, and of the marvels of modern science, literature, and philosophy, and while greatly overrating the amount of unlikeness between the men of modern and those of ancient times, indulged the belief that the whole of the difference was in their own favour; with what a salutary shock did the paradoxes of Rousseau explode like bombshells in the midst, dislocating the compact mass of one-sided opinion, and forcing its elements to recombine in a better form and with additional ingredients. Not that the current opinions were on the whole farther from the truth than Rousseau's were; on the contrary, they were nearer to it; they contained more of positive truth, and very much less of error. Nevertheless there lay in Rousseau's doctrine, and has floated down the stream of opinion along with it, a considerable amount of exactly those truths which the popular opinion wanted; and these are the deposit which was left behind when the flood subsided. The superior worth of simplicity of life, the enervating and demoralizing effect of the trammels and hypocrisies of artificial society, are ideas which have never been entirely absent from cultivated minds since Rousseau wrote; and they will in time produce their due effect, though at present needing to be asserted as much as ever, and to be asserted by deeds, for words, on this subject, have nearly exhausted their power.

In politics, again, it is almost a commonplace, that a party of order or stability, and a party of progress or reform, are both necessary elements of a healthy state of political life; until the one or the other shall have so enlarged its mental grasp as to be a party equally of order and of progress, knowing and distinguishing what is fit to be preserved from what ought to be swept away. Each of these modes of thinking derives its utility from the deficiencies of the other; but it is in a great measure the opposition of the other that keeps each within the limits of reason and sanity. Unless opinions [254] favourable to democracy and to aristocracy, to property and to equality, to co-operation and to competition, to luxury and to abstinence, to sociality and individuality, to liberty and discipline, and all the other standing antagonisms of practical life, are expressed with equal freedom, and enforced and defended with equal talent and energy, there is no chance of both elements obtaining their due; one scale is sure to go up, and the other down. Truth, in the great practical concerns of life, is so much a question of the reconciling and combining of opposites, that very few have minds sufficiently capacious and impartial to make the adjustment with an approach to correctness, and it has to be made by the rough process of a struggle between combatants fighting under hostile banners. On any of the great open questions just enumerated, if either of the two opinions has a better claim than the other, not merely to be tolerated, but to be encouraged and countenanced, it is the one which happens at the particular time and place to be in a minority. That is the opinion which, for the time being, represents the neglected interests, the side of human well-being which is in danger of obtaining less than its share. I am aware that there is not, in this country, any intolerance of differences of opinion on most of these topics. They are adduced to show, by admitted and multiplied examples, the universality of the fact, that only through diversity of opinion is there, in the existing state of human intellect, a chance of fair play to all sides of the truth. When there are persons to be found, who form an exception to the apparent unanimity of the world on any subject, even if the world is in the right, it is always

probable that dissentients have something worth hearing to say for themselves, and that truth would lose something by their silence.

It may be objected, "But some received principles, especially on the highest and most vital subjects, are more than half-truths. The Christian morality, for instance, is the whole truth on that subject, and if any one teaches a morality which varies from it, he is wholly in error." As this is of all cases the most important in practice, none can be fitter to test the general maxim. But before pronouncing what Christian morality is or is not, it would be desirable to decide what is meant by Christian morality. If it means the morality of the New Testament, I wonder that any one who derives his knowledge of this from the book itself, can suppose that it was announced, or intended, as a complete doctrine of morals. The Gospel always refers to a pre-existing morality, and confines its precepts to the particulars in which that morality was to be corrected, or superseded by a wider and higher; expressing itself, moreover, in terms most general, often impossible to be interpreted literally, and possessing rather the impressiveness of poetry or eloquence than the precision of legislation. To extract from it a body of ethical doctrine, has never been possible without erasing it out from the Old Testament, that is, from a system elaborate indeed, but [255] in many respects barbarous, and intended only for a barbarous people. St. Paul, a declared enemy to this Judaical mode of interpreting the doctrine and filling up the scheme of his Master, equally assumes a pre-existing morality, namely that of the Greeks and Romans; and his advice to Christians is in a great measure a system of accommodation to that; even to the extent of giving an apparent sanction to slavery. What is called Christian, but should rather be termed theological, morality, was not the work of Christ or the Apostles, but is of much later origin, having been gradually built up by the Catholic church of the first five centuries, and though not implicitly adopted by moderns and Protestants, has been much less modified by them than might have been expected. For the most part, indeed, they have contented themselves with cutting off the additions which had been made to it in the middle ages, each sect supplying the place by fresh additions, adapted to its own character and tendencies. That mankind owe a great debt to this morality, and to its early teachers. I should be the last person to deny; but I do not scruple to say of it, that it is, in many important points, incomplete and one-sided, and that unless ideas and feelings, not sanctioned by it, had contributed to the formation of European life and character, human affairs would have been in a worse condition than they now are. Christian morality (so called) has all the characters of a reaction; it is, in great part, a protest against Paganism. Its ideal is negative rather than positive; passive rather than active; Innocence rather than Nobleness; Abstinence from Evil, rather than energetic Pursuit of Good: in its precepts (as has been well said) "thou shalt not" predominates unduly over "thou shalt." In its horror of sensuality, it made an idol of asceticism, which has been gradually compromised away into one of legality. It holds out the hope of heaven and the threat of hell, as the appointed and appropriate motives to a virtuous life: in this falling far below the best of the ancients, and doing what lies in it to give to human morality an essentially selfish character, by disconnecting each man's feelings of duty from the interests of his fellow-creatures, except so far as a self-interested inducement is offered to him for consulting them. It is essentially a doctrine of passive obedience; it inculcates submission to all authorities found established; who indeed are not to be actively obeyed when they command what religion forbids, but who are not to

pretension made by a part of the truth to be the whole, must and ought to be protested against; and if a reactionary impulse should make the protestors unjust in their turn, this one-sidedness, like the other, may be lamented, but must be tolerated. If Christians would teach infidels to be just to Christianity, they should themselves be just to infidelity. It can do truth no service to blink the fact, known to all who have the most ordinary acquaintance with literary history, that a large portion of the noblest and most valuable moral teaching has been the work, not only of men who did not know, but of men who knew and rejected, the Christian faith.

I do not pretend that the most unlimited use of the freedom of enunciating all possible opinions would put an end to the evils of religious or philosophical sectarianism. Every truth which men of narrow capacity are in earnest about, is sure to be asserted, inculcated, and in many ways even acted on, as if no other truth existed in the world, or at all events none that could limit or qualify the first. I acknowledge that the tendency of all opinions to become sectarian is not cured by the freest discussion, but is often heightened and exacerbated thereby; the truth which ought to have been, but was not, seen, being rejected all the more violently because proclaimed by persons regarded as opponents. But it is not on the impassioned partisan, it is on the calmer and more disinterested bystander, that this collision of opinions works its salutary effect. Not the violent conflict between parts of the truth, but the quiet suppression of half of it, is the formidable evil; there is always hope when people are forced to listen to both sides; it is when they attend only to one that errors harden into prejudices, and truth itself ceases to have the effect of truth, by being exaggerated into falsehood. And since there are few mental attributes more rare than that judicial faculty which can sit in intelligent judgment between two sides of a question, of which only one is represented by an advocate before it, truth has no chance but in proportion as every side of it, every opinion which embodies any fraction of the truth, not only finds advocates, but is so advocated as to be listened to.

We have now recognised the necessity to the mental well-being of mankind (on which all their other well-being depends) of freedom of opinion, [258] and freedom of the expression of opinion, on four distinct grounds; which we will now briefly recapitulate.

First, if any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our own infallibility.

Secondly, though the silenced opinion be an error, it may, and very commonly does, contain a portion of truth; and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by the collision of adverse opinions that the remainder of the truth has any chance of being supplied.

Thirdly, even if the received opinion be not only true, but the whole truth; unless it is suffered to be, and actually is, vigorously and earnestly contested, it will, by most of those who receive it, be held in the manner of a prejudice, with little comprehension or feeling of its rational grounds. And not only this, but, fourthly, the meaning of the doctrine itself will be in danger of being lost, or enfeebled, and deprived of its vital effect on the character and conduct: the dogma becoming a mere formal profession,

inefficacious for good, but cumbering the ground, and preventing the growth of any real and heartfelt conviction, from reason or personal experience.

Before quitting the subject of freedom of opinion, it is fit to take some notice of those who say, that the free expression of all opinions should be permitted, on condition that the manner be temperate, and do not pass the bounds of fair discussion. Much might be said on the impossibility of fixing where these supposed bounds are to be placed; for if the test be offence to those whose opinion is attacked. I think experience testifies that this offence is given whenever the attack is telling and powerful, and that every opponent who pushes them hard, and whom they find it difficult to answer, appears to them, if he shows any strong feeling on the subject, an intemperate opponent. But this, though an important consideration in a practical point of view, merges in a more fundamental objection. Undoubtedly the manner of asserting an opinion, even though it be a true one, may be very objectionable, and may justly incur severe censure. But the principal offences of the kind are such as it is mostly impossible, unless by accidental self-betrayal, to bring home to conviction. The gravest of them is, to argue sophistically, to suppress facts or arguments, to misstate the elements of the case, or misrepresent the opposite opinion. But all this, even to the most aggravated degree, is so continually done in perfect good faith, by persons who are not considered, and in many other respects may not deserve to be considered, ignorant or incompetent, that it is rarely possible on adequate grounds conscientiously to stamp the misrepresentation as morally culpable; and still less could law presume to interfere with this kind of controversial misconduct. With regard to what is commonly meant by intemperate discussion, namely invective, sarcasm, personality, and the like, the [259] denunciation of these weapons would deserve more sympathy if it were ever proposed to interdict them equally to both sides; but it is only desired to restrain the employment of them against the prevailing opinion: against the unprevailing they may not only be used without general disapproval, but will be likely to obtain for him who uses them the praise of honest zeal and righteous indignation. Yet whatever mischief arises from their use, is greatest when they are employed against the comparatively defenceless: and whatever unfair advantage can be derived by any opinion from this mode of asserting it, accrues almost exclusively to received opinions. The worst offence of this kind which can be committed by a polemic, is to stigmatize those who hold the contrary opinion as bad and immoral men. To calumny of this sort, those who hold any unpopular opinion are peculiarly exposed, because they are in general few and uninfluential, and nobody but themselves feels much *interested* in seeing justice done them: but this weapon is, from the nature of the case, denied to those who attack a prevailing opinion: they can neither use it with safety to themselves, nor, if they could, would it do anything but recoil on their own cause. In general, opinions contrary to those commonly received can only obtain a hearing by studied moderation of language, and the most cautious avoidance of unnecessary offence, from which they hardly ever deviate even in a slight degree without losing ground: while unmeasured vituperation employed on the side of the prevailing opinion, really does deter people from professing contrary opinions, and from listening to those who profess them. For the interest, therefore, of truth and justice, it is far more important to restrain this employment of vituperative language than the other: and, for example, if it were necessary to choose, there would be much more need to discourage offensive attacks on infidelity, than on religion. It is, however, obvious that law and

authority have no business with restraining either, while opinion ought, in every instance, to determine its verdict by the circumstances of the individual case; condemning every one, on whichever side of the argument he places himself, in whose mode of advocacy either want of candour, or malignity, bigotry, or intolerance of feeling manifest themselves; but not inferring these vices from the side which a person takes, though it be the contrary side of the question to our own: and giving merited honour to every one, whatever opinion he may hold, who has calmness to see and honesty to state what his opponents and their opinions really are, exaggerating nothing to their discredit, keeping nothing back which tells or can be supposed to tell, in their favour. This is the real morality of public discussion: and if often violated. I am happy to think that there are many controversialists who to a great extent observe it, and a still greater number who conscientiously strive towards it.

(E) The state must be self-sufficient. It must aim at economic autarchy; for otherwise the rulers would either be dependent upon traders, or become traders themselves. The first of these alternatives would undermine their power, the second their unity and the stability of the state.

This programme can, I think, be fairly described as totalitarian. And it is certainly founded upon a historicist sociology.

But is that all? Are there no other features of Plato's programme, elements which are neither totalitarian nor founded upon historicism? What about Plato's ardent desire for Goodness and Beauty, or his love of Wisdom and of Truth? What about his demand that the wise, the philosophers should rule? What about his hopes of making the citizens of his state virtuous as well as happy? And what about his demand that the state should be founded upon Justice? Even writers who criticize Plato believe that his political doctrine, in spite of certain similarities, is clearly distinguished from modern totalitarianism by these aims of his, the happiness of the citizens, and the rule of justice. Crossman, for instance, whose critical attitude can be gauged from his remark that 'Plato's philosophy is the most savage and most profound attack upon liberal ideas which history can show'², seems still to believe that Plato's plan is 'the building of a perfect state in which every citizen is really happy'. Another example is Joad, who discusses the similarities between Plato's programme and that of fascism at some length, but maintains that there are fundamental differences, since in Plato's best state, 'the ordinary man . . . achieves such happiness as appertains to his nature'; and since this state is built upon the ideas of 'an absolute good and an absolute justice'.

In spite of such arguments, I believe that Plato's political programme, far from being morally superior to totalitarianism, is fundamentally identical with it. I believe that the objections against this view are based upon an ancient and deep-rooted prejudice in favour of idealizing Plato. That Crossman has done much to point out and to destroy this inclination may be seen from this statement: 'Before the Great War . . . Plato . . . was rarely condemned outright as a reactionary, resolutely opposed to every principle of the liberal creed. Instead he was elevated to a higher rank, . . . removed from practical life, dreaming of a transcendent City of God.'³ But even Crossman is in my opinion not entirely free from that tendency which he so clearly exposes. It is interesting that this tendency could

Karl Popper, The Open Society and Its Enemies. Volume I. The Spell of Plato (London: George Routledge & Sons, 1943)
CHAPTER 6: TOTALITARIAN JUSTICE

The analysis of Plato's sociology makes it easy to present his political programme. His fundamental demands can be expressed in either of two formulæ, the first corresponding to his idealist theory of change and rest, the second to his naturalism. The idealist formula is: *Arrest all political change!* Change is evil, rest divine¹. All change can be arrested if the state is made an exact copy of its original, i.e. of the Form or Idea of the city. Should it be asked how this is practicable, we can reply with the naturalist formula: *Back to nature!* Back to the original state of our forefathers, the primitive state founded in accordance with human nature, and therefore stable; back to the tribal patriarchy of the time before the Fall, to the natural class rule of the wise few over the ignorant many.

I believe that practically all the features of Plato's political programme can be derived from these demands. They are, in turn, based upon his historicism; and they have to be combined with his sociological doctrines concerning the conditions for the stability of class rule. The main features I have in mind are:

(A) The strict division of the classes; i.e. the ruling class consisting of herdsmen and watch-dogs must be strictly separated from the human cattle.

(B) The identification of the fate of the state with that of the ruling class; the exclusive interest in this class, and in its unity; and subservient to this unity, the rigid rules for breeding and educating this class, and the strict supervision and collectivization of the interests of its members.

From these principal features, many other features can be derived, for instance:

(C) The ruling class has a monopoly of things like military virtues and training, and of the right to carry arms and to receive education of any kind; but it is excluded from any participation in economic activities, and especially from earning money.

(D) There must be a censorship of all intellectual activities of the ruling class, and a continual propaganda aiming at moulding and unifying their minds.

persist for such a long time in spite of the fact that Grote and Gompertz had pointed out the reactionary character of some doctrines of the *Republic* and the *Laws*. But even they did not see all the implications of these doctrines; they never doubted that Plato was, fundamentally, a humanitarian. And their adverse criticism was ignored, or interpreted as a failure to understand and to appreciate Plato, who was by Christians considered a 'Christian before Christ', and by revolutionaries a revolutionary. This kind of complete faith in Plato is undoubtedly still dominant, and Field, for instance, finds it necessary to warn his readers that 'we shall misunderstand Plato entirely if we think of him as a revolutionary thinker'. This is, of course, very true; and it would clearly be pointless if the tendency to make of Plato a revolutionary thinker, or at least a progressivist, were not fairly widespread. But Field himself has the same kind of faith in Plato; for when he goes on to say that Plato was 'in strong opposition to the new and subversive tendencies' of his time, then surely he accepts too readily Plato's testimony for the subversiveness of these tendencies. The enemies of freedom have always charged its defenders with subversion. And nearly always they have succeeded in persuading the guileless and well-meaning.

The idealization of the great idealist permeates not only the interpretations of Plato's writings, but also the translations. Drastic remarks of Plato's which do not fit the translator's views of what a humanitarian should say are frequently either toned down or misunderstood. This tendency begins with the translation of the very title of Plato's so-called 'Republic'. What comes first to our mind when hearing this title is that the author must be a liberal, if not a revolutionary. But the title 'Republic' is, quite simply, the English form of the Latin rendering of a Greek word that had no associations of this kind, and whose proper English translation would be 'The Constitution' or 'The City State' or 'The State'. The traditional translation 'Republic' has undoubtedly contributed to the general conviction that Plato could not have been a reactionary.

In view of all that Plato says about Goodness and Justice and the other Ideas mentioned, my thesis that his political demands are purely totalitarian and anti-humanitarian needs to be defended. In order to undertake this defence, I shall, for the next four chapters, break off the analysis of historicism, and concentrate upon a critical examination of the ethical Ideas

mentioned, and of their part in Plato's political demands. In the present chapter, I shall examine the Idea of Justice; in the three following chapters, the doctrine that the wisest and best should rule, and the Ideas of Truth, Wisdom, Goodness, and Beauty.

~~What do we really mean when we speak of Justice? I do not think that verbal problems of this kind are particularly important, or that it is possible to give a definite reply to them, since such terms are always used in various senses. However, I think that most of us, especially those whose general outlook is humanitarian, mean something like this: (a) an equal distribution of the burden of citizenship, i.e. of those limitations of freedom which are necessary in social life⁴; (b) equal treatment of the citizens before the law, provided, of course, that (c) the laws themselves neither favour nor disfavour individual citizens or groups or classes; (d) impartiality of the courts of justice; and (e) an equal share in the advantages (and not only in the burden) which their membership of the state may offer to the citizen. If Plato had meant by 'justice' anything of this kind, then my claim that his programme is purely totalitarian would certainly be wrong and all those would be right who believe that Plato's politics rested upon an acceptable humanitarian basis. But the fact is that he meant by 'justice' something entirely different.~~

~~What did Plato mean by 'justice'? I maintain that in the *Republic* he used the term 'just' as a synonym for 'that which is in the interest of the best state'. And what is the interest of this best state? The arrest of change, by the maintenance of a rigid class division and class rule. If I am right in this interpretation, then we should have to say that Plato's demand for justice leaves his political programme at the level of totalitarianism; and we should have to conclude that we must guard against the danger of being impressed by mere words.~~

~~Justice is the central topic of the *Republic*; in fact, 'On Justice' is its traditional sub-title. In his enquiry into the nature of justice, Plato makes use of the method mentioned⁵ in the last chapter; he first tries to search for this Idea in the state, and then attempts to apply the result to the individual. One cannot say that Plato's question 'What is justice?' quickly finds an answer, for it is given in the Fourth Book, and then only after much hesitation. The considerations which lead up to it will be analysed more fully later in this chapter. Briefly, they are these.~~

beauty' ; but its appeal is always to our emotions rather than to reason. Even with the best intentions of realizing heaven on earth it only succeeds in realizing hell—that hell which man alone prepares for his fellows.

CHAPTER 10: THE OPEN SOCIETY AND ITS ENEMIES

There is still something missing from our analysis. The contention that Plato's political programme is purely totalitarian and the objections to it raised in chapter 6 have led us to examine the rôle played, within this programme, by such moral ideas as Justice, Wisdom, Truth, and Beauty. The result of this examination was always the same. We found that the rôle of these ideas is important, but that they do not lead Plato beyond totalitarianism and racialism. But one of these ideas we have still to examine: that of Happiness. It may be remembered that we quoted Crossman (and Joad) in connection with the belief that Plato's political programme is fundamentally a 'plan for the building of a perfect state in which every citizen is really happy', and that I described this belief as a relic of the tendency to idealize Plato. If called upon to justify my opinion, I should not have much difficulty in pointing out that Plato's treatment of happiness is exactly analogous to his treatment of justice; and especially, that it is based upon the same belief that society is 'by nature' divided into classes or castes. True happiness¹, Plato insists, is achieved only by justice, i.e. by keeping to one's place. The ruler must find happiness in ruling, the warrior in warring; and, we may infer, the slave in slaving. Apart from that, Plato says frequently that what he is aiming at is neither the happiness of individuals nor that of any particular class in the state, but only the happiness of the whole, and this, he maintains, is nothing but the outcome of that rule of justice which I have shown to be totalitarian in character. That only this justice can lead to any true happiness is one of the main theses of the *Republic*.

In view of all this, it seems to be a consistent and hardly refutable interpretation of the material to present Plato as a totalitarian party-politician, unsuccessful in his immediate and practical undertakings, but in the long run only too successful² in his propaganda for the arrest and overthrow of a civilization which he hated. But one has only to formulate this interpretation in this blunt fashion in order to feel that there is something amiss

with it. At any rate, so I felt, when I had formulated it. I felt perhaps not so much that it was untrue, but that it was defective. I therefore began to search for evidence which would refute this interpretation³. However, in every point but one, this attempt to refute the interpretation was quite unsuccessful. The new material made the identity between Platonism and totalitarianism only the more manifest.

The one point in which I felt that my search for a refutation had succeeded concerned Plato's hatred of tyranny. Of course, there was always the possibility of explaining this away. It would have been easy to say that his indictment of tyranny was mere propaganda. Totalitarianism always professes a love for 'true' freedom, and Plato's praise of freedom as opposed to tyranny sounds exactly like this professed love. In spite of this, I felt that certain of his observations on tyranny⁴, which will be mentioned later in this chapter, were sincere. Of course, the fact that 'tyranny' usually meant in Plato's day a form of rule based on the support of the masses, would make it possible to claim that Plato's hatred was consistent with my original interpretation. But I felt that this did not remove the need for modifying the interpretation. I also felt that the mere emphasis on Plato's fundamental sincerity was quite insufficient to accomplish this modification. No amount of emphasis could offset the general impression of the picture. A new picture was needed which would have to include Plato's sincere belief in his mission as healer of the sick social body, as well as the fact that he had seen more clearly than anybody else before or after him what was happening to Greek society. Since the attempt to reject the identity of Platonism and totalitarianism had not improved the picture, I was ultimately forced to modify my interpretation of totalitarianism itself. In other words, my attempt to understand Plato by analogy with modern totalitarianism led, to my own surprise, to a new view of totalitarianism.

In the light of the interpretation, it appears to me that Plato's declaration of his wish to make the state and its citizens happy is not merely propaganda. I grant his fundamental benevolence⁵. I also grant that he was right, to a limited extent, in the sociological analysis on which he based his promise of happiness. To put this point more precisely: I believe that Plato, with deep sociological insight, found that his contemporaries were suffering under a severe strain, and that this strain was due to the social revolution which had begun with the rise of democracy and individualism.

For reasons discussed later in this chapter, I believe that the medico-political treatment which he recommended, the arrest of change and the return to tribalism, was hopelessly wrong. But the recommendation, though not practicable, shows an amazing power of diagnosis. Plato knew what was amiss, he understood the strain, the unhappiness, under which the people were labouring, although he erred in his fundamental claim that by leading them back to tribalism he could restore their happiness, and lessen the strain.

It is my intention to give in this chapter a brief survey of the historical material which induced me to hold such opinions. A few remarks on the method adopted, that of historical interpretation, will be found in the last chapter of the book. It will therefore suffice here if I say that I do not claim scientific status for this method, since the testing of an interpretation can never be as thorough as that of an ordinary hypothesis. The interpretation is mainly a *point of view*, whose value lies in its fertility, in its power to throw light upon the historical material, to lead us to find new material, and to help us to rationalize and to unify it. What I am going to say here is therefore not asserted dogmatically, however boldly I may perhaps sometimes express my opinions.

Our western civilization originated with the Greeks. They made the step from tribalism to humanitarianism. Let us consider what that means.

The early Greek tribal society resembles in many respects that of peoples like the Polynesians, the Maoris, for instance. Small bands of warriors, usually living in fortified settlements, were ruled by tribal chiefs or kings, or by aristocratic families, who waged wars against one another on sea as well as on land. There were, of course, many differences between the Greek and the Polynesian ways of life, for there is, admittedly, no uniformity in tribalism. There is no standardized 'tribal way of life'. It seems to me, however, that there is one distinguishing feature which is common to most, if not all, of these tribal societies. I mean their magical or irrational attitude towards the customs of social life, and the corresponding rigidity of these customs.

When I speak of the rigidity of tribalism I do not mean that no changes can occur in the tribal ways of life. I rather mean that the comparatively infrequent changes have the character

of religious conversions, or of the introduction of new magical taboos. They are not based upon a fully rational attempt to improve social conditions. Apart from such rare changes, taboos rigidly regulate and dominate all aspects of life. They do not leave many loop-holes. There are few problems in this form of life, and nothing really equivalent to moral problems. I do not mean that it does not sometimes need much heroism for a member of a tribe to act in accordance with the taboos. What I mean is that he will never find himself in the position of doubting how he ought to act. The right way is always determined, though difficulties must be overcome in following it. It is determined by taboos, by magical tribal institutions which can never become objects of critical consideration. Not even a Heraclitus distinguishes clearly between the institutional laws of tribal life and the laws of nature; both are taken to be of the same magical character. Based upon the collective tribal tradition, institutions leave no room for personal responsibility. The taboos that establish some form of group-responsibility may be the forerunner of what we call personal responsibility, but they are fundamentally different from it. They are not based upon a principle of reasonable accountability, but upon a magical idea of appeasing the powers of fate.

It is well known how much of this still survives. Our own ways of life are still beset with taboos, food taboos, taboos of politeness, and many others. And yet, there are some important differences. In our own way of life there is, between the laws of the state on the one hand, and on the other the taboos we habitually observe, an ever-widening field of personal decisions, with its problems and responsibilities; and we know the importance of this field. Personal decisions may lead to the alteration of taboos, and even of political laws which are no longer taboos. The great difference is the possibility of rational reflection upon these matters. We make rational decisions, that is to say, decisions based upon an estimate of their consequences, and upon a conscious preference for certain consequences to others. We recognize rational personal responsibility.

In what follows, the magical or tribal or collectivist society will also be called the *closed society*, and the society in which individuals are confronted with personal decisions, the *open society*.⁶

The closed society at its best can be justly compared to an organism. The so-called organic or biological theory of the

state is to a certain extent applicable here, since the closed society lacks those features of the open society which must defeat every attempt to apply this theory. The features I have in mind are those connected with the fact that, in the open society, many members strive to take the place of other members. This may express itself, for instance, in such an important phenomenon as class struggle. We cannot find anything like class struggle in an organism. The cells or tissues of an organism which are sometimes said to correspond to the members of a state, may perhaps compete for food; but there is no inherent tendency on the part of the legs to become the brain, or of other members of the body to become the belly. Since there is nothing in the organism to correspond to one of the most important features of the open society, competition for status among its members, the so-called organic theory of the state is based on a false analogy. The closed society, on the other hand, does not know much of such tendencies. Its institutions, including its castes, are sacrosanct—taboo. The organic theory does not fit so badly here. It is therefore not surprising to find that most attempts to apply the organic theory to our society are veiled forms of propaganda for a return to tribalism.⁷

Thus when we say that our western civilization comes from the Greeks, we ought to be clear what that means. It means that the Greek began that greatest of all revolutions, a revolution which started just yesterday, as it were, for we are still in its initial stage—the transition from the closed to the open society.

Of course, this revolution was not made consciously. The breakdown of tribalism may be traced back to the time when population growth began to make itself felt among the ruling class of landed proprietors. This meant the end of 'organic' tribalism. For it created social tension within the closed society of the ruling class. At first, there appeared to be something like an 'organic' solution of this problem, the creation of daughter cities. The character of this solution is shown by the magical procedure in the sending out of colonists. But this ritual of colonization only postponed the breakdown. It even created new danger spots wherever it led to cultural contacts; and these, in turn, created the worst danger, commerce, and a new class engaged in trade and seafaring. By the sixth century B.C., this development had led to the partial dissolution of the old ways of life, and even to a series of political revolutions and

reactions. And it had led not only to attempts to retain and to arrest tribalism by force, as in Sparta, but also to that great spiritual revolution, the invention of thought that was free from magical obsessions. At the same time we find the first symptoms of a new uneasiness. *The strain of civilization was beginning to be felt.*

This strain, or uneasiness, is a direct consequence of the shock due to the breakdown of the closed society; a shock which I do not doubt has not been forgotten even in our day. It is the strain of the demand that we should be rational, look after ourselves, and take immense responsibilities. It is the price we have to pay for being human.

The strain is most closely related to the problem of the tension between the classes which is raised for the first time by the breakdown of the closed society. The closed society itself does not know this problem. At least to its ruling members, slavery, caste, and class rule are 'natural' in the sense of being unquestionable. But with the breakdown of the closed society, this certainty disappears, and with it all feeling of security. The tribal community, the 'city', is the place of security for the member of the tribe. Surrounded by enemies and by dangerous or even hostile magical forces, he experiences the tribal community as a child experiences his family and his home, in which he plays his definite part; a part he knows well, and plays well. The breakdown of the closed society and the opening up of the problems of class and other problems of status must have the same effect upon the citizens as a serious family quarrel and the breaking up of the family home must have on children⁸. Of course, this kind of strain must be felt by the privileged classes, now that they are threatened, more strongly than by those who had formerly been suppressed; but even the latter felt uneasy. They also were frightened by the breakdown of their 'natural' world. And though they continued to fight their struggle, they were often reluctant to exploit their victories over their class enemies, who had tradition, the *status quo*, a higher level of education, and the feeling of natural authority, on their side.

In this light we must try to understand the history of Sparta which had arrested these developments, and of Athens, the leading democracy.

Perhaps the most powerful cause of the breakdown of the closed society is the development of sea-communications and commerce. Close contact with other tribes is liable to undermine

the feeling of necessity with which tribal institutions are viewed; and trade, commercial initiative, appears to be one of the few forms in which individual initiative⁹ and independence can assert itself, even in a society in which tribalism still prevails. These two, seafaring and commerce, were the outstanding features of Athenian imperialism, as it developed in the fifth century B.C. And indeed they were recognized as the most dangerous developments by the oligarchs, the members of the privileged, or of the formerly privileged, classes of Athens. It became clear to them that the trade of Athens, its monetary commercialism, its naval policy, and its democratic tendencies, were a single large movement, and that it was impossible to defeat democracy without going the whole way, i.e. destroying the naval policy and the empire. But the naval policy of Athens was based upon its harbour, the Piræus; and strategically, upon the walls that fortified Athens, and later, upon the Long Walls which linked it to the harbours of the Piræus and Phalerum. We find, accordingly, that for more than a century the empire, the fleet, the harbour, and the walls, were hated by the oligarchic parties of Athens as the strongpoints and the symbols of the Athenian democratic power which they hoped one day to destroy.

Much evidence of this development can be found in Thucydides' *History of the Peloponnesian War*, or rather, of the two great wars of 431-421 and 419-403 B.C., between Athenian democracy and the arrested oligarchic tribalism of Sparta. When reading Thucydides we must never forget that his heart was not with Athens, his native city. Although he apparently did not belong to the extreme wing of the Athenian oligarchic clubs who conspired throughout the war with the enemy, he was certainly a member of the oligarchic party, and a friend neither of the Athenian people, the demos, who had exiled him, nor of its imperialist policy. (I do not intend to belittle Thucydides, the greatest historian, perhaps, who ever lived. But however successful he was in making sure of the facts he records, and in spite of his sincere efforts to be impartial, his comments and moral judgements represent an interpretation, a point of view; and in this we need not agree with him.) I quote first a passage on Themistocles' policy in 482 B.C., half a century before the Peloponnesian war: 'Themistocles also persuaded the Athenians to finish the Piræus. . . Since the Athenians had now taken to the sea, he thought that they had a great opportunity for

building an empire. He was the first who dared to say that they should make the sea their domain. . . .¹⁰ Twenty-five years later, the Athenians began to build their Long Walls to the sea, one to the harbour of Phalerum, the other to the Piræus.¹¹ But this time, twenty-six years before the outbreak of the Peloponnesian war, the oligarchic party was fully aware of the meaning of these developments. We hear from Thucydides that they did not shrink even from the most blatant treachery. As sometimes happens with oligarchs, class interest superseded their patriotism. An opportunity offered itself in the form of a hostile Spartan expeditionary force operating in the north of Athens, and they determined to conspire with Sparta against their own country. Thucydides writes: 'Certain Athenians were privately making overtures to them' (i.e. to the Spartans) 'in the hope that they would put an end to the democracy, and to the building of the Long Walls. But the other Athenians . . . suspected their design against democracy.' The loyal Athenian citizens therefore went out to meet the Spartans, but were defeated. It appears, however, that they had weakened the enemy sufficiently to prevent him from joining forces with the fifth columnists within their own city. Some months later, the Long Walls were completed, which meant that the Athenian democracy could enjoy security as long as it upheld its naval supremacy.

This incident throws light on the tenseness of the class situation in Athens, even twenty-six years before the outbreak of the Peloponnesian war, during which the situation became even worse. It also throws light on the methods employed by the subversive and pro-Spartan oligarchic party. Thucydides, one must note, mentions their treachery only in passing, and he does not censure them, although in other places he speaks most strongly against class struggle and party spirit. The next passages quoted, written as a general reflection on the Corcyraean Revolution of 427 B.C., are interesting, first as an excellent picture of the class situation; secondly, as an illustration of the strong words Thucydides could find when he wanted to describe analogous tendencies on the side of the democrats of Corcyra. (In order to judge his apparent impartiality we must remember that in the beginning of the war Corcyra had been one of Athens' democratic allies, and that the revolt had been started by the oligarchs.) Moreover, the passage is an excellent expression of the feeling of a general social breakdown: 'Nearly the whole Hellenic world', writes Thucydides, 'was in commotion. In

every city, the leaders of the democratic and of the oligarchic parties were trying hard, the one to bring in the Athenians, the other the Lacedaemonians. . . . The tie of party was stronger than the tie of blood. . . . The leaders on either side used specious names, the one party professing to uphold the constitutional equality of the many, the other the wisdom of an aristocracy; in reality they made the public interest their price, professing, of course, their devotion to it. They used any conceivable means for getting the better of one another, and committed the most monstrous crimes. . . . This revolution gave birth to every form of wickedness in Hellas. . . . Everywhere prevailed an attitude of perfidious antagonism. There was no word binding enough, no oath terrible enough, to reconcile enemies. Each man was strong only in the conviction that nothing was secure.'¹²

The full significance of the attempt of the Athenian oligarchs to accept the help of Sparta and stop the building of the Long Walls can be gauged when we realize that this treacherous attitude had not changed when Aristotle wrote his *Politics*, more than a century later. We hear there about an oligarchic oath, which, Aristotle said, 'is now in vogue'. This is how it runs: 'I promise to be an enemy of the people, and to do my best to give them bad advice!'¹³ It is clear that we cannot understand this period without keeping such hatred in mind.

I mentioned above that Thucydides himself was an anti-democrat. This becomes clear when we consider his description of the Athenian empire, and the way it was hated by the various Greek states. Athens' rule over its empire, he tells us, was felt to be no better than a tyranny, and all the Greek tribes were afraid of her. In describing public opinion at the outbreak of the Peloponnesian war, he is mildly critical of Sparta and very critical of Athenian imperialism. 'The general feeling of the peoples was strongly on the side of the Lacedaemonians; for they maintained that they were the liberators of Hellas. Cities and individuals were eager to assist them . . . , and the general indignation against the Athenians was intense. Some were longing to be liberated from Athens, others fearful of falling under its sway.'¹⁴ It is most interesting that this judgement of the Athenian empire has become, more or less, the official judgement of 'History', i.e. of most of the historians. Just as the philosophers find it hard to free themselves from Plato's point of view, so are the historians bound to that of Thucydides. As an example I may quote Meyer, who simply repeats Thucydides when he

says: 'The sympathies of the educated world of Greece were turned away from Athens.'¹⁵

But such statements are only expressions of the anti-democratic point of view. Many facts recorded by Thucydides, for instance, the passage quoted on the attitude of the democratic and oligarchic party leaders, show that Sparta was 'popular' not among the peoples of Greece but only among the oligarchs—the 'educated', as Meyer puts it so nicely. Even Meyer admits that 'the democratically minded masses hoped in many places for her victory'¹⁶, i.e. for the victory of Athens; and Thucydides' narrative contains many instances which prove Athens' popularity among the democrats and the suppressed. But who cares for the opinion of the uneducated masses? If Thucydides and the 'educated' maintained that Athens was a tyrant, then she was a tyrant.

It is most interesting that the same historians who hail Rome for her achievement, the foundation of a universal empire, condemn Athens for her attempt to achieve something better. The fact that Rome succeeded where Athens failed is not a sufficient explanation of this attitude. They do not really censure Athens for her failure, since they loathe the very idea that her attempt might have been successful. Athens, they believe, was a ruthless democracy, a place ruled by the uneducated, who simply hated and suppressed the educated, and were hated by them in turn. But this is of course pure nonsense, as shown by the amazing spiritual productivity of Athens in this particular period. Even Meyer must admit this productivity. 'What Athens produced in this decade', he says modestly, 'ranks equal with one of the mightiest decades of German literature.'¹⁷ Pericles, who was the democratic leader of Athens at this time, was more than justified when he called her the School of Hellas.

I am far from defending everything that Athens did in building up her empire, and I do not defend wanton attacks (if such have occurred), or acts of brutality; nor do I forget that Athenian democracy was still based on slavery¹⁸. But it is necessary, I believe, to see that tribalist exclusiveness and self-sufficiency could be superseded only by some form of imperialism. And it must be said that certain of the imperialist measures introduced by Athens were rather liberal. One very interesting instance is the fact that Athens offered, in 405 B.C., to her ally, the Ionian island Samos, 'that the Samians should be Athenians from now on; and that both cities should be one state; and that the

Samians should order their internal affairs as they chose, and retain their laws.'¹⁹ Another instance is Athens' method of taxing her empire. Much has been said about these taxes which have been described, very unjustly, I believe, as a shameless and tyrannical way of exploiting the smaller cities. In an attempt to evaluate the significance of these taxes, we must, of course, compare them with the volume of the trade protected by the Athenian fleet in return. The necessary information is given by Thucydides, from whom we learn that the Athenians imposed upon their allies, in 413 B.C., 'instead of a tribute, a duty of 5 per cent. on all things imported and exported by sea; and they thought that this would yield more'²⁰. This measure, adopted under severe strain of war, compares favourably, I believe, with the Roman methods of centralization. The Athenians, by this method of taxation, became interested in the development of allied trade, and so in the initiative and independence of the various members of their empire. Originally, the Athenian empire had developed out of a league of equals. In spite of the temporary domination of Athens, her interest in the development of trade might have led, in time, to some kind of federal constitution. At least, we know nothing of the Roman method of 'transferring' the cultural possessions from the empire to the dominant city, i.e. of looting. And whatever one might say against plutocracy, it is preferable to a rule of looters²¹.

This favourable view of Athenian imperialism can be supported by comparing it with the Spartan methods in foreign affairs. These were determined by the ultimate aim of all Spartan politics, the arrest of change, the return to tribalism; their principles were: (1) Tribalism and arrestment proper: shut out all foreign influences which might endanger the rigidity of tribal taboos.—(2) Anti-humanitarianism: shut out, more especially, all equalitarian, democratic, and individualistic ideologies.—(3) Autarchy: be independent of trade.—(4) Anti-universalism or particularism: uphold the differentiation between your tribe and all others; do not mix with inferiors.—(5) Mastery: dominate and enslave your neighbours.—(6) But do not become too large: 'The city should grow only as long as it can do so without impairing its unity'²², and especially, without risking the introduction of universalistic tendencies.—If we compare these six principal tendencies with those of modern totalitarianism, then we see that they agree fundamentally, with the sole exception of the last. The difference can be described

by saying that modern totalitarianism appears to have imperialist tendencies. But this imperialism has no element of a tolerant universalism, and the world-wide ambitions of the modern totalitarians are imposed upon them, as it were, against their will. Two factors are responsible for this: a general tendency of all tyrannies to justify their existence by saving the state from its enemies, and perhaps more important, the difficulties in carrying out points (2) and (5) of the above programme in our modern world. Humanitarian tendencies have become so universal that humanitarianism can be shut out only if it is destroyed all over the world. Besides, this world has become so small that everybody is now a neighbour, and must therefore be enslaved. But in ancient times, nothing could have appeared more dangerous to those who adopted a particularism like Sparta's, than Athenian imperialism, with its possibility of developing into a universal empire of man.

Summing up our analysis so far, we can say that the political and spiritual revolution which had begun with the breakdown of Greek tribalism reached its climax in the fifth century, with the outbreak of the Peloponnesian war. It had developed into a violent class war, and, at the same time, into a war between the two leading cities of Greece.

But how can we explain the fact that outstanding Athenians like Thucydides stood on the side of reaction? Class interest may play its rôle here, but it is, I believe, an insufficient explanation. The main point seems to be that although the open society was already in existence, although it had, in practice, begun to develop new values, new equalitarian standards of life, there was still something missing especially for the 'educated'. The new faith of the open society, its only possible faith, humanitarianism, was beginning to assert itself, but was not yet formulated. For the time being, one could not see much more than class war, the democrats' fear of the oligarchic reaction, and the threat of further revolutionary developments. The reaction, therefore, had much on its side, tradition, the call for defending old virtues, and the old religion. These tendencies appealed to the feelings of most men, and their popularity gave rise to a movement to which, although it was led and used for their own ends by the Spartans and their oligarchic friends, many upright men must have belonged, even at Athens. From the slogan of the movement, 'Back to the state of our forefathers', or 'Back to the old paternal state', derives the term 'patriot'. It is hardly necessary to

insist that the beliefs popular among those who supported this 'patriotic' movement were grossly misused by those oligarchs who did not shrink from handing over their own city to the enemy, in the hope of gaining support against the democrats. Thucydides was one of the representative leaders of this movement for the 'paternal state'²³, and though he probably did not support the treacherous acts of the extreme anti-democrats, he could not disguise his sympathies with their fundamental purpose: to arrest change, and to fight the universalistic imperialism of the Athenian democracy and the instruments and symbols of its power, the navy, the walls, and commerce. (In view of Plato's doctrines about commerce, it may be interesting to note how great the fear of commercialism was. When after his victory over Athens in 404 B.C. the Spartan king, Lysander, returned with great booty, the Spartan 'patriots', i.e. the members of the movement for the 'paternal state', tried to prevent the import of gold; and though it was ultimately admitted, its possession was limited to the state, and capital punishment was imposed on any citizen found in possession of precious metals.²⁴)

Although the 'patriotic' movement was partly the expression of the longing to return to more stable forms of life, to religion, decency, law and order, it was itself morally rotten. Its ancient faith was lost, and was largely replaced by a hypocritical and even cynical exploitation of religious sentiments.²⁵ Nihilism, as painted by Plato in the portraits of Callicles and Thrasymachus, could be found if anywhere among the young 'patriotic' aristocrats who, if given the opportunity, became leaders of the democratic party. The clearest example of this nihilism is perhaps the oligarchic leader who helped to deal the death-blow at Athens, Plato's uncle Critias, the leader of the Thirty Tyrants.²⁶

But at this time, in the same generation to which Thucydides belonged, there rose a new faith in reason, freedom and the brotherhood of all men—the new faith, and, as I believe, the only possible faith, of the open society.

This generation which marks a turning point in the history of mankind, I would like to call the Great Generation; it is the generation which lived in Athens during the Peloponnesian war. There were great conservatives among them, like Sophocles²⁷, or Thucydides. There were men among them who represent the period of transition; who were wavering, like Euripides, or sceptical, like Aristophanes. But there was also the great

leader of democracy, Pericles, who formulated the principle of equality before the law, and of political individualism, and Herodotus, welcomed and hailed in Pericles' city as the author of a work that glorified these principles. Protagoras, a native of Abdera who became influential in Athens, and his countryman Democritus, must also be counted among the Great Generation. They formulated the doctrine that human institutions of language, custom, and law are not taboos but man-made, not natural but conventional, insisting, at the same time, that we are responsible for them. Then there was the school of Gorgias—Alcidamas, Lycophron, and Antisthenes, who developed the fundamental tenets of anti-slavery, and of anti-nationalism, i.e. the creed of the universal empire of men. And there was, perhaps the greatest of all, Socrates, who taught the lesson that we must have faith in human reason, but beware of dogmatism; that we must keep away both from misology²⁸, the distrust of theory and of reason, and from the magical attitude of making an idol of wisdom; who taught, in other words, that the spirit of science is criticism.

Since I have not so far said much about Pericles, and nothing at all about Democritus, I may use some of their own words in order to illustrate the new faith. First Democritus: 'Not out of fear but out of a feeling of what is right should we abstain from doing wrong. . . | Virtue is based, most of all, upon respecting the other man. . . Every man is a little world of his own. . . We ought to do our utmost to help those who have suffered injustice. . . To be good means to do no wrong; and also, not to want to do wrong. . . It is the good deed that counts, not the word! . . . The poverty of a democracy is better than the prosperity which allegedly goes with aristocracy or monarchy, just as liberty is better than slavery. . . The wise man belongs to all countries, for the home of a great soul is the whole world.' To him is due also that remark of a true scientist: 'I would rather find a single causal law than be the king of Persia!'²⁹

In their humanitarian and universalistic emphasis some of these fragments of Democritus sound, although they are of earlier date, as if directed against Plato. The same impression is conveyed, only much more strongly, by Pericles' famous funeral oration, delivered at least half a century before the *Republic* was written. I have already in chapter 6 quoted two sentences from this oration, in connection with equalitarianism³⁰, but a few

passages may be quoted here more fully in order to give a clearer impression of its spirit: 'Our political system does not compete with institutions which are elsewhere in force. We do not copy our neighbours, but try to be an example. Our administration favours the many instead of the few: this is why it is called a democracy. The laws afford equal justice to all alike in their private disputes, but we do not ignore the claims of excellence. When a citizen distinguishes himself, then he is preferred to the public service, not as a matter of privilege, but as a reward of merit; and poverty is no bar. . . The freedom we enjoy extends also to ordinary life; we are not suspicious of one another, and do not feel called upon to nag our neighbour if he chooses to go his own way. . . But this freedom does not make us lawless. We are taught to respect the magistrates and the laws, and never to forget that we must protect the injured. And we are also taught to observe those unwritten laws whose sanction lies only in the universal feeling of what is right. . .

'Our city is thrown open to the world; we never expel a foreigner. . . We are free to live exactly as we please, and yet are always ready to face any danger. . . We love beauty without becoming extravagant, and we cultivate the intellect without lessening our resolution. . . To admit one's poverty is no disgrace with us; but we consider it disgraceful not to make an effort to avoid it. An Athenian citizen does not neglect public affairs when attending to his private business. . . We consider a man who takes no interest in the state not as harmless, but as useless; and although only a few may originate a policy, we are all able to judge it. We do not look upon discussion as a stumbling block in the way of political action, but as an indispensable preliminary to any wise action at all. . . We believe that happiness is the fruit of freedom and freedom of valour, and we do not shrink from the danger of war. . . To sum up, I claim that Athens is the School of Hellas, and that the individual Athenian grows up to a happy versatility and to a readiness for varied emergencies—to self-reliance.'³¹

These words are not only a eulogy on Athens; they express the true spirit of the Great Generation. They formulate the political programme of a great equalitarian individualist, of a democrat who well understands that democracy cannot be exhausted by the meaningless principle that 'the people should rule', but that it must be based on humanitarianism. At the same time, they are an expression of true patriotism, of just

pride in a city which had made it its task to set an example; which became the school, not only of Hellas, but, as we know, of mankind, for millennia past and yet to come.

Pericles' speech is not only a programme. It is also a defence, and perhaps even an attack. It reads, as I have already hinted, like a direct attack on Plato. I do not doubt that it was directed, not only against the arrested tribalism of Sparta, but also against the totalitarian ring or 'link' at home; against the movement for the paternal state, the Athenian 'Society of the Friends of Laconia' (as Th. Gomperz called them in 1902³²). The speech is the earliest³³ and at the same time perhaps the strongest statement ever made in opposition to this kind of movement. Its importance was felt by Plato, who caricatured Pericles' oration half a century later in the passages of the *Republic*³⁴ in which he opposes democracy, as well as in another parody, the dialogue *Menexenus*³⁵. But the friends of Laconia whom Pericles attacked retaliated long before Plato. Only five or six years after Pericles' oration, a pamphlet on the *Constitution of Athens*³⁶ was published by an unknown author, possibly Critias, who is frequently called the 'Old Oligarch'. This ingenious pamphlet, the oldest extant treatise on political theory, is, at the same time, the oldest monument of the desertion of mankind by its intellectual leaders. It is a ruthless attack upon Athens, written no doubt by one of her best brains. Its central idea, an idea which became an article of faith with Thucydides and Plato, is the close connection between naval imperialism and democracy; and it tries to show that there can be no compromise in a conflict between two worlds³⁷, the worlds of democracy and of oligarchy. Only the use of ruthless violence, of total measures, including the acquisition of allies from outside (the Spartans), can put an end to the unholly rule of freedom. This remarkable pamphlet was to become the first of a practically infinite series of works on political philosophy which were, openly or covertly, to repeat the same theme down to our own day. Unwilling and unable to help mankind along their difficult path into an unknown future which they have to create for themselves, the 'educated' tried to make them turn back into the past. Incapable of leading a new way, they only could make themselves leaders of the *perennial revolt against freedom*. And to assert their superiority by fighting against equality became the more necessary for them since they were unable to prove their superiority by helping the cause of human freedom. Harsh as this judgement may sound, it is fair, I

believe, if it is applied to those intellectual leaders of the revolt against freedom who came after the Great Generation, and especially after Socrates. We can now try to see them against the background of our historical interpretation.

The invention of philosophy itself can be interpreted, I think, as a reaction to the breakdown of the closed society and its magical beliefs. It is an attempt to replace the lost magical faith by a rational faith. (A significant point is that this attempt coincides with the spread of the so-called Orphic sects whose members tried to replace the lost feeling of unity by a new mystical religion.) The earliest philosophers, the three great Ionians and Pythagoras, were probably quite unaware of the stimulus to which they were reacting. They were the unconscious antagonists as well as the representatives of a social revolution. The very fact that they founded schools or sects or orders, i.e. new social institutions, modelled largely after those of an idealized tribe³⁸, proves that they were reformers in the social field, and therefore, that they were reacting to certain social needs. That they reacted to these needs and to their own sense of drift, not by imitating Hesiod in inventing a historicist myth of destiny and decay³⁹, but by inventing the art of thinking rationally, is one of the inexplicable facts which stand at the beginning of our civilization. But even these rationalists reacted to the loss of the unity of tribalism in a largely emotional way. Their reasoning gives expression to their feeling of drift, to the strain of a development which was about to create our individualistic civilization. One of the oldest expressions of this strain is due to Anaximander⁴⁰, the second of the Ionian philosophers. Individual existence appeared to him as injustice, as a wrongful act of usurpation, for which individuals must suffer, and do penance. The first to become conscious of the social revolution and the struggle of classes was Heraclitus. How he rationalized his feeling of drift by developing the first anti-democratic ideology and the first historicist philosophy of change and destiny, has been described in the second chapter of this book. Heraclitus was the first conscious antagonist of the open society.

Nearly all these early thinkers were labouring under a tragic and desperate strain.⁴¹ The only exception is perhaps the monotheist Xenophanes⁴², who carried his burden courageously. We cannot blame them for their reactionary tendencies in the same way as we may blame their successors. The new faith of the open society, the faith in man, in equalitarian justice, and

in human reason, was perhaps beginning to take shape, but it was not yet formulated.

The greatest contribution to this faith was to be made by Socrates, who died for it. Socrates was not a leader of Athenian democracy, like Pericles, or a theorist of the open society, like Protagoras. He was, rather, a critic of Athens and of her democratic institutions, and in this he may have borne a superficial resemblance to some of the leaders of the reaction. But there is no need for a man who criticizes democracy and democratic institutions to be their enemy, although both the democrats he criticizes, and the totalitarians who hope to profit from any disunion in the democratic camp, are likely to brand him as such. There is a fundamental difference between a democratic and a totalitarian criticism of democracy. Socrates' criticism was a democratic one, and indeed of the kind that is the very life of democracy. (Democrats who do not see the difference between a friendly and a hostile criticism of democracy are themselves imbued with the totalitarian spirit. Totalitarianism certainly cannot consider any criticism as friendly, since every criticism of such an authority must challenge the principle of authority itself.)

I have already mentioned some features of Socrates' teaching; his intellectualism, i.e. his equalitarian theory of human reason as a universal medium of communication; his stress on intellectual honesty and self-criticism; his equalitarian theory of justice, and his doctrine that it is better to be a victim of injustice than to inflict it upon others. I think it is this last doctrine which can help us best to understand the core of his teaching, his creed of individualism, his belief in the human individual as an end in himself.

The closed society and with it its creed that the tribe is everything and the individual nothing, had broken down. Individual initiative and self-assertion had become a fact. Interest in the human individual as individual, and not only as tribal hero and saviour, had been aroused⁴³. But the philosophy of man began only with Protagoras; and the creed that there is nothing more important in our life than other individual men, the appeal to men to respect one another, and themselves, is due to Socrates.

Burnet has stressed⁴⁴ that it was Socrates who created the conception of the *soul*, a conception which had such an immense influence upon our civilization. I believe that this view is largely

right, although I feel that its formulation may be misleading, especially the use of the term 'soul'; for Socrates seems to have kept away from metaphysical theories as much as he could. His appeal was a moral appeal, and his theory of individuality (or of the 'soul', if this word is preferred) is, I think, a moral and not a metaphysical doctrine. With this doctrine he fought, as always, against self-satisfaction and complacency. He demanded that individualism should not be merely the dissolution of tribalism, but that the individual should prove worthy of his liberation. This is why he insisted that man is not merely a piece of flesh—a body. There is more in man, a divine spark, reason; and a love of truth, of kindness, humaneness, a love of beauty and of goodness. It is these that make a man's life worth while. But if I am not merely 'body', what am I, then? You are, first of all, intelligence, was Socrates' reply. It is your reason that makes you human; that enables you to be more than a mere bundle of desires and wishes; that makes you a self-sufficient individual and entitles you to claim that you are an end in yourself. Socrates' saying 'care for your souls' is largely an appeal for *intellectual* honesty, just as the saying 'know thyself' is used by him to remind us of our intellectual limitations.

These, Socrates insisted, are the things that matter. And what he criticized in democracy and democratic statesmen was their inadequate realization of these things. He criticized them rightly for their lack of intellectual honesty, and for their obsession with power-politics⁴⁵. With his emphasis upon the human side of the political problem, he could not take much interest in institutional reform. It was the immediate, the personal aspect of the open society in which he was interested. He was wrong when he considered himself a politician; he was a teacher.

But if Socrates was, fundamentally, a protagonist of the open society, and a friend of democracy, why, it may be asked, did he mix with anti-democrats? For we know that among his companions were not only Alcibiades, who for a time went over to the side of Sparta, but also two of Plato's uncles, Critias who later became the ruthless leader of the Thirty Tyrants, and Charmides who became his lieutenant.

There is more than one reply to this question. First we are told by Plato that Socrates' attack upon the democratic politicians of his time was carried out partly with the purpose of exposing the selfishness and lust for power of the hypocritical flatterers of the people, more particularly, of the young aristocrats who posed

as democrats, but who looked upon the people as mere instruments of their lust for power ⁴⁶. This activity made him, on the one hand, attractive to some at least of the enemies of democracy; on the other hand it brought him into contact with that very type of ambitious aristocrat. And here enters a second consideration. Socrates, the moralist and individualist, would never merely attack these men. He would, rather, take a real interest in them, and he would hardly give them up without making a serious attempt to convert them. There are many allusions to such attempts in Plato's dialogues. We have reason, and this is a third consideration, to believe that Socrates, the teacher-politician, even went out of his way to attract young men and to gain influence over them, especially when he considered them open to conversion, and thought that some day they might possibly hold offices of responsibility in their city. The outstanding example is, of course, Alcibiades, singled out from his very childhood as the great future leader of the Athenian empire. And Critias' brilliancy, ambition and courage, made him one of the few likely competitors of Alcibiades. (He co-operated with Alcibiades for a time, but later turned against him. It is not at all improbable that the temporary co-operation was due to Socrates' influence.) From all we know about Plato's own early and later political aspirations, it is more than likely that his relations with Socrates were of a similar kind ⁴⁷. Socrates, though one of the leading spirits of the open society, was not a party man. He would have worked in any circle where his work might have benefited his city. If he took interest in a promising youth he was not to be deterred by oligarchic family connections.

But these connections were to cause his death. When the great war was lost, Socrates was accused of having educated the men who had betrayed democracy and conspired with the enemy to bring about the downfall of Athens.

The history of the Peloponnesian war and the fall of Athens is still often told, under the influence of Thucydides' authority, in such a way that the defeat of Athens appears as the ultimate proof of the dangerous weaknesses of the democratic system. But this view is merely a tendentious distortion, and the well-known facts tell a very different story. The main responsibility for the lost war rests with the treacherous oligarchs who continuously conspired with Sparta. Prominent among these were three former disciples of Socrates, Alcibiades, Critias, and Charmides. After the fall of Athens in 404 B.C. the two latter became the

leaders of the Thirty Tyrants, who were no more than a puppet government under Spartan protection. The fall of Athens, and the destruction of the walls, are often presented as the final results of the great war which had started in 431 B.C. But in this presentation lies the main distortion, for the democrats fought on. At first only seventy strong, they prepared under the leadership of Thrasybulus and Anytus the liberation of Athens, where Critias was meanwhile killing scores of citizens; for during the eight months of his reign of terror the death-role contained 'nearly a greater number of Athenians than the Peloponnesians had killed during the last ten years of war' ⁴⁸. But after eight months (in 403 B.C.) Critias and the Spartan garrison were attacked and defeated by the democracies who established themselves in the Piræus, and both of Plato's uncles lost their lives in the battle. Their oligarchic followers continued for a time the reign of terror in the city of Athens itself, but their forces were in a state of confusion and dissolution. Having proved themselves incapable of ruling, they were ultimately abandoned by their Spartan protectors, who concluded a treaty with the democrats. The peace re-established the democracy in Athens. Thus the democratic form of government had proved its superior strength under the most severe trials, and even its enemies began to think it invincible. (Nine years later, after the battle of Cnidus, the Athenians could re-erect their walls. The defeat of democracy had turned into victory.)

As soon as the restored democracy had re-established normal legal conditions ⁴⁹, a case was brought against Socrates. Its meaning was clear enough; he was accused of having educated the most pernicious enemies of the state, Alcibiades, Critias, and Charmides. Certain difficulties for the prosecution were created by an amnesty for all political crimes committed before the re-establishment of the democracy. The charge could not therefore openly refer to the past. And the prosecutors probably sought not so much to punish Socrates for the unfortunate political events of the past which, as they knew well, had happened against his intentions; their aim was, rather, to prevent him from continuing his teaching, which, in view of its effects, they could hardly regard otherwise than as dangerous to the state. For all these reasons, the charge was given the vague and rather meaningless form that Socrates was corrupting the youth, that he was impious, and that he had attempted to introduce novel religious practices into the state. (The latter two charges undoubtedly

expressed, however clumsily, the correct feeling that in the ethico-religious field he was a revolutionary.) Because of the amnesty, the 'corrupted youth' could not be more precisely named, but everybody knew, of course, who was meant.⁵⁰ In his defence, Socrates insisted that he had no sympathy with the policy of the Thirty, and that he had actually risked his life by defying their attempt to implicate him in one of their crimes⁵¹. It is now usually recognized that Anytus, the democratic leader who backed the prosecution, did not intend to make a martyr of Socrates. The aim was to exile him. But this plan was defeated by Socrates' refusal to compromise his principles. That he wanted to die, or that he enjoyed the rôle of martyr, I do not believe⁵². He simply fought for what he believed to be right, and for his life's work. He had never intended to undermine democracy. In fact, he had tried to give it the faith it needed. This had been the work of his life. It was, he felt, seriously threatened. The betrayal of his former companions let his work and himself appear in a light which must have disturbed him deeply. He may have welcomed the trial as an opportunity to prove that his loyalty to his city was unbounded.

Socrates explained this attitude most carefully when he was given an opportunity to escape. Had he seized it, and become an exile, everybody would have thought him an opponent of democracy. So he stayed, and stated his reasons. This explanation, his last will, can be found in Plato's *Crito*⁵³. It is simple. If I go, said Socrates, I violate the laws of the state. Such an act would put me in opposition to the laws, and prove my disloyalty. It would do harm to the state. Only if I stay can I put beyond doubt my loyalty to the state, as well as to democracy, and prove that I have never been its enemy. There can be no better proof of my loyalty than my willingness to die for it.

Socrates' death is the ultimate proof of his sincerity. His fearlessness, his simplicity, his modesty, his sense of proportion, his humour never deserted him. 'I am that gadfly which God has attached to the city', he said in his *Apology*, 'and all day long and in all places I am always fastening upon you, arousing and persuading and reproaching you. You would not readily find another like me, and therefore I should advise you to spare me . . . If you strike at me, as Anytus advises you, and rashly put me to death, then you will remain asleep for the rest of your lives, unless God in his care sends you another gadfly'⁵⁴. He showed that a man could die, not only for fate and fame and other

grand things of this kind, but also for the freedom of critical thought, and for a self-respect which has nothing to do with self-importance or sentimentality.

Socrates had only *one* worthy successor, his old friend Antisthenes, the last of the Great Generation. Plato, his most gifted disciple, was soon to prove the least faithful. He betrayed Socrates, just as his uncles had done. These, besides betraying Socrates, had also tried to implicate him in their terrorist acts, but they did not succeed, since he resisted. Plato tried to implicate Socrates in his grandiose attempt to construct the theory of the arrested society; and he had no difficulty in succeeding, for Socrates was dead.

I know of course that this judgement will seem outrageously harsh, even to those who are critical of Plato⁵⁵. But if we look upon the *Apology* and the *Crito* as Socrates' last will, and if we compare these testaments of his old age with Plato's testament, the *Laws*, then it is difficult to judge otherwise. Socrates had been condemned, but his death was not intended by the initiators of the trial. Plato's *Laws* remedy this lack of intention. Coolly and carefully they elaborate the theory of inquisition. Free thought, criticism of political institutions, teaching new ideas to the young, attempts to introduce new religious practices or even opinions, are all pronounced capital crimes. In Plato's state, Socrates would never have been given the opportunity of defending himself publicly; he would have been handed over to the secret Nocturnal Council for the 'treatment', and finally for the punishment, of his diseased soul.

I cannot doubt the fact of Plato's betrayal, nor that his use of Socrates as the main speaker of the *Republic* was the most successful attempt to implicate him. But it is another question whether this attempt was conscious.

In order to understand Plato we must visualize the whole contemporary situation. After the Peloponnesian war, the strain of civilization was felt as strongly as ever. The old oligarchic hopes were still alive, and the defeat of Athens had even tended to encourage them. The class struggle continued. Yet Critias' attempt to destroy democracy by carrying out the programme of the Old Oligarch had failed. It had not failed through lack of determination; the most ruthless use of violence had been unsuccessful, in spite of favourable circumstances in the shape of powerful support from victorious Sparta. Plato felt that a complete reconstruction of the programme was needed. The

Thirty had been beaten in the realm of power politics largely because they had offended the citizens' sense of justice. The defeat had been largely a moral defeat. The faith of the Great Generation had proved its strength. The Thirty had nothing of this kind to offer; they were moral nihilists. The programme of the Old Oligarch, Plato felt, could not be revived without basing it upon another faith, upon a persuasion which re-affirmed the old values of tribalism, opposing them to the faith of the open society. *Men must be taught that justice is inequality*, and that the tribe, the collective, stands higher than the individual.⁵⁶ But since Socrates' faith was too strong to be challenged openly, Plato attempted to re-interpret it as a faith in the closed society. This was difficult; but it was not impossible. For had not Socrates been killed by the democracy? Had not democracy lost any right to claim him? And had not Socrates always criticized the anonymous multitude as well as its leaders for their lack of wisdom? It was not difficult, moreover, to re-interpret Socrates as having recommended the rule of the 'educated', the learned philosophers. In this interpretation, Plato was much encouraged when he discovered that it was also part of the ancient Pythagorean creed; and most of all, when he found, in Archytas of Tarentum, a Pythagorean sage as well as a great and successful statesman. Here, he felt, was the solution of the riddle. Had not Socrates himself encouraged his disciples to participate in politics? Did this not mean that he wanted the enlightened, the wise, to rule? What a difference between the crudity of the ruling mob of Athens and the dignity of an Archytas! Surely, Socrates who had never stated his solution of the constitutional problem must have had Pythagoreanism in mind.

In this way Plato may have found that it was possible to give by degrees a new meaning to the teaching of the most influential member of the Great Generation, and to make use of an opponent whose overwhelming strength he would never have dared to attack directly. This, I believe, is the simplest interpretation of the fact that Plato retained Socrates as his main speaker even after he had departed so widely from his teaching that he could no longer deceive himself about this deviation⁵⁷. But it is not the whole story. He felt, I believe, in the depth of his soul, that Socrates' teaching was very different indeed from this presentation, and that he was betraying Socrates. And I think that Plato's continuous efforts to make Socrates re-interpret himself are at the same time Plato's efforts to quiet his own bad con-

science. By trying again and again to prove that his teaching was only the logical development of the true Socratic doctrine, he tried to persuade himself that he was not a traitor.

In reading Plato we are, I feel, witnesses of an inner conflict, of a truly titanic struggle in Plato's mind. Even his famous 'fastidious reserve, the suppression of his own personality'⁵⁸, or rather, the attempted suppression—for it is not at all difficult to read between the lines—is an expression of this struggle. And I believe that Plato's influence can partly be explained by the fascination of this conflict between two worlds in one soul, a struggle whose powerful repercussions upon Plato can be felt under that surface of fastidious reserve. This struggle touches our feelings, for it is still going on within ourselves. Plato was the child of a time which is still our own. (We must not forget that it is, after all, only a century since the abolition of slavery in the United States, and even less since the abolition of serfdom in Central Europe.) Nowhere does this inner struggle reveal itself more clearly than in Plato's theory of the soul. That Plato, with his longing for unity and harmony, visualized the structure of the human soul as analogous to that of a class-divided society⁵⁹, shows how deeply he must have suffered.

Plato's greatest conflict arises from the deep impression made upon him by the example of Socrates, but his own oligarchic inclinations strive only too successfully against it. In the field of rational argument, the struggle is conducted by using the argument of Socrates' humanitarianism against itself. The earliest example of this kind can be found in the *Euthyphro*⁶⁰. I am not going to be like Euthyphro, Plato assures himself; I shall never take it upon myself to accuse my own father, my own venerated ancestors, of having sinned against a law and a humanitarian morality which is only on the level of vulgar piety. Even if they took human life, it was, after all, only the lives of their own serfs, who are no better than criminals; and it is not my task to judge them. Did not Socrates show how hard it is to know what is right and wrong, pious and impious? And was he not himself prosecuted for impiety by these so-called humanitarians? Other traces of Plato's struggle can, I believe, be found in nearly every place where he turns against humanitarian ideas, especially in the *Republic*. His evasiveness and his resort to scorn in combating the equalitarian theory of justice, his hesitant preface to his defence of lying, to his introduction of racialism, and to his definition of justice, have all been mentioned

in previous chapters. But perhaps the clearest expression of the conflict can be found in the *Menexenus*, that sneering reply to Pericles' funeral oration. Here, I feel, Plato gives himself away. In spite of his attempt to hide his feelings behind irony and scorn, he cannot but show how deeply he was impressed by Pericles' sentiments. This is how Plato makes his 'Socrates' maliciously describe the impression made upon him by Pericles' oration: 'A feeling of exultation stays with me for more than three days; not until the fourth or fifth day, and not without an effort, do I come to my senses and realize where I am.'⁶¹ Who can doubt that Plato reveals here how seriously he was impressed by the creed of the open society, and how hard he had to struggle to come to his senses and to realize where he was—namely, in the camp of its antagonists.

Plato's strongest argument in this struggle was, I believe, sincere: According to the humanitarian creed, he argued, we should be ready to help our neighbours. The people need help badly, they are unhappy, they labour under a severe strain, a sense of drift. There is no certainty, no security⁶² in life, when everything is in flux. I am ready to help them. But I cannot make them happy without going to the root of the evil.

And he found the root of the evil. It is the 'Fall of Man', the breakdown of the closed society. This discovery convinced him that the Old Oligarch and his followers had been fundamentally right in favouring Sparta against Athens, and in aping the Spartan programme of arresting change. But they had not gone far enough; their analysis had not been carried sufficiently deep. They had not been aware of the fact, or had not cared for it, that even Sparta showed signs of decay, in spite of its heroic effort to arrest all change; that even Sparta had been half-hearted in her attempts at controlling breeding in order to eliminate the causes of the Fall, the 'variations' and 'irregularities' in the number as well as the quality of the ruling race.⁶³ (Plato saw that population increase was one of the causes of the Fall.) Also, the Old Oligarch and his followers had thought, in their superficiality, that with the help of a tyranny, such as that of the Thirty, they would be able to restore the good old days. Plato knew better. The great sociologist saw clearly that these tyrannies were entirely based upon, and were themselves kindling, the modern revolutionary spirit; that they were forced to make concessions to the equalitarian cravings of the people; and that they had indeed played an important part in

the breakdown of tribalism. Plato hated tyranny. Only hatred can see as sharply as he did in his famous description of the tyrant. Only a genuine enemy of tyranny could say that tyrants must 'stir up one war after another in order to make the people feel the need of a general', of a saviour from extreme danger. Tyranny, Plato insisted, was not the solution, nor any of the current oligarchies. Although it is imperative to keep the people in their place, their suppression is not an end in itself. The end must be the complete return to nature, a complete cleaning of the canvas.

The difference between Plato's theory on the one hand, and that of the Old Oligarch and the Thirty on the other, is due to the influence of the Great Generation. Individualism, equalitarianism, faith in reason and love of freedom were new, powerful, and, from the point of view of the antagonists of the open society, dangerous sentiments that had to be fought. Plato had himself felt their influence, and, within himself, he had fought them. His answer to the Great Generation was a truly great effort. It was an effort to close the door which had been opened, and to arrest society by casting upon it the spell of an alluring philosophy, unequalled in depth and richness. In the political field he added but little to the old oligarchic programme against which Pericles had once argued⁶⁴. But he discovered, perhaps unconsciously, the great secret of the revolt against freedom, formulated in our own day by Pareto⁶⁵: '*To take advantage of sentiments, not wasting one's energies in futile efforts to destroy them*'. Instead of showing his hostility to reason, he captured by his brilliance all intellectuals, flattering and thrilling them by his demand that the learned should rule. Instead of arguing against justice he convinced all righteous men that he was fighting for it. Not even to himself did he fully admit that he was condemning Socrates and freedom of thought; and by making Socrates his champion he persuaded all others that he was fighting for it. Plato thus became the pioneer of the many propagandists who developed the technique of appealing to moral, humanitarian sentiments, for anti-humanitarian, immoral purposes. And he achieved the somewhat surprising effect of convincing even great humanitarians of the immorality and selfishness of their creed⁶⁶. I do not doubt that he succeeded in persuading himself. He transfigured his hatred of individual initiative, and his wish to arrest all change, into a love of justice and temperance, of a beautiful state in which everybody is satisfied

and happy and in which the crudity of money-grabbing⁸⁷ is replaced by laws of generosity and friendship. This dream of unity and beauty and perfection, this aestheticism and holism and collectivism, is the product as well as the symptom of the lost group spirit of tribalism⁸⁸. It is the expression of, and an ardent appeal to, the sentiments of those who suffer from the strain of civilization. (It is part of the strain that we are becoming more and more painfully aware of the gross imperfections in our life, of personal as well as of institutional imperfection; of waste and unnecessary ugliness; and at the same time of the fact that it is not impossible for us to do something about all this, but that such improvements would be just as hard to achieve as they are important. This awareness increases the strain of personal responsibility, of carrying the cross of being human.)

Socrates had refused to compromise his personal integrity. Plato, with all his uncompromising canvas cleaning, was led along a path on which he compromised his integrity with every step he took. He was forced to combat free thought, and the pursuit of truth. He was led to defend lying, political miracles, taboistic superstition, the suppression of truth, and ultimately, brutal violence. In spite of Socrates' warning against misanthropy, he was led to distrust man. In spite of his own hatred of tyranny, he was led to look to a tyrant for help, and to defend the most tyrannical measures. The internal logic of his anti-humanitarian aim, the internal logic of power, led him unawares to the same point to which once the Thirty had been led, and at which, later, his friend Dio arrived, and his other tyrant-disciples⁸⁹. He did not succeed in arresting society. (Only much later, in the dark ages, was it arrested by the spell of essentialism). Instead, he succeeded in binding himself, by his own spell, to powers which once he had hated.

The lesson which we thus should learn from Plato is the exact opposite of what he tries to teach us. It is a lesson which must not be forgotten. Excellent as Plato's sociological diagnosis was, his own development of it proves that the therapy he recommended is worse than the evil he tried to combat. Arresting political change is not the remedy; it cannot bring happiness. We can never return to the alleged innocence and beauty of the closed society. Our dream of heaven cannot be realized on earth. Once we begin to rely upon our reason, and to use our powers of criticism, once we feel the call of personal responsibilities, and with it, the responsibility of helping to advance knowledge,

we cannot return to a state of implicit submission to tribal magic. For those who have eaten from the tree of knowledge, paradise is lost⁹⁰. The more we try to return to tribal heroism, the more surely do we arrive at the Inquisition, at the Secret Police, and at a romanticized gangsterism. Beginning with the suppression of reason and truth, we must end with the most brutal and violent destruction of all that is human. *There is no return to a harmonious state of nature. If we turn back, then we must go the whole way—we must return to the beasts.*

It is an issue which we must face squarely, hard though it may be for us to do so. If we dream of a return to our childhood, if we are tempted to rely on others and so be happy, if we turn back from the task of carrying our cross, the cross of humanness, of reason, of responsibility, if we lose courage and flinch from the strain, then we must try to fortify ourselves with a clear understanding of the simple decision before us. We can return to the beasts. But if we wish to remain human, then there is only one way, the way into the open society. We must go on into the unknown, courageously, using what reason we have, to plan for security *and* freedom.

Alfred Cobban
THE OPEN SOCIETY: A RECONSIDERATION

Professor Karl R. Popper's book, *The Open Society and Its Enemies*,¹ attained almost the standing of a classic with its first appearance. Such a book, in its second edition, demands a careful and critical reëxamination of its major premises and conclusions, even though this may involve an apparent lack of proportion, in taking for granted the many points of agreement, and singling out for discussion those on which doubts still remain in one reader's mind.

To Professor Popper, it is clear, certain ideas, or attitudes of mind, which might have been adjudged safely dead a generation earlier, revived with a sinister and menacing life in the years that led up to the Second World War. These were the ideas that are summed up in the word totalitarianism, and he saw in them not a purely contemporary phenomenon but a tradition as old as our civilization. Their chief prophets, in his opinion, were Plato and Hegel, followed, though not to quite the same degree, by Aristotle and Marx. His book is thus a response to the challenge of contemporary politics and should be judged as such.

He forces us also to estimate his work as history. He does not say: this is what the ideas of Plato on politics amount to in a modern setting, and it is an evil thing; but rather: this is what Plato was attempting to do in his own day, and these are the consequences which flowed from it. This is a historical judgment, and in employing this line of argument Professor Popper is relying on the accuracy of his historical interpretation, which, it might perhaps be thought, is to weaken his case unnecessarily.

Fundamentally, I take him to be concerned with establishing the danger, or worse, of a particular way of looking at the problems of society. This way he takes to be that of Plato, and it is certainly one which plausibly can be attributed to the author of the *Republic*. He devotes a great deal of learned and profound discussion to establishing the correctness of this interpretation, but to me, at least, it seems that for his main thesis this is a secondary issue. Similarly, the discussion of the motives of Plato, of which Professor Popper often takes rather a low view, is surely of minor significance unless we are to suppose that good intentions necessarily go with sound political ideas and vice versa. Moreover, it is to be remembered that the influence of a writer, and the relation of what he said to what men made of it, is a highly speculative subject. In appearing to base his argument on his interpretation of the historical rôle of Plato, therefore, Professor Popper lays himself open to the criticism of those who

¹ Second Edition (revised). London, Routledge & Kegan Paul, Ltd., 1952. 2 vols. xi, 318; v, 375 pp. 42s.

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are unable to accept his description of Plato as "a totalitarian party-politician, unsuccessful in his immediate and practical undertakings, but in the long run only too successful in his propaganda for the arrest and overthrow of a civilisation which he hated" (I, 169-170).

This interpretation of Plato is only the first step in a general historical argument. "The conflict between the Platonic-Aristotelian speculation and the spirit of the Great Generation, of Pericles, of Socrates, and of Democritus", writes Professor Popper, "can be traced throughout the ages" (II, 22). Thus Christianity was, in the beginning, "in part, a protest against what may be described as Jewish Platonism in the wider sense" (I, 22); and he detects a close "parallelism between the creed of the Great Generation, especially of Socrates, and that of early Christianity" (II, 23). Admittedly this might not be quite so easy to say of medieval Christianity, but the official recognition of the Christian Church, it is suggested, may have been "an ingenious political move on the part of the ruling powers, designed to break the tremendous moral influence of an equalitarian religion." With Justinian's persecution "the dark ages began", and after this "the Church followed in the wake of Platonic-Aristotelian totalitarianism, a development that culminated in the Inquisition." Professor Popper has some scathing things to say of "the medieval conversion of Christianity into an authoritarian creed", though even this "could not fully suppress its humanitarian tendencies" (II, 58). With these opinions I have much sympathy, but is there not something a little arbitrary in a definition of Christianity which seems to confine it to those aspects of the religion which coincide with one's own ethical principles, regardless of the actual manifestation in history of the Christian churches? Similarly, some of the methods of Athenian imperialism, as well as the acceptance of slavery, though admitted, are not allowed to be an integral part of the picture of the "Great Generation".

The historian will be still more shaken when he reads that, while "medieval authoritarianism began to dissolve with the Renaissance", "on the Continent, its political counterpart, medieval feudalism, was not seriously threatened before the French Revolution" (II, 30). These phrases suggest a very personal usage of the terms "authoritarianism" and "feudalism". I should have thought there were reasons for holding that authoritarianism in Church and State was throughout most of Europe a good deal more extreme in the sixteenth century than it has been earlier; and certainly in most of Western Europe medieval feudalism had completely changed its nature long before the eighteenth century. It is by neglecting the latter fact that Professor Popper is able to declare that "the fight for the open society began again only with the ideas of 1789."

The ancient struggle now reappears in the modern world. "Just as the French Revolution rediscovered the perennial ideas of the Great Generation and of Christianity, freedom, equality, and the brotherhood of all men, so Hegel rediscovered the Platonic ideas which lie behind the perennial revolt against freedom and reason" (I, 30). I find this interpretation a little difficult to reconcile either with the facts of revolutionary history or with the theories propounded by the revolutionaries. Take, for example, Sieyes' *Qu est-ce-que le tiers état?*, the most famous expression of the ideas of 1789: "La Nation existe avant tout, elle est l'origine de tout. Sa volonté est toujours légale"; "de quelque manière qu'une nation veuille, il suffit qu'elle veuille; toutes les formes sont bonnes et sa volonté est toujours la loi suprême." Such opinions were not mere abstract theories. Sieyes spoke for a France that was soon to be the France that guillotined Lavoisier, the France of the Committee of Public Safety, of the Directory and of Napoleon. Was he the herald of the open society that, according to Professor Popper, the Revolution proclaimed, or the prophet of nationalism and totalitarian democracy? Professor Popper sees the principle of the national state, or nationalism, as born (he says revived) in Germany, out of the writings of Herder, Fichte and Hegel. I think it is arguable that the description of Hegel's theory of the state as nationalism is misleading, but whether this be agreed or not, the close link between nationalism, "totalitarian democracy", and the ideas of the French Revolution can hardly be seriously questioned.

Professor Popper's historical pattern is based on the antithesis between the "open society" achieved by the Athenians of the "Great Generation" and by the French Revolution in modern times, and the "closed society", or the "return to tribalism" advocated above all by Plato, and in modern times by Hegel, as a remedy for the strains of freedom. It is not difficult to see that the modern antithesis does not correspond to historical facts. On the "open society" of fifth-century Athens our knowledge is so patchy and indirect that there is more scope for speculation.

In making these comments from the point of view of a historian, I am not, of course, quarrelling with the assertion that each generation has the right to interpret history in its own way—it will do so whether it has the right or not. Nor would I suggest that "under the influence of an inapplicable idea of objectivity", we should refrain from presenting historical problems from our own point of view (II, 268). I am only suggesting that there are features of the important judgments I have quoted which are "not really in keeping with the accepted records" (II, 266).

It is a pity that Professor Popper has chosen to present his argument in a historical form, because in fact it is not dependent for its validity on

historical evidence. It is really an impassioned indictment of a series of what he believes to be wrong, indeed immoral and dangerous, approaches to the problem of politics. The most important of these are, to summarize them briefly: historicism—the belief that there are laws discernible in history, which enable us to prophesy the course of future events (I, 3); and “essentialism”—“the view, held by Plato and many of his followers, that it is the task of pure knowledge or ‘science’ to discover and to describe the true nature of things, i.e. their hidden reality or essence” (I, 31). The main object of Professor Popper’s book is to subject historicism and essentialism to a close examination: his criticism of both as methods of social thought seems to me convincing. Plato is the arch-priest of these heresies and his theories are discussed with great thoroughness. What is said of Aristotle is much slighter.² It is concentrated mainly on the deficiencies in his approach to science, and this can hardly be questioned. But in even an avowedly slight treatment, the description of Aristotle’s “Best State” as a compromise between “a romantic Platonic aristocracy, a ‘sound and balanced’ feudalism, and some democratic ideas” (II, 3) is not really adequate. Here, as elsewhere, I am in some doubt as to what “feudalism”, which after all is a term of art and not of abuse, signifies for Professor Popper.

From Aristotle we proceed to Hegel, whose opposition to the supposedly “open society” of the French Revolution is paralleled by that of Plato to the “open society” of the “Great Generation”. The subsequent discussion of the ideas of Marx is more substantial and is written in a sympathetic tone very different from the invective lavished on Plato and Hegel. Whereas Professor Popper was concerned to expose their conscious dishonesty, he recognizes the sincerity of Marx. “His open-mindedness, his sense of facts, his distrust of verbiage, and especially of moralising verbiage, made him one of the world’s most influential fighters against hypocrisy and pharisaism” (II, 82). Marx’s faith, Professor Popper believes, was fundamentally in the “open society”, in spite of his “sociological determinism” (II, 200, 208). I cannot but feel that if Professor Popper had followed with Marx the line of criticism that he applies to Plato and Hegel, he would have found equal opportunities for attributing less elevated motives to him and judging his ideas by the consequences that flowed from them in practice. This criticism is to some extent

² Incidentally, Professor Popper’s references to Aristotle as a mediocre writer and to his “dry systematisation” (II, 2) are curiously contradicted by the “golden flow” of eloquence attributed to Aristotle by Cicero, no mean judge of a literary style. The explanation, presumably, is that we have mostly only the lecture-notes of Aristotle, and who would like his style to be judged by lecture-notes?

acknowledged, and to some extent answered, in the Preface to the revised edition.

The exegesis of Plato and Marx, while not the kind that would have been produced by one of the faithful in either case, is learned and pertinacious to a high degree. It could be discussed adequately only at great length, and by one as familiar as its author is with the works of both masters and equally gifted in the analysis of ideas. The crux of the matter lies in the ideas of the open society, of which Professor Popper regards Plato and Aristotle, Hegel and Marx, as the enemies. It is in the attempt to discover what he means by the open society that I have the greatest difficulty. The clearest statement I can find is that "the closed society is characterised by the belief in magical taboos, while the open society is one in which men have learned to be to some extent critical of taboos, and to base decisions on the authority of their own intelligence (after discussion)" (I, 202). The essential problem here is the nature of the discussion; there is, for example, Hegelian discussion, which Professor Popper would certainly not regard as a satisfactory substitute for the system of totem and taboo. His answer to this problem seems to be that "The only course open to the social sciences is . . . to tackle the practical problems of our time with the help of the theoretical methods which are fundamentally the same in all sciences" (II, 222; cf. I, 286).

It is not necessary to attempt a summary of the profound and highly illuminating analysis that Professor Popper makes of scientific method, but it will be sufficient to say that in his view the social sciences should copy science in employing "the methods of trial and error, of inventing hypotheses which can be practically tested, and of submitting them to practical tests." The result would be the development of a social technology "whose results can be tested by piecemeal social engineering" (II, 222). This seems admirable to me. I believe it is the method, and perhaps not uninfluenced by the development of the scientific mind, which, in a rough and ready way, has often been applied in English politics during the last three centuries. It is far removed from Platonism or Hegelianism.

There is one difficulty which has to be met. It may be objected that an engineering technique is all right so long as you know what kind of engine you want, or at least what purpose it is to be used for. If it is replied that we are given the engine in the shape of society and its institutions and are not presented with the task of making one *de novo*, it still remains true that we need this knowledge before we can decide what kind of modifications are required. Science cannot tell us this, and Professor Popper does not suggest that it can. His demonstration of the barrenness of "scientific" ethics is convincing (I, 237-238). "It is impossible to

derive a sentence stating a norm or a decision or, say, a proposal for a policy from a sentence stating a fact; this is only another way of saying that it is impossible to derive norms or decisions or proposals from facts" (I, 64. I have omitted some italics in this quotation). "In the case of a scientific theory, our decision depends upon the results of experiments. . . . But in the case of a moral theory, we can only confront its consequences with our conscience. And while the verdict of experiments does not depend upon ourselves, the verdict of our conscience does" (II, 233). This, I think, could hardly be better put, but it leaves us with the problem that, while Professor Popper's conscience produces one set of verdicts, whatever passed for a conscience in, say, Hitler produced a very different set.

The problem for the political theorist, it seems to me, is to discuss why the conscience, or the ethical intuitions, of Professor Popper are preferable to those of Hitler. His reply is that "it is impossible to prove the rightness of any ethical principle" (II, 238). That is, I think, true; but it leaves us in the position that we must either accept the fact that the ethical intuitions of different men are at bottom contradictory and opposed to one another, in which case there is no reason for preferring one to another, except that it is ours, or else we must venture into the field of ethical discussion.

It would be no fair criticism of Professor Popper to complain of a failure to pass beyond the critical to the constructive, because his whole book is based on a positive conception of the open society, though we have to pick out the positive elements in his doctrine from scattered passages at different points in the argument. His basic outlook is "humanitarian", by which he means that all should have an equal share in the burdens and advantages of citizenship, and that the laws should be equal for all and should be impartially administered. This equalitarianism seems to me a good example of the ethical intuition which is incapable of ultimate proof, which does not mean that it is not susceptible of argument calculated to promote its acceptance, or at least to undermine the prevailing theories of the superior claims of one section or other of society or of the human race. But at bottom it is an act of faith.

It is always a good thing, I think, to see what principles mean in practice, if only as a test of the firmness with which we hold them. Let me take another of Professor Popper's theories of the way in which the open society should function. He is rightly suspicious of efforts to make people happy by state action. "It leads invariably to the attempt to impose our scale of 'higher' values upon others, in order to make them realise what seems to us of greatest importance for their happiness; in order, as it were, to save their souls" (II, 237). He proposes, therefore, to replace the principle "maximise pleasure" by that of "minimise pain"

(II, 304; cf. I, 284–285). This principle may be tested by a positive example. I suppose that any government in Great Britain, faced with the necessity to make a decision whether to declare war on Germany or not in 1939, on the principle of minimizing pain should have remained at peace. On any reasonable calculation the human suffering likely to result from the war surely far outweighed any that was likely to be prevented by it. The consideration that war might possibly, though I should have thought hardly probably in the circumstances of 1939, minimize the calculable suffering in the long run is ruled out by an argument which Professor Popper employs elsewhere. Some Marxists believe that there would be less suffering involved in a violent social revolution than is inherent already under the capitalist system. “But . . . how can they evaluate the suffering in the one state and in the other? Here . . . a factual question arises, and it is . . . our duty not to overestimate our factual knowledge. . . . Can we condemn one generation to suffer for the sake of later generations?” (I, 287). These are very strong arguments, but I am left with an uneasy feeling that they would have added up to the wrong answer in 1939, and that therefore “minimise pain” is by itself not invariably a safe principle.

As Professor Popper approaches more closely to politics I find myself increasingly alarmed at what seem to me rather *simpliste* analyses and solutions. Thus he declares that “we need only distinguish between two forms of government, viz. such as possess institutions of this kind [those in which the rulers, that is, the government, can be dismissed by the ruled without bloodshed], and all others; i.e. democracies and tyrannies” (II, 161). The distinction is a valuable and important one; it is only difficult when we try to apply it in practice. By this criterion all the governments of France and Great Britain in the eighteenth century were tyrannies, for they certainly could not be dismissed by the ruled peacefully; but one cannot help wondering whether a classification which makes no distinction between the governments of George III or Louis XVI and those of Hitler and Stalin is as useful as it might be.

My alarm is increased when I find that the “ardent liberalism” of Kant is held up for admiration, with special reference to his *Principles of Politics* (I, 247). Professor Popper deplores the failure of English and American writers to recognize fully this liberalism. Without denying the nobility of much of Kant’s thought, a single quotation from him may help to explain this lack of appreciation. Kant writes:

All resistance to the Sovereign legislative power, every kind of instigation to bring the discontent of the subjects into active form, and rebellion or insurrection of every degree or kind, constitute the highest and most punishable crimes in the commonwealth; for they

would destroy its very foundations. . . . Even if the Supreme Power, or the Sovereign as its agent, were to violate the original contract, and thereby in the judgment of the subject to lose the right of making law, yet as the Government has been empowered to proceed even thus tyrannically, no right of resistance can be allowed to the subject as a power antagonistic to the State.

Again, "A right of compulsion or coercion, in the form of resistance in word or deed against the sovereign Head of the State, can never belong of right to the people." Even the greatest of British conservatives were more liberal than this. Hume disliked rebellion profoundly, but with characteristic sense he observed that it was absurd to grant the people a share in the supreme power without at the same time granting them a right to defend that share from encroachment; while Burke, at the height of his crusade against the French Revolution, in 1794, could write of a revolt in India, "The whole country rose up in rebellion, and surely in justifiable rebellion." Certainly it is better to be able to change one's government without bloodshed if possible, but to make the absence of bloodshed the essential factor, as Professor Popper seems to do, if I understand him correctly, is to rob ourselves of the ultimate defense of liberty.

I hope that in presenting these difficulties I shall not be supposed to be in disagreement with the greater part of Professor Popper's thesis. Scientific analysis and "piecemeal social engineering" have, I am sure, an important contribution to make to the solution of the political problems of social life. I think it is fair to say that there is now more of both than ever before in the history of the world. The only question I am tempted to ask is whether we know to what purpose to put them. Any possible answer may be only a partial and provisional one, but at least we ought to be aware of the need for putting the question. I suspect that we are ceasing to do so, on the assumption, which, perhaps unjustly, I think I detect even in Professor Popper, that we know the answer, and that no sensible men could disagree about it. Unfortunately this seems to be far from true, nor can I see that science is giving us, or has a capacity in itself for giving us, any discussion of this question. Science may be the new Leviathan, it is not the new Messiah. This, indeed, is Professor Popper's own teaching: "Neither nature nor history can tell us what we ought to do. . . . It is we who introduce purpose and meaning into nature and into history" (II, 278). That, I suppose, is what Plato was trying to do. I agree with Professor Popper in disliking the way he did it and the results he achieved, but the human need for purpose and meaning still remains. Is it too much to ask that this brilliant book should be the prolegomena to a discussion of these fundamental issues?

ALFRED COBBAN

University College London

THE "OPEN SOCIETY" AND ITS FALLACIES

WILLMOORE KENDALL
Yale University

A little over 100 years ago John Stuart Mill wrote in his essay *On Liberty* that "... there ought to exist the fullest liberty of professing and discussing, as a matter of ethical conviction, any doctrine, however immoral it may be considered."¹ The sentence from which this is taken is not *obiter*: Chapter Two of his book is devoted to arguments, putatively philosophical in character, which if they were sound would warrant precisely such a conclusion;² we have therefore every reason to assume that Mill meant by the sentence just what it says. The topic of Chapter Two is the entire "communications" process in civilized society ("advanced" society, as Mill puts it);³ and the question he raises is whether there should be limitations on that process.⁴ He treats that problem as the central problem of all civilized societies, the one to which all other problems are subordinate, because of the consequences, good or ill, that a society must bring upon itself according as it adopts this or that solution to it. And he has supreme confidence in the rightness of the solution he offers. Presumably to avoid all possible misunderstanding, he provides several alternative statements of it, each of which makes his intention abundantly clear, namely, that society must be so organized as to make

that solution its supreme law. "Fullest," that is, absolute freedom of thought and speech, he asserts by clear implication⁵ in the entire argument of the chapter, is not to be one of several competing goods society is to foster, one that on occasion might reasonably be sacrificed, in part at least, to the preservation of other goods; *i.e.*, he refuses to recognize any competing good in the name of which it can be limited. The silencing of dissenters on behalf of a received doctrine, of an accepted idea—this is an alternative statement—is *never* justified;⁶ it can only do hurt, unwarranted hurt, alike to the person silenced, to the individual or group that silences, to the doctrine or idea on behalf of which the silencing is done, and to the society in the name of which the silencers silence.⁷ The quotation I started with is, then, merely the strongest, the most intransigent, of several formulations of a general prescription he makes for advanced societies. We shall do well to examine it, phrase-by-phrase, before proceeding:

"There ought to exist"—*ought*, so that the prescription is put forward on ethical grounds—"the fullest liberty"—a liberty, *i.e.*, that no one (individual, group, government, even society as a whole) is entitled to interfere with—"of professing and discussing"—that is, of pub-

¹ *On Liberty and Considerations on Representative Government*, ed. R. B. McCallum (Oxford, 1946), p. 14 fn.

² That is approximately how Mill himself puts it: the words preceding what I have quoted are, "If the arguments of the present chapter are of any validity, . . ." The chapter is entitled "Of the Liberty of Thought and Discussion."

³ *Cf. ibid.*, p. 9: "... we may leave out of consideration those backward states of society in which the race itself may be considered as in its nonage." The distinction seems to turn variously (*ibid.*) on whether "mankind have become capable of being improved by free and equal discussion" and whether they "have attained the capacity of being guided to their own improvement by conviction or persuasion." On the latter point he adds, perhaps a little optimistically: "... a period long since reached in all nations with whom we need here concern ourselves." *Cf. ibid.* p. 59, where he refers, astonishingly, to "the present low state of the human mind," that being the point he needs to establish the thesis there in question.

⁴ Who should be permitted, in the fashionable jargon of the "communications" literature, "to say what, and to whom."

⁵ Those who regard "absolute" as too strong a term to be deemed a synonym of "fullest" may wish to be reminded of the following passage (*ibid.*, p. 11): "... the appropriate region of human liberty . . . comprises . . . liberty of conscience in the most comprehensive sense: liberty of thought and feeling; *absolute* freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological. [And the] liberty of expressing and publishing opinions . . . is practically inseparable from [liberty of thought] . . ." (italics added). And *cf. ibid.*: "No society . . . is completely free in which [these liberties] . . . do not exist *absolute and unqualified*" (italics added).

⁶ *Cf. ibid.*, p. 14: "... I deny the right of the people to exercise such coercion, either by themselves or their government. The power itself is illegitimate. The best government has no more title to it than the worst." The statement could hardly be more sweeping.

⁷ Not to speak of "mankind." *Cf. ibid.*, pp. 14-15: "... the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; . . . those who dissent from the opinion, still more than those who hold it."

licly propagating—"as a matter of ethical conviction"—which, however, as any reader can quickly satisfy himself by re-examining Chapter II, is not intended to exclude other types of conviction, "intellectual" conviction for example—"any doctrine"—and "doctrine" is not intended to exclude, either, since he uses the term synonymously with "idea" and "opinion"; usually, indeed, he prefers the word "opinion"—"however immoral it may be considered"—where "immoral" also is used merely to cover what Mill considers the extreme case, the case in which, he supposes, people are least likely to refrain from silencing; and he would be equally willing, as the context shows, to write "however wrong," that is, "however incorrect," "however dangerous," "however foolish," or even "however harmful," and where "it may be considered" is recognizably shorthand for "it may be considered by anyone whomsoever."

It is fashionable, these days, in part because of a fairly recent book by the scientist-philosopher K. R. Popper,⁸ to call the kind of society Mill had in mind an "open society"—by at least implied contrast with a "closed" society, that is, an "hermetically sealed" society, in which Mill's grand principle is, by definition, *not* observed. And we are told, variously, by writers whom we may call (because they so call themselves) Liberals, that we have an open society and ought to protect it against the machinations of those who would like to close it; or that we have a closed society and ought, heeding Mill's arguments, to turn it forthwith into an open society; or that democracy, freedom, progress—any or all of them—must stand or fall, according as we maintain or inaugurate or return to an open society; or that all who are opposed to the idea of the open society are authoritarians, enemies of human freedom, totalitarians. We are told all this, however, at least in its application to civilized societies in general (as opposed to the United States in particular),⁹ on grounds that have

⁸ K. R. Popper, *The Open Society and Its Enemies* (London, 1945), 2 vols. The term "open society" is of course much older (Bergson uses a distinction between "open" and "closed" society in *Les deux sources de la morale et de la religion*, though for a quite different purpose). Popper wedded the term "open society" to Mill's ideas, and the term "closed society" to those of his *bêtes noires*, Plato especially.

⁹ The exception is necessary, because the American arguments are often based on the meaning of the Constitution of the United States, the First Amendment especially.

not varied perceptibly since Mill set them down in the *Essay*. We are still dealing, then, with Mill's issue; and we shall think more clearly about it, I believe, if we keep it stated as much as possible in his terms—for no subsequent pleader for the open society has possessed his clarity or vigor of mind—as follows: Ought there to exist in organized society—the United States, *e.g.*—that "fullest liberty of professing and discussing" that Mill argues for? On what theoretical grounds can that liberty be defended? Is openness of the kind Mill's society would possess one of the characteristics of the *good* society? Before attempting to deal with these questions, let me pause to clarify certain aspects of his position.

I

First, Mill must not be understood as saying, over-all, something *more* extravagant than he is actually saying. He is fully aware of the necessity for laws against libel and slander, and does not deem them inconsistent with his doctrine.¹⁰ He is aware, also, of organized society's need to protect its younger members against certain forms of expression,¹¹ which is to say that his "fullest liberty of professing and discussing" is to obtain only among adults. Laws prohibiting, *e.g.*, the circulation of obscene literature amongst school-children, or, *e.g.*, utterance calculated to undermine the morals (however the society chooses to define morals) of a minor, are presumably not proscribed. Nor does the doctrine outlaw sanctions against incitement to crime¹²—provided, one must hasten to add, nothing political is involved (Mill would permit punishment for incitement to, *e.g.*, tyrannicide, only if it could be shown to have resulted in an overt act).¹³

¹⁰ *Cf. op. cit.*, p. 73: "Whenever, in short, there is a definite damage, or a definite risk of [definite?] damage, either to an individual or to the public, the case is taken out of the province of liberty, and placed in that of morality and law."

¹¹ *Cf. ibid.*, p. 72: "... protection against themselves is confessedly due to children and persons under age. . . ."

¹² *Cf. ibid.*, p. 49: "... even opinions lose their immunity when the circumstances in which they are expressed are such as to constitute their expression a positive instigation to some mischievous act." To this writer's mind a curious concession, which Mill ought *not* to have made. Once it is made, a society wishing to silence this or that form of persuasive utterance has only to declare the behavior it is calculated to produce a crime, and it may silence—with Mill's blessing.

¹³ *Cf. ibid.*, p. 14 fn.

And, finally—a topic about which, as it seems to me, there is much confusion amongst commentators on Mill—he would permit the police to disperse a mob where a riot is clearly imminent, even if its shoutings did bear upon some political, social, or economic issue; but not, he makes abundantly clear, on grounds of any official exception to the doctrinal tendency of the shoutings. The individuals concerned would be free to resume their agitation the following morning.¹⁴

This is an important point because the passage in question, dealing with the mob at the corn-merchant's house, has given Mill an undeserved reputation for having been an adherent of the clear-and-present-danger doctrine as we know it today. We may perhaps clear it up best as follows. The situations covered by the clear and present danger doctrine, as applied, *e.g.*, to the Communist "threat," and by parallel doctrines in contemporary political theory,¹⁵ are those in which Mill was *most* concerned to maintain absolute liberty of discussion—those situations, namely, in which the ideas being expressed have a tendency dangerous to the established political, social, or economic order. We must not, then, suppose his society to be one in which anarchists, or defenders of polygamy, for example, could be silenced because of the likelihood of their picking up supporters and, finally, winning the day; since for Mill the likelihood of their picking up supporters is merely a further reason for letting them speak. *All* utterance with a bearing on public policy—political, social or economic—is to be permitted, no matter what some members of society, even the majority, even all the members save some lonely dissenter,¹⁶ may happen to think of it. Mill must, then, also not be understood as saying something *less* extravagant than he is actually saying.

Second, what is at issue for Mill is not merely unlimited freedom of speech (as just defined) but, as he makes abundantly clear, unlimited

¹⁴ Cf. *ibid.*, p. 49.

¹⁵ *E.g.*, the doctrine that enemies of liberty must not be permitted to take advantage of "civil liberties" in order to undermine and destroy them; or the doctrine that free society is entitled to interfere with free expression in order to perpetuate its own existence. Mill would certainly not have countenanced either doctrine.

¹⁶ Cf. *ibid.*, p. 14: "If all mankind were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing all mankind."

freedom of thought as well, *and* a way of life appropriate to their maintenance. To put it otherwise: when we elevate freedom of thought and speech to the position of society's highest good, it ceases to be merely freedom of thought and speech, and becomes—with respect to a great many important matters—the society's ultimate standard of *order*.

Mill did not dwell upon the inescapable implications of this aspect of his position; it has been left to his epigones, especially in the United States, to think the position out. The open society, they tell us repeatedly, *must* see to it that all doctrines start out equal in the market-place of ideas; for society to assign an advantaged position to these doctrines rather than those would be tantamount to suppressing those; society can, therefore, have no orthodoxy, no public truth, no standard, upon whose validity it is entitled to insist; outside its private homes, its churches, and perhaps its non-public schools, it therefore cannot indoctrinate; *all* questions are for it open questions, and must, publicly, be treated as open. If it has public schools and universities, it will be told (and with unexceptionable logic), these also must treat all questions as open—otherwise what happens to the freedom of thought and so, ultimately, to the freedom of speech of the student who might have thought differently had his teachers not treated some questions as closed? Even if in their hearts and souls all the members of the open society believe in a particular religion, or a particular church, each must nevertheless be careful in his public capacity to treat all religions and churches as equal, to treat dissent, when and as it occurs, as the peer of dogma, to treat the voodoo missionary from Cuba as on an equal plane with an Archbishop of his own church.¹⁷ The open society's first duty (so its custodians will remind it, and if not those at home then those abroad)¹⁸ is to freedom; and that means that it is *not* free to give public status to its beliefs, its standards, and its loyalties. Mill's disciples are completely faithful to the spirit of his thought when they insist that if we mean business about freedom, that is how it is going to have to be. The open society confers "freedom" upon its members; but it does so at the cost of its own freedom as a society.

Third, Mill denies the existence—that is to say, at any particular place and moment—not only of a public truth,¹⁹ but of any truth what-

¹⁷ Who, after all, is to say which is right?

¹⁸ As witness the sermons addressed by the New York press to the Trujillo regime.

¹⁹ Except, we must remind ourselves, the public truth that there is no public truth.

ever unless it be the truth of the denial itself. (Let us not press this last too far, however, lest it seem a mere "debater's" point; it is of course, the Achilles' heel of all skepticisms.) Reduced to its simplest terms, the argument of the *Essay* runs as follows: whenever and wherever men disagree about a teaching, a doctrine, an opinion, an idea, we have no way of knowing which party is correct; the man (or group) who moves to silence a teaching on the ground that it is incorrect attributes to himself a kind of knowledge (Mill says an "infallibility") that no one is ever entitled to claim short of (if then) the very case where the question is sure not to arise—that is, where there is unanimity, and so no temptation to silence to begin with. When, therefore, Mill's followers demand the elevation of skepticism to the status of a national religion, and the remaking of society in that image, they are not reading into his position something that is not there—for all that Mill himself, as I have intimated, preserves a discreet silence on the detailed institutional consequences of his position. They are, rather, only making specific applications of notions that, for Mill, are the point of departure for the entire discussion.

The *basic* position, in fine, is not that society must have no public truth, no orthodoxy, no preferred doctrines, *because* it must have freedom of speech; but that it must not have them *for the same reason* that it must have freedom of speech, namely: because, in any given situation, no supposed truth has any proper claim to special treatment, and this in turn because it may turn out to be incorrect—nay, *will* turn out to be at least partially incorrect, since each competing idea is at most a partial truth. Nor is that all: Mill's freedom of speech doctrine is not merely derivative from a preliminary assault upon truth itself;²⁰ it is *inseparable from* that assault and cannot, I contend, be defended on any other ground. It is incompatible with religious, or any other, belief.

Fourth, Mill is not saying that no man must be silenced because every man has a "right" to freedom of speech. Consistent skeptic that he is, he warns us—and from an early moment—that he disclaims any advantage that might accrue to his argument from an appeal to abstract right; he is going to justify his position in terms of "utility," in terms of "the permanent interest of a man [*sic*] as a progressive being,"²¹ whatever that may mean; and he sticks scrupulously to at least the first half of the promise throughout the *Essay*. This raises interesting questions as to (a) what Mill could

have meant—whether indeed he means anything at all that people committed to the idea of abstract right might find intelligible—by such words as "ethical," "immoral," etc.; as to (b) the pains Mill takes, throughout his main argument, to reduce the question, "Should some types of expression be prohibited in civilized society because the ideas they express are wicked?" to the question, "Should some types of expression be prohibited because they are intellectually incorrect?"; and as to (c) the kind of moral fervor his followers have poured into the propagation of his views. Everything reduces itself for Mill to intellectual argument, where you either win or draw or lose by the sheer appeal to reason—which, for Mill, excludes *ex hypothesi* any appeal to revelation or authority, for that would merely precipitate an endless discussion as to the status, from the standpoint of reason, of revelation and authority.

The notion of a "right" to freedom of speech, a capacity on the part of every man to say what he pleases that society must respect, because he is *entitled* to it—of a right that men have to live in the kind of society that Mill projects—is a later development. It occurs in different countries for different reasons and under different auspices; but to the extent that it is intended seriously it represents a complete break with Mill. Those who appeal to such a notion therefore have in his own shrewd example a warning that they must not attempt to do so on his grounds;²² and much current confusion about the open society would be avoided if they would but take the warning to heart. In short, if we are going to speak of a *right* to freedom of speech, a *right* to live in an open society, we are going to have to justify it with arguments of a different character from Mill's, and so move the discussion onto a plane entirely different from Mill's. We are, above all, going to have to subordinate what we have to say to certain rules of discourse from which Mill, by his own fiat, is happily free. For any such right is inconceivable save as one component of a system or complex of rights, that mutually limit and determine one another and are meaningless save as they are deemed subject to the general proposition that we are not entitled to the exercise of *any* right unless we discharge the duties correlative to that right. Once we begin to argue from premises of that sort we shall begin to talk sense, not non-

²² We must distinguish here between a "natural" or "ethical" "right" to freedom of expression and a mere constitutional right. The case for the latter could of course be rested upon Mill's grounds, insofar as they are valid.

²⁰ *Ibid.*, *passim*.

²¹ *Ibid.*, p. 9.

sense, about freedom of speech and the open society. And the essence of the sense, I hasten to add, will be found to lie in the fact that we are no longer driving the roots of our doctrine into the soil of skepticism, because (as I have suggested already) once we speak of a right²³ we have already ceased to be skeptics. And nothing is more certain than that we shall come out with something quite different from Popper's conception of the open society.

Fifth, Mill was fully aware (as his disciples seem not to be) both of the novelty and of the revolutionary character of his proposal for a society organized around the notion of freedom of speech. Just as he deliberately cuts himself off from any appeal to the notion of abstract right, so does he cut himself off from any appeal to tradition. Not only had no one ever before taught his doctrine concerning freedom of speech. No one had ever taught a doctrine even remotely like his. No one, indeed, had ever discussed such a doctrine even as a matter of speculative fancy.²⁴ Hardly less than Machiavelli, and more than Hobbes, Mill is in full rebellion against both religion and philosophy, and so in full rebellion also against the traditional society that embodies them.²⁵ Hardly less than Machiavelli, he conceives himself a "new prince in a new state,"²⁶ obliged to destroy what has preceded him so that he may create what he feels stirring within him.²⁷ Hardly less than Machiavelli, again, he is a teacher of *evil*: all truths that have preceded his are (as we have noted in passing above) at most partial truths, and enjoy even that status only because Mill confers it upon them.²⁸ To reverse a famous phrase, Mill thinks of himself as standing not upon the shoulders of giants but of pygmies. He appeals to no earlier teacher,²⁹ identifies himself with nothing out of the past; and his doctrine of freedom of speech is, as I have intimated already, the unavoidable logical consequence of the denials from which his thought moves. Not, however, because it is in fact to be the public policy of the society he will found, not because it is to govern his followers' actions with respect to the

freedom of thought of others, but because it is the perfect weapon—perfect because of its alleged connection with the quest for truth—to turn upon the traditional society that he must overthrow. For he who would destroy a society must first destroy the public truth it conceives itself as embodying; and Mill's doctrine of freedom of speech, to the extent that it gets itself accepted publicly, does precisely that. I do not, I repeat, believe it can be separated from the evil teaching that underlies it; and nothing could be more astonishing than the incidence of persons amongst us who because of their religious commitments must repudiate the evil teaching, yet continue to embrace the doctrine.

Sixth, Mill's most daring *démarche* in the *Essay* (and Popper's in the *Open Society and Its Enemies*) is that of confronting the reader with a series of false dilemmas: unlimited freedom of speech or all-out thought-control; the open society or the closed society; etc. I say "false" for two reasons: first, because unlimited freedom of speech and the open society are not real alternatives at all, as I hope shortly to show. And second, because the dilemmas as posed conceal the real choices available to us, which are always choices as to how-open-how-closed our society is to be, and thus not choices between two possibilities but choices among an infinite range of possibilities. Mill would have us choose between never silencing and declaring ourselves infallible, as Popper would have us believe that a society cannot be a little bit closed, any more than a woman can be a little bit pregnant. All our knowledge of politics bids us not to fall into that trap. Nobody wants all-out thought-control or the closed society; and nobody has any business pretending that somebody else wants them. For the real question is, how open can a society be and still remain open at all? Or, to put it differently, is there any surer prescription for arriving, willy nilly, in spite of ourselves, at the closed society, than is involved in current pleas for the open society?

II

That brings me to the central business of this article, which I may put as follows. Let us adjourn objections to open society doctrines on the ground that they are rooted in demonstrably evil teachings. Let us also suppose, *arguendo*, that we have organized a society in accordance with Mill's prescriptions, and for Mill's reasons. Have we then cause to suppose, as Mill thinks, that we shall end up forwarding the interests of truth? In other words, Mill offers us not only an exhortation but a prediction, and we wish merely to know what would in fact happen if we did what he tells us to do.

²³ Again, we must except the merely constitutional right.

²⁴ Plato, of course, contemplates a freedom of speech *situation* in Book IX of the *Republic*; but merely to show that it can result only in disaster.

²⁵ Cf. Leo Strauss, *Thoughts on Machiavelli* (Glencoe, 1958), ch. 4, *passim*.

²⁶ Cf. *ibid.*, p. 9.

²⁷ Cf. *ibid.*, ch. 2, *passim*.

²⁸ Cf. *op. cit.*, pp. 42-46.

²⁹ That he had broken sharply with his father and with Bentham is, I take it, a commonplace.

My contention will be that, once the question is put in that way,³⁰ we run up against some insuperable objections to his prescriptions in and of themselves—objections, moreover, that remain equally valid even if one starts out, unlike Mill, from a supposed "right," whether natural or constitutional, to freedom of speech. I shall argue the objections in a logical order such that if each in turn were overcome the remaining ones would still stand.

Mill's proposals have as one of their tacit premises a false conception of the nature of society, and are, therefore, unrealistic on their face. They assume that society is, so to speak, a *debating club* devoted above all to the pursuit of truth, and capable therefore of subordinating itself—and all other considerations, goods, and goals—to that pursuit. Otherwise, the proposals would go no further than to urge upon society the common-sense view that the pursuit of truth is *one* of the goods it ought to cherish (even perhaps that one which it is most likely, in the press of other matters, to fail to make sufficient provision for); that it will neglect this good only at its own peril (a point that could easily be demonstrated); and that, accordingly, it should give hard and careful thought to what kind of provision it can make for it without disrupting unduly the pursuit of other goods. But we know only too well that society is *not* a debating club—all our experience of society drives the point home—and that, even if it were one, like the UN General Assembly, say, the chances of its adopting the pursuit of truth as its supreme good are negligible. Societies, alike by definition and by the teaching of history, cherish a whole series of goods—among others, their own self-preservation, the *living* of the truth they believe themselves to embody already, and the communication of that truth (pretty much intact, moreover) to future generations, their religion, etc.—which they are not only likely to value as much as or more than the pursuit of truth, but *ought* to value as much as or more than the pursuit of truth, because these are *preconditions* of the pursuit of truth.

To put it a little differently, the proposals misconceive the strategic problem, over against organized society, of those individuals who *do* value the pursuit of truth above all other things. That strategic problem we may state as follows: *fortunate* that society that has even a small handful—a "select minority," in Ortega y Gasset's phrase—of persons who value the pursuit of truth in the way in which Mill imagines a society valuing it. *Fortunate* that select

³⁰ *I.e.*, as a problem for "empirical" political theory.

minority in such a society, if it can prevail upon the society to provide it with the leisure and resources with which to engage in the pursuit of truth; or, failing that, at least not to stand in the way of its pursuit of truth. And *wise* that society whose decision-makers see deeply enough into things to provide that select minority—even in the context of guarantees against its abusing its privileges—the leisure and the resources it needs for the pursuit of truth. To ask more than that of society, to ask that it give that select minority freedom to treat publicly all questions as open questions, as open not only for itself in the course of its discharge of its own peculiar function but for everybody, is Utopian in the worst sense of the word; and so, certain to defeat the very purpose the asking is intended to serve. By asking for all, even assuming that all to be desirable, we imperil our chances of getting that little we might have got had we asked only for that little.

If we nevertheless waive that objection, we confront another, namely, that the proposals have as a further tacit premise a false conception of human beings, and how they act in organized society. Concretely, Mill not only assumes that speech (the professing and discussing of any doctrine, however immoral) is incapable of doing hurt in society. (He has to assume this, since he calls for non-interference with speech, while the overriding principle of the *Essay* is that society is always entitled to interfere in order to prevent hurt, whether to itself or to its individual members.) This is disturbing enough: Socrates, we recall, taught otherwise, namely, that he who teaches my neighbor evil does *me* hurt. But Mill also assumes (else again his proposal is romantic) that people can be persuaded either to *be* indifferent toward the possible tendency of what their neighbors are saying, or at least to *act* as if they were indifferent. We know nothing about people, I suggest, that warrants our regarding such an assumption, once it is brought out into the open, as valid. Thus his proposals, like all political proposals that call implicitly for the refashioning of human nature, can be enforced only through some large-scale institutional coercion. And I believe it to be this consideration, above all, that explains the failure of Mill's followers, to date, to persuade any organized society to adopt his proposals. We have no experience of unlimited freedom of speech as Mill defines it, of the open society as Popper defines it, unless, after a fashion and for a brief moment, in Weimar Germany—an experience no organized society will be eager to repeat.

Let us now turn to still another objection. I contend that such a society will become *intol-*

erant, one in which the pursuit of truth can only come to a halt. Whatever the private convictions of the society's individual members concerning what Plato teaches us to call the important things (that is, the things with which truth is primarily concerned), the society itself is now, by definition, dedicated to a national religion of skepticism, to the suspension of judgment as *the* exercise of judgment *par excellence*. It can, to be sure, tolerate all expression of opinion that is predicated upon its own view of truth; but what is it to do with the man who steps forward to urge an opinion, to conduct an inquiry, *not* predicated on that view? What is it to do with the man who, with every syllable of faith he utters, challenges the very foundations of skeptical society? What can it say to him except, "Sir, you cannot enter into our discussions, because you and we have no common premises from which discussion between us can be initiated?" What can it do, in a word, but silence him, and look on helplessly as within its own bosom the opinions about the important things descend into an ever greater conforming dullness? Nor—unlike traditional society, which did *not* regard all questions as open questions—need it hesitate to silence him. The proposition that all opinions are equally—and hence infinitely—valuable, said to be the unavoidable inference from the proposition that all opinions are equal, is only one—and perhaps the less likely—of two possible inferences, the other being: all opinions are equally—and hence infinitely—*without* value, so what difference does it make if one, particularly one not our own, gets suppressed?³¹ This we may

³¹ Cf. Bertrand de Jouvenel, *On Sovereignty* (Chicago: 1957), p. 288: "One of the strangest intellectual illusions of the nineteenth century was the idea that toleration could be ensured by moral relativism. . . . The relativist tells us that the man professing opinion A ought to respect opinion B, because his own opinion A has no more intrinsic value than B. But in that case B has no more than A. Attempts to impose either would be attempts to impose what had no intrinsic value; but also suppression of either would be suppression of what had no intrinsic value. And in that case there is no crime . . . in the suppression of contrary opinions." On equality of opinions in Mill, see note 16 *supra*. On the progress in Mill from "equally valuable" to "equally and infinitely valuable," cf. *op. cit.*, p. 46: ". . . truth has no chance but in proportion as every side of it, every opinion which embodies any fraction of the truth, not only finds advocates, but is so advocated as to be listened to." And the presumption, he insists, is that every opinion *does* contain some fraction of the truth: ". . . it is always probable that dissentients have something worth hearing

fairly call the central paradox of the theory of freedom of speech. In order to practice tolerance on behalf of the pursuit of truth, you have first to value and believe in not merely the pursuit of truth but Truth itself, with all its accumulated riches to date. The all-questions-are-open-questions society cannot do that; it cannot, therefore, practice tolerance towards those who disagree with it. It must persecute—and so, on its very own showing, arrest the pursuit of truth.

I next contend that such a society as Mill prescribed will descend ineluctably into ever-deepening *differences of opinion*, into progressive breakdown of those common premises upon which alone a society can conduct its affairs by discussion, and so into the abandonment of the discussion process and the arbitrament of public questions by violence and civil war. This is the phenomenon—we may call it the dispersal of opinion—to which Rousseau, our greatest modern theorist of the problem, recurred again and again in his writings.³² The all-questions-are-open-questions society cannot endeavor to arrest it, by giving preferred status to certain opinions and, at the margin, mobilizing itself internally for their defense; for by definition it places a *premium* upon dispersion by inviting irresponsible speculation and irresponsible utterance. As time passes, moreover, the extremes of opinion will—as they did in Weimar—grow further and further apart, so that (for the reason noted above) their bearers can less and less tolerate even the thought of one another, still less one another's presence in society. And again the ultimate loser is the pursuit of truth.

Still another tacit premise of the proposals is the extraordinary notion that the discussion process, which correctly understood does indeed forward the pursuit of truth, and does indeed call for *free* discussion, is one and the same thing with Mill's unlimited freedom of speech. They rest, in consequence, upon a false conception of the discussion process. What they

. . . and that truth would lose something by their silence" (p. 42).

³² See *Social Contract*, IV, i., as also *The Discourse on the Sciences and Arts*, *passim*, and Rousseau's famous letter of 1767 to the Marquis of Mirabeau. Cf. de Jouvenel, *op. cit.*, p. 286: "The whole of [Rousseau's] . . . large stock of political wisdom consists in contrasting the dispersion of feelings in a people morally disintegrated by the progress of the 'sciences and arts,' with the natural unity of a people in which dissociation has not occurred." As de Jouvenel notes (p. 287), Rousseau, though himself a Protestant, deplored the introduction of Protestantism into France, and on these grounds.

will produce is not truth but rather only deafening noise and demoralizing confusion. For the essence of Mill's freedom of speech is the divorce of the right to speak from the duties correlative to the right; the right to speak is a right to speak *ad nauseam*, and with impunity. It is shot through and through with the egalitarian overtones of the French Revolution, which are as different from the measured aristocratic overtones of the pursuit of truth by discussion, as understood by the tradition Mill was attacking, as philosophy is different from phosphorus.

Of the latter point we may sufficiently satisfy ourselves, it seems to me, by recalling how the discussion process works in those situations in which men who are products of the tradition organize themselves for a serious venture in the pursuit of truth—as they do in, say, a branch of scholarship, an academic *discipline*, and the community of truth-seekers corresponding to it.³³

Such men demonstrably proceed on some such principles as these: (a) The pursuit of truth is indeed forwarded by the exchange of opinions and ideas among many; helpful suggestions do indeed emerge sometimes from surprising quarters; but one does not leap from these facts to the conclusion that helpful suggestions may come from just anybody. (b) The man or woman who wishes to exercise the right to be heard has a logically and temporally prior obligation to *prepare* himself for participation in the exchange, and to prepare himself in the manner defined by the community. Moreover (c), from the moment he begins to participate in the exchange, he must make manifest, by his behavior, his sense of the duty to act as if the other participants had something to teach him—the duty, in a word, to see to it that the exchange goes forward in an atmosphere of courtesy and mutual self-respect. Next (d), the entrant must so behave as to show that he understands that scholarly investigation did not begin with his appearance on the scene, that there is a strong presumption that prior investigators have not labored entirely in vain, and that the community is the custodian of—let us not sidestep the *mot juste*—an *orthodoxy*, no part of which it is going to set lightly to one side. (e) That orthodoxy must be understood as concerning first and foremost the frame of reference within which the exchange of ideas and opinions is to go forward. That frame of reference is, to be sure, subject to change, but this is a matter of meeting the

arguments that led originally to its adoption, and meeting them in recognition that the ultimate decision, as to whether or not to change it, lies with the community. (f) The entrant, insofar as he wishes to challenge the orthodoxy, must expect barriers to be placed in his way, and must not be astonished if he is punished, at least in the short term, by what are fashionably called "deprivations"; he must, indeed, recognize that the barriers and the deprivations are a necessary part of the organized procedure by which truth is pursued. (g) Access to the channels of communication that represent the community's central ritual (the learned journals, that is to say) is something that the entrant wins by performing the obligation to produce a craftsmanlike piece of work. (h) The ultimate fate of the entrant who disagrees with the orthodoxy but cannot persuade the community to accept his point of view is, quite simply, isolation within or banishment from the community.

No suggestion is made that this is a complete statement of the rules as we see them operating about us in the scholarly disciplines, or that the particular forms of words employed are the happiest, or most accurate, that could be found. They do, however, seem to me to suggest the broad outlines of the paradigm of the free discussion process as it goes forward in an academic community, and to drive home its differences from the freedom of speech process as Mill defines it. Nor, I think, could anything be more obvious than the answer to the question, which of the two is the more likely to forward the pursuit of truth? But this is not all. *The* point about Mill's model is that by giving equal privileges to those who are in fact opposed to or ignorant of the discussion process, it constitutes a major onslaught against Truth. The two paradigms are not only different, but incompatible.

It would not be easy, of course, to transfer the rules of the discussion process set forth here to the public forum of a society; nor is there any point in denying that the transfer would involve our openly conceding to society far greater powers, particularly as regards silencing the ill-mannered, the ignorant, the irrelevant, than it would ever enjoy under Mill's prescription. Here, however, two things must be kept in mind. First (however reluctant we may be to admit it), that society always has, and constantly exercises, the power to silence. And second, that no society is likely, within the foreseeable future, to remake itself in the image of either of the two paradigms. The question, always, is that of which of the two we accept as the ideal toward which we try to move. That is the real issue at stake between the proponents and opponents of the "open society."

³³ A similar point might be developed over the difference between Mill's freedom of speech and the free discussion of the traditional American town-meeting.

~~The Good Society is one in which the chances of anyone selected at random are likely to be as great as possible~~

~~The conclusion to which our considerations lead is thus that we should regard as the most desirable order of society one which we would choose if we knew that our initial position in it would be decided purely by chance (such as the fact of our being born into a particular family). Since the attraction such chance would possess for any particular adult individual would probably be dependent on the particular skills, capacities and tastes he has already acquired, a better way of putting this would be to say that the best society would be that in which we would prefer to place our children if we knew that their position in it would be determined by lot. Very few people would probably in this case prefer a strictly egalitarian order. Yet, while one might, for instance, regard the kind of life lived in the past by the landed aristocracy as the most attractive kind of life, and would choose a society in which such a class existed if he were assured that he or his children would be a member of that class, he would probably decide differently if he knew that that position would be determined by drawing lots and that in consequence it would be much more probable that he would become an agricultural labourer. He would then very likely choose that very type of industrial society which did not offer such delectable plums to a few but offered better prospects to the great majority.²⁵~~

F. A. Hayek, Law
 Legislation and Liberty.
 Volume 2. The Mirage
 of Social Justice
 (Chicago: University of
 132
 Chicago Press, 1976)

THE DISCIPLINE OF ABSTRACT RULES AND THE EMOTIONS OF THE TRIBAL SOCIETY

Liberalism—it is well to recall this today—is the supreme form of generosity; it is the right which the majority concedes to minorities and hence it is the noblest cry that has ever resounded on this planet. It announces the determination to share existence with the enemy; more than that, with an enemy which is weak. It was incredible that the human species should have arrived at so noble an attitude, so paradoxical, so refined, so anti-natural. Hence it is not to be wondered at that this same humanity should soon appear anxious to get rid of it. It is a discipline too difficult and complex to take firm root on earth.

José Ortega y Gasset *

The pursuit of unattainable goals may prevent the achievement of the possible

It is not enough to recognize that 'social justice' is an empty phrase without determinable content. It has become a powerful incantation which serves to support deep-seated emotions that are threatening to destroy the Great Society. Unfortunately it is not true that if something cannot be achieved, it can do no harm to strive for it.¹ Like chasing any mirage it is likely to produce results which one would have done much to avoid if one had foreseen them. Many desirable aims will be sacrificed in the vain hope of making possible what must forever elude our grasp.

We live at present under the governance of two different and irreconcilable conceptions of what is right; and after a period of ascendancy of conceptions which have made the vision of an Open Society possible, we are relapsing rapidly into the conceptions of the tribal society from which we had been slowly emerging. We had hoped that with the defeat of the European dictators we had banished the threat of the totalitarian state; but all we have achieved was to put down the first flare-up of a reaction which is slowly spreading everywhere. Socialism is simply a re-assertion of

that tribal ethics whose gradual weakening had made an approach to the Great Society possible. The submergence of classical liberalism under the inseparable forces of socialism and nationalism is the consequence of a revival of those tribal sentiments.

Most people are still unwilling to face the most alarming lesson of modern history: that the greatest crimes of our time have been committed by governments that had the enthusiastic support of millions of people who were guided by moral impulses. It is simply not true that Hitler or Mussolini, Lenin or Stalin, appealed only to the worst instincts of their people: they also appealed to some of the feelings which also dominate contemporary democracies. What-ever disillusionment the more mature supporters of these movements may have experienced as they came to see the effects of the policies they had supported, there can be no doubt that the rank and file of the communist, national-socialist or fascist movements contained many men and women inspired by ideals not very different from those of some of the most influential social philosophers in the Western countries. Some of them certainly believed that they were engaged in the creation of a just society in which the needs of the most deserving or 'socially most valuable' would be better cared for. They were led by a desire for a visible common purpose which is our inheritance from the tribal society and which we still find breaking through everywhere.

The causes of the revival of the organizational thinking of the tribe

One reason why in recent times we have seen a strong revival of organizational thinking and a decline in the understanding of the operation of the market order is that an ever growing proportion of the members of society work as members of large organizations and find their horizon of comprehension limited to what is required by the internal structure of such organizations. While the peasant and the independent craftsman, the merchant and the journeyman, were familiar with the market and, even if they did not understand its operation, had come to accept its dictates as the natural course of things, the growth of big enterprise and of the great administrative bureaucracies has brought it about that an ever increasing part of the people spend their whole working life as members of large organizations, and are led to think wholly in terms of the requirements of the organizational form of life. Even though in the pre-industrial society the great majority also spent most of their

lives within the familial organization which was the unit of all economic activity,² the heads of the households saw society as a network of family units connected by the markets.

Today organizational thinking increasingly dominates the activities of many of the most powerful and influential figures of modern society, the organizers themselves.³ The modern improvements in the technique of organization, and the consequent increase of the range of particular tasks which can be performed by means of large-scale organization far beyond what was possible before, have created the belief that there are no limits to what organization can achieve. Most people are no longer aware of the extent to which the more comprehensive order of society on which depends the very success of the organizations within it is due to ordering forces of an altogether different kind.

The other main reason for the growing dominance of organizational thinking is that the success of the deliberate creation of new rules for purposive organizations has in many respects been so great, that men no longer recognize that the more comprehensive order within which the organizations operate rests on a different type of rules which have not been invented with a definite foreseen purpose in mind, but are the product of a process of trial and error in the course of which more experience has been accumulated than any living person is aware of.

The immoral consequences of morally inspired efforts

Though in the long perspective of Western civilization the history of law is a history of a gradual emergence of rules of just conduct capable of universal application, its development during the last hundred years has become increasingly one of the destruction of justice by 'social justice', until even some students of jurisprudence have lost sight of the original meaning of 'justice'. We have seen how the process has mainly taken the form of a replacement of the rules of just conduct by those rules of organization which we call public law (a 'subordinating law'), a distinction which some socialist lawyers are trying hard to obliterate.⁴ In substance this has meant that the individual is no longer bound only by rules which confine the scope of his private actions, but has become increasingly subject to the commands of authority. The growing technological possibilities of control, together with the presumed moral superiority of a society whose members serve the same hierarchy of ends, have

made this totalitarian trend appear under a moral guise. It is indeed the concept of 'social justice' which has been the Trojan Horse through which totalitarianism has entered.

The values which still survive from the small end-connected groups whose coherence depended upon them, are, however, not only different from, but often incompatible with, the values which make possible the peaceful coexistence of large numbers in the Open Society. The belief that while we pursue the new ideal of this Great Society in which all human beings are regarded as equal, we can also preserve the different ideals of the small closed society, is an illusion. To attempt it leads to the destruction of the Great Society.

The possibility of men living together in peace and to their mutual advantage without having to agree on common concrete aims, and bound only by abstract rules of conduct,⁵ was perhaps the greatest discovery mankind ever made. The 'capitalist' system which grew out of this discovery no doubt did not fully satisfy the ideals of liberalism, because it grew up while legislators and governments did not really understand the *modus operandi* of the market, and largely in spite of the policies actually pursued.⁶ Capitalism as it exists today in consequence undeniably has many remediable defects that an intelligent policy of freedom ought to correct. A system which relies on the spontaneous ordering forces of the market, once it has reached a certain level of wealth, is also by no means incompatible with government providing, outside the market, some security against severe deprivation. But the attempt to secure to each what he is thought to deserve, by imposing upon all a system of common concrete ends towards which their efforts are directed by authority, as socialism aims to do, would be a retrograde step that would deprive us of the utilization of the knowledge and aspirations of millions, and thereby of the advantages of a free civilization. Socialism is not based merely on a different system of ultimate values from that of liberalism, which one would have to respect even if one disagreed; it is based on an intellectual error which makes its adherents blind to its consequences. This must be plainly said because the emphasis on the alleged difference of the ultimate values has become the common excuse of the socialists for shirking the real intellectual issue. The pretended difference of the underlying value judgments has become a protective cloak used to conceal the faulty reasoning underlying the socialist schemes.

In the Great Society 'social justice' becomes a disruptive force

Not only is it impossible for the Great Society to maintain itself while enforcing rules of 'social' or distributive justice; for its preservation it is also necessary that no particular groups holding common views about what they are entitled to should be allowed to enforce these views by preventing others to offer their services at more favourable terms. Though common interests of those whose position is affected by the same circumstances are likely to produce strong common opinions about what they deserve, and will provide a motive for common action to achieve their ends, any such group action to secure a particular income or position for its members creates an obstacle to the integration of the Great Society and is therefore anti-social in the true sense of this word. It must become a divisive force because it produces not a reconciliation of, but a conflict between, the interests of the different groups. As the active participants in the struggle for 'social justice' well know, it becomes in practice a struggle for power of organized interests in which arguments of justice serve merely as pretexts.

The chief insight we must hold on to is that not always when a group of people have strong views about what they regard as their claims in justice does this mean that there exists (or can be found) a corresponding rule which, if universally applied, would produce a viable order. It is a delusion to believe that whenever a question is represented as one of justice it must be possible to discover a rule capable of universal application which will decide that question.⁷ Nor does the fact that a law endeavours to meet somebody's claim for justice prove that it is a rule of just conduct.

All groups whose members pursue the same or parallel aims will develop common views about what is right for members of those groups. Such views, however, will be right only for all those who pursue the same aims, but may be wholly incompatible with any principles by which such a group can be integrated into the overall order of society. The producers of any particular commodity or service who all aim at a good remuneration for their efforts will regard as unjust the action of any fellow producer who tends to reduce the incomes of the others. Yet it will be precisely the kind of actions by some members of the group that the rest regard as harmful which will fit the activities of the members of the group into the overall pattern of the Great Society and thereby benefit all.

It is certainly in itself not unjust if a barber in one city receives

\$3 for a haircut while in another city only \$2 is paid for the same work. But it would clearly be unjust if the barbers in the first prevented any from the second city from improving their position by offering their services in the first for, say, \$2.50 and thus, while improving their position, lowering the income of the first group. Yet it is precisely against such efforts that established groups are today permitted to combine in defence of their established position. The rule 'do nothing which will decrease the income of the members of your own group' will often be regarded as an obligation of justice toward one's fellow members. But it cannot be accepted as a rule of just conduct in a Great Society where it will conflict with the general principles on which the activities of that society are co-ordinated. The other members of that society will have every interest and moral right to prevent the enforcement of such a rule that the members of a special group regard as just, because the principles of integration of the Great Society demand that the action of some of those occupied in a particular manner should often lead to a reduction of the incomes of their fellows. This is precisely the virtue of competition. The conceptions of group justice would often proscribe all effective competition as unjust—and many of the 'fair competition' demands aim in effect at little less.

It is probably true that in any group whose members know that their prospects depend on the same circumstances, views will develop that represent as unjust all conduct of any member which harms the others; and there will in consequence arise a desire to prevent such conduct. But by any outsider it will rightly be regarded as unjust if any member of such a group is prevented by his fellows from offering him more advantageous terms than the rest of the group are willing to offer. And the same is true when some 'interloper' who before was not recognized as a member of the group is made to conform to the standards of the group as soon as his efforts compete with theirs.

The important fact which most people are reluctant to admit, yet which is probably true in most instances, is that, though the pursuit of the selfish aims of the individual will usually lead him to serve the general interest, the collective actions of organized groups are almost invariably contrary to the general interest. What in fact leads to the condemnation as anti-social of that pursuit of individual interests which contributes to the general interest, and to the commendation as 'social' of the subservience to those sectional interests which destroy the overall order, are sentiments which we

have inherited from earlier forms of society. The use of coercion in the service of this kind of 'social justice', meaning the interests of the particular group to which the individual belongs, will thus always mean the creation of particular preserves of special groups united against the outsiders—interest groups which exist because they are allowed to use force or pressure on government for the benefit of their members. But, however much the members of such groups may agree among themselves that what they want is just, there exists no principle which could make it appear as just to the outsider. Yet today, if such a group is only large enough, its representation of the demands of its members as just is commonly accepted as one view of justice which must be taken into account in ordering the whole, even though it does not rest on any principle which could be generally applied.

From the care of the most unfortunate to the protection of vested interests

We must not lose sight, however, of the fact that at the beginning of the striving for 'social justice' stood the laudable desire to abolish destitution, and that the Great Society has brilliantly succeeded in abolishing poverty in the absolute sense.⁸ Nobody capable of useful work need today lack food and shelter in the advanced countries, and for those incapable of themselves earning enough these necessities are generally provided outside the market. Poverty in the relative sense must of course continue to exist outside of any completely egalitarian society: so long as there exists inequality, somebody must be the bottom of the scale. But the abolition of absolute poverty is not helped by the endeavour to achieve 'social justice'; in fact, in many of the countries in which absolute poverty is still an acute problem, the concern with 'social justice' has become one of the greatest obstacles to the elimination of poverty. In the West the rise of the great masses to tolerable comfort has been the effect of the general growth of wealth and has been merely slowed down by measures interfering with the market mechanism. It has been this market mechanism which has created the increase of aggregate income, which also has made it possible to provide outside the market for the support of those unable to earn enough. But the attempts to 'correct' the results of the market in the direction of 'social justice' have probably produced more injustice in the form of new privileges, obstacles to mobility and frustration of

efforts than they have contributed to the alleviation of the lot of the poor.

This development is a consequence of the circumstance that the appeal to 'social justice' that was originally made on behalf of the most unfortunate was taken up by many other groups whose members felt that they did not get as much as they thought that they deserved, and particularly by those groups who felt threatened in their present positions. As a demand that political action should assign to the members of any group the position which in some sense it deserved, 'social justice' is irreconcilable with the ideal that coercion should be used only to enforce the same rules of just conduct which all could take into account in making their plans. Yet when those claims were first admitted in favour of groups with whose misfortune everybody sympathized, the floodgates were opened to the demand by all who found their relative position threatened that their position be protected by government action. Misfortune, however, cannot create a claim for protection against risks which all have had to run in order to attain the position they occupy. The very language in current use which at once labels as a 'social problem' anything which causes dissatisfaction of any group, and suggests that it is the duty of the legislature to do something about such 'social injustice', has turned the conception of 'social justice' into a mere pretext for claims for privileges by special interests.

Those who turn with indignation against a conception of justice which failed, e.g., to prevent the rapidly proceeding up-rooting of the peasantry which commenced already after the Napoleonic wars, or the decline of the artisanry after the middle of the century, or the pauperization of the wage labourers⁹ wholly misconceive what can be achieved by enforcement of rules of just conduct in a world of free men who reciprocally serve each other for their own benefit and to whom nobody assigns tasks or allocates benefits. Since today we can probably even feed the numbers to which mankind has grown only thanks to the intensive utilization of dispersed knowledge which is made possible by the market—not to speak of maintaining that level of comfort which the great majority has reached in some parts of the world—it certainly would not be just to exempt some from the necessity of accepting a less favourable position than they had already attained if an unforeseen turn of events diminishes the value of their services to the rest. However sorry we may be for those who, through no fault of their own but as a result of unfore-

seeable developments, find themselves in a reduced position, this does not mean that we can have both the progressive increase in the level of general wealth on which the future improvement of the conditions of the great masses depends and no such recurrent declines of the position of some groups.

'Social justice' has in practice become simply the slogan used by all groups whose status tends to decline—by the farmer, the independent craftsman, the coalminer, the small shopkeeper, the clerical worker and a considerable part of the old 'middle class', rather than the industrial workers on whose behalf it was first raised but who have in general been the beneficiaries of recent developments. That the appeal to justice by such groups frequently succeeds in mobilizing the sympathy of many who regard the traditional hierarchy of society as a natural one, and who resent the ascent of new types to that middle position to which once the bare capacity to read and write gave access, does not show that such demands have any connection with generally applicable rules of just conduct.

In the existing political order such claims will in fact be met only when such groups are large enough to count politically and especially when it is possible to organize their members for common action. We shall see later that only some but not all such interests can be thus organized, and that in consequence the resulting advantages can be achieved only by some and will harm the rest. Yet the more organizations of interests are used for this purpose, the more necessary does it become for each group to organize for pressure on government, since those who fail to do so will be left out in the cold. Thus the conception of 'social justice' has resulted in the assurance by government of an appropriate income to particular groups, which has made the progressive organization of all such 'interests' inevitable. But the protection of expectations which such assurance involves cannot possibly be granted to all in any but a stationary society. The only just principle is therefore to concede this privilege to none.

At one time this argument would have had to be directed chiefly against the trade unions, since they were the first of such groups who succeeded in clothing their demands with the aura of legitimacy (and in being allowed to use coercion for their enforcement) by representing them as a requirement of 'social justice'. But though it was initially the use in the service of relatively poor and unfortunate groups that made discrimination in their favour appear justifiable,

such discrimination served as the thin end of the wedge by which the principle of equality under the law was destroyed. It is now simply those who are numerically strong, or can readily be organized to withhold essential services, who gain in the process of political bargaining which governs legislation in contemporary democracy. But the particular absurdities which arise when a democracy attempts to determine the distribution of incomes by majority vote will occupy us further only in the third volume of the present work.

Attempts to 'correct' the order of the market lead to its destruction

The predominant view today appears to be that we should avail ourselves in the main of the ordering forces of the market, indeed must in a great measure do so, but should 'correct' its results where they are flagrantly unjust. Yet so long as the earnings of particular individuals or groups are not determined by the decision of some agency, no particular distribution of incomes can be meaningfully described as more just than another. If we want to make it substantively just, we can do so only by replacing the whole spontaneous order by an organization in which the share of each is fixed by some central authority. In other words, 'corrections' of the distribution brought about in a spontaneous process by particular acts of interference can never be just in the sense of satisfying a rule equally applicable to all. Every single act of this kind will give rise to demands by others to be treated on the same principle; and these demands can be satisfied only if all incomes are thus allocated.

The current endeavour to rely on a spontaneous order corrected according to principles of justice amounts to an attempt to have the best of two worlds which are mutually incompatible. Perhaps an absolute ruler, wholly independent of public opinion, might confine himself to mitigating the hardships of the more unfortunate ones by isolated acts of intervention and let a spontaneous order determine the positions of the rest. And it is certainly possible to take entirely out of the market process those who cannot adequately maintain themselves on the market and support them by means set aside for the purpose. For a person at the beginning of an uncertain career, and for his children, it might even be perfectly rational to agree that all should insure for a minimum of sustenance in such an eventuality. But a government dependent on public opinion, and particularly a democracy, will not be able to confine such attempts to supple-

ment the market to the mitigation of the lot of the poorest. Whether it intends to let itself be guided by principles or not, it is in fact, if it has the power to do so, certain to be driven on by the principles implicit in the precedents it sets. By the measures it takes it will produce opinions and set standards which will force it to continue on the course on which it has embarked.

It is possible to 'correct' an order only by assuring that the principles on which it rests are consistently applied, but not by applying to some part of the whole principles which do not apply to the rest. As it is the essence of justice that the same principles are universally applied, it requires that government assist particular groups only in conditions in which it is prepared to act on the same principle in all similar instances.

The revolt against the discipline of abstract rules

The rise of the ideal of impersonal justice based on formal rules has been achieved in a continuous struggle against those feelings of personal loyalty which provide the basis of the tribal society but which in the Great Society must not be allowed to influence the use of the coercive powers of government. The gradual extension of a common order of peace from the small group to ever larger communities has involved constant clashes between the demands of sectional justice based on common visible purposes and the requirements of a universal justice equally applicable to the stranger and to the member of the group.¹⁰ This has caused a constant conflict between emotions deeply ingrained in human nature through millennia of tribal existence and the demands of abstract principles whose significance nobody fully grasped. Human emotions are attached to concrete objects, and the emotions of justice in particular are still very much connected with the visible needs of the group to which each person belongs—the needs of the trade or profession, of the clan or the village, the town or the country to which each belongs. Only a mental reconstruction of the overall order of the Great Society enables us to comprehend that the deliberate aim at concrete common purposes, which to most people still appears as more meritorious and superior to blind obedience to abstract rules, would destroy that larger order in which all human beings count alike.

As we have already seen, much that will be truly social in the small end-connected group because it is conducive to the coherence of the working order of that society, will be anti-social from the

point of view of the Great Society. The demand for 'social justice' is indeed an expression of revolt of the tribal spirit against the abstract requirements of the coherence of the Great Society with no such visible common purpose. It is only by extending the rules of just conduct to the relations with all other men, and at the same time depriving of their obligatory character those rules which cannot be universally applied, that we can approach a universal order of peace which might integrate all mankind into a single society.

While in the tribal society the condition of internal peace is the devotion of all members to some common visible purposes, and therefore to the will of somebody who can decide what at any moment these purposes are to be and how they are to be achieved, the Open Society of free men becomes possible only when the individuals are constrained only to obey the abstract rules that demarcate the domain of the means that each is allowed to use for his purposes. So long as any particular ends, which in a society of any size must always be the ends of some particular persons or group, are regarded as a justification of coercion, there must always arise conflicts between groups with different interests. Indeed, so long as particular purposes are the foundation of political organization, those whose purposes are different are inevitably enemies; and it is true that in such a society politics necessarily is dominated by the friend-enemy relation.¹¹ Rules of just conduct can become the same for all only when particular ends are not regarded as justification for coercion (apart from such special passing circumstances as war, rebellion or natural catastrophes).

The morals of the open and of the closed society

The process we are describing is closely associated with, and indeed a necessary consequence of, the circumstance that in an extensive market order the producers are led to serve people without knowing of their individual needs: Such an order which relies on people working with the effect of satisfying the wants of people of whom they do not know presupposes and requires somewhat different moral views, from one in which people serve visible needs. The indirect guidance by an expected monetary return, operating as an indicator of the requirements of others, demanded new moral conceptions which do not prescribe particular aims but rather general rules limiting the range of permitted actions.

It did become part of the ethos of the Open Society that it was

better to invest one's fortune in instruments making it possible to produce more at smaller costs than to distribute it among the poor, or to cater for the needs of thousands of unknown people rather than to provide for the needs of a few known neighbours. These views, of course, did not develop because those who first acted upon them understood that they thus conferred greater benefits on their fellows, but because the groups and societies which acted in this way prospered more than others; it became in consequence gradually the recognized moral duty of the 'calling' to do so. In its purest form this ethos regards it as the prime duty to pursue a self-chosen end as effectively as possible without paying attention to the role it plays in the complex network of human activities. It is the view which is now commonly but somewhat misleading described as the Calvinist ethic—misleading because it prevailed already in the mercantile towns of medieval Italy and was taught by the Spanish Jesuits long before Calvin.¹²

We still esteem doing good only if it is done to benefit specific known needs of known people, and regard it as really better to help one starving man we know than to relieve the acute need of a hundred men we do not know; but in fact we generally are doing most good by pursuing gain. It was somewhat misleading, and did his cause harm, when Adam Smith gave the impression as if the significant difference were that between the egoistic striving for gain and the altruistic endeavour to meet known needs. The aim for which the successful entrepreneur wants to use his profits may well be to provide a hospital or an art gallery for his home town. But quite apart from the question of what he wants to do with his profits after he has earned them, he is led to benefit more people by aiming at the largest gain than he could if he concentrated on the satisfaction of the needs of known persons. He is led by the invisible hand of the market to bring the succour of modern conveniences to the poorest homes he does not even know.¹³

It is true, however, that the moral views underlying the Open Society were long confined to small groups in a few urban localities, and have come generally to govern law and opinion in the Western world so comparatively recently that they are often still felt to be artificial and unnatural in contrast to the intuitive, and in part perhaps even instinctive, sentiments inherited from the older tribal society. The moral sentiments which made the Open Society possible grew up in the towns, the commercial and trading centres, while the feelings of the large numbers were still governed by the

parochial sentiments and the xenophobic and fighting attitudes governing the tribal group.¹⁴ The rise of the Great Society is far too recent an event to have given man time to shed the results of a development of hundreds of thousands of years, and not to regard as artificial and inhuman those abstract rules of conduct which often conflict with the deeply ingrained instincts to let himself be guided in action by perceived needs.

The resistance against the new morals of the Open Society was strengthened also by the realization that it not only indefinitely enlarged the circle of other people in relation to whom one had to obey moral rules, but that this extension of the scope of the moral code necessarily brought with itself a reduction of its content. If the enforceable duties towards all are to be the same, the duties towards none can be greater than the duties towards all—except where special natural or contractual relations exist. There can be a general obligation to render assistance in case of need towards a circumscribed group of fellow-men, but not towards men in general. The moral progress by which we have moved towards the Open Society, that is, the extension of the obligation to treat alike, not only the members of our tribe but persons of ever wider circles and ultimately all men, had to be bought at the price of an attenuation of the enforceable duty to aim deliberately at the wellbeing of the other members of the same group. When we can no longer know the others or the circumstances under which they live, such a duty becomes a psychological and intellectual impossibility. Yet the disappearance of these specific duties leaves an emotional void by depriving men both of satisfying tasks and the assurance of support in case of need.¹⁵

It would therefore not be really surprising if the first attempt of man to emerge from the tribal into an open society should fail because man is not yet ready to shed moral views developed for the tribal society; or, as Ortega y Gasset wrote of classical liberalism in the passage placed at the head of this chapter, it is not to be wondered that 'humanity should soon appear anxious to get rid of . . . so noble an attitude, so paradoxical, so refined, so anti-natural . . . a discipline too difficult and complex to take firm root on earth.' At a time when the great majority are employed in organizations and have little opportunity to learn the morals of the market, their intuitive craving for a more humane and personal morals corresponding to their inherited instincts is quite likely to destroy the Open Society.

It should be realized, however, that the ideals of socialism (or of 'social justice') which in such a position prove so attractive, do not really offer a new moral but merely appeal to instincts inherited from an earlier type of society. They are an atavism, a vain attempt to impose upon the Open Society the morals of the tribal society which, if it prevails, must not only destroy the Great Society but would also greatly threaten the survival of the large numbers to which some three hundred years of a market order have enabled mankind to grow.

Similarly the people who are described as alienated or estranged from a society based on the market order are not the bearers of a new moral but the non-domesticated or un-civilized who have never learnt the rules of conduct on which the Open Society is based, but want to impose upon it their instinctive, 'natural' conceptions derived from the tribal society. What especially most of the members of the New Left do not appear to see is that that equal treatment of all men which they also demand is possible only under a system in which individual actions are restricted merely by formal rules rather than guided by their known effects.

The Rousseauesque nostalgia for a society guided, not by learnt moral rules which can be justified only by a rational insight into the principles on which this order is based, but by the unreflected 'natural' emotions deeply grounded on millennia of life in the small horde, leads thus directly to the demand for a socialist society in which authority ensures that visible 'social justice' is done in a manner which gratifies natural emotions. In this sense, however, of course all culture is unnatural and, though undesigned, still artificial because relying on obedience to learnt rules rather than on natural instincts. This conflict between what men still feel to be natural emotions and the discipline of rules required for the preservation of the Open Society is indeed one of the chief causes of what has been called the 'fragility of liberty': all attempts to model the Great Society on the image of the familiar small group, or to turn it into a community by directing the individuals towards common visible purposes, must produce a totalitarian society.

The old conflict between loyalty and justice

The persistent conflict between tribal morals and universal justice has manifested itself throughout history in a recurrent clash between the sense of loyalty and that of justice. It is still loyalty to

such particular groups as those of occupation or class as well as those of clan, nation, race or religion which is the greatest obstacle to a universal application of rules of just conduct. Only slowly and gradually do those general rules of conduct towards all fellow men come to prevail over the special rules which allowed the individual to harm the stranger if it served the interest of his group. Yet while only this process has made possible the rise of the Open Society, and offers the distant hope of a universal order of peace, current morals do not yet wholeheartedly approve this development; indeed, there has in recent times taken place a retreat from positions which had already been largely achieved in the Western world.

If in the distant past perhaps altogether inhuman demands were sometimes made in the name of formal justice, as when in ancient Rome the father was praised who as a magistrate unflinchingly condemned his son to death, we have learned to avoid the gravest of such conflicts, and in general to reduce the requirements of formal justice to what is compatible with our emotions. The advance of justice continued until recent times as a progressive ascendancy of the general rules of just conduct applying to our relations to any fellow member of society over the special rules serving the needs of particular groups. It is true that this development in some measure stopped at national frontiers; but most nations were of such a size that it still brought about a progressive replacement of the rules of the purpose-connected organization by the rules of the spontaneous order of an Open Society.

The main resistance to this development was due to its requiring a predominance of abstract rational principles over those emotions that are evoked by the particular and the concrete, or the predominance of conclusions derived from abstract rules, whose significance was little understood, over the spontaneous response to the perception of concrete effects which touched the lives and conditions of those familiar to us. This does not mean that those rules of conduct which refer to special personal relations have lost their importance for the functioning of the Great Society. It merely means that, since in a society of free men the membership in such special groups will be voluntary, there must also be no power of enforcing the rules of such groups. It is in such a free society that a clear distinction between the moral rules which are not enforced and the rules of law which are enforced becomes so important. If the smaller groups are to be integrated into the more comprehensive order of society at large, it must be through the free movement of

individuals between groups into which they may be accepted if they submit to their rules.

The small group in the Open Society

The revolt against the abstractness of the rules we are required to obey in the Great Society, and the predilection for the concrete which we feel to be human, are thus merely a sign that intellectually and morally we have not yet fully matured to the needs of the impersonal comprehensive order of mankind. To submit comprehendingly to those rules which have made the approach to the Open Society possible and which we have obeyed so long as we attributed them to the command of a higher personal authority, and not to blame some imagined personal agent for any misfortune that we encounter, evidently requires a degree of insight into the working of a spontaneous order which few persons have yet attained.

Even moral philosophers often appear simply to wallow in the emotions inherited from the tribal society without examining their compatibility with the aspirations of the universal humanism that they also champion. Most people indeed will watch with regret the decline of the small group in which a limited number of persons were connected by many personal ties, and the disappearance of certain sentiments connected with it. But the price we have to pay for the achievement of the Great Society in which all human beings have the same claims on us is that these claims must be reduced to the avoidance of harmful actions and cannot include positive duties. The individual's free choice of his associates will in general have the effect that for different purposes he will be acting with different companions and that none of these connections will be compulsory. This presupposes that none of these small groups has power to enforce its standards on any unwilling person.

The savage in us still regards as good what was good in the small group but what the Great Society must not only refrain from enforcing but cannot even allow particular groups to enforce. A peaceful Open Society is possible only if it renounces the method of creating solidarity that is most effective in the small group, namely acting on the principle that 'if people are to be in harmony, then let them strive for some common end'. This is the conception of creating coherence which leads straight to the interpretation of all politics as a matter of friend-enemy relations. It is also the device which has been effectively employed by all dictators.

Except when the very existence of a free society is threatened by an enemy, it must deny itself what in many respects is still the strongest force making for cohesion, the common visible purpose. It must bid farewell, so far as the use of coercion is concerned, to the use of some of the strong moral emotions which still stand us in good stead in the small group and which, though still needed within the small groups from which the Great Society is built up, must result in tension and conflict if enforced in the Great Society.

The conception through which the atavistic craving for visible common purposes which so well served the needs of the small group today chiefly expresses itself is that of 'social justice'. It is incompatible with the principles on which the Great Society rests and indeed the opposite of those forces making for its coherence which can truly be called 'social'. Our innate instincts are here in conflict with the rules of reason we have learned, a conflict we can resolve only by limiting coercion to what is required by abstract rules and by abstaining from enforcing what can be justified only by the desire for particular results.

The kind of abstract order on which man has learnt to rely and which has enabled him peacefully to co-ordinate the efforts of millions, unfortunately cannot be based on such feelings as love which constituted the highest virtue in the small group. Love is a sentiment which only the concrete evokes, and the Great Society has become possible through the individual's efforts being guided not by the aim of helping particular other persons, but the confinement of the pursuit of their purposes by abstract rules.

The importance of voluntary associations

It would be a sad misunderstanding of the basic principles of a free society if it were concluded that, because they must deprive the small group of all coercive powers, they do not attach great value to voluntary action in the small groups. In restricting all coercion to the agencies of government and confining its employment to the enforcement of general rules, these principles aim at reducing all coercion as much as possible and leaving as much as possible to voluntary efforts. The mischievous idea that all public needs should be satisfied by compulsory organization and that all the means that the individuals are willing to devote to public purposes should be under the control of government, is wholly alien to the basic principles of a free society. The true liberal must on the contrary

desire as many as possible of those 'particular societies within the state', voluntary organizations between the individual and government, which the false individualism of Rousseau and the French Revolution wanted to suppress; but he wants to deprive them of all exclusive and compulsory powers. Liberalism is not individualistic in the 'everybody for himself' sense, though necessarily suspicious of the tendency of organizations to arrogate exclusive rights for their members.

We shall later (in chapter 15) have to consider more fully the problems raised by the consideration that such voluntary organizations, because their power is so much greater than that of any individual, may have to be restricted in their activities by law in ways in which the individual need not be restrained and, in particular, that they may have to be denied some of the rights to discriminate which for the individual are an important part of his freedom. What we wish to stress at this point, however, is not the necessary limits but rather the importance of the existence of numerous voluntary associations, not only for the particular purposes of those who share some common interest, but even for public purposes in the true sense. That government should have the monopoly of coercion is necessary in order to limit coercion; but this must not mean that government should have the exclusive right to pursue public purposes. In a truly free society, public affairs are not confined to the affairs of government (least of all of central government) and public spirit should not exhaust itself in an interest in government.¹⁶

It is one of the greatest weaknesses of our time that we lack the patience and faith to build up voluntary organizations for purposes which we value highly, and immediately ask the government to bring about by coercion (or with means raised by coercion) anything that appears as desirable to large numbers. Yet nothing can have a more deadening effect on real participation by the citizen than if government, instead of merely providing the essential framework for spontaneous growth, becomes monolithic and takes charge of the provision for all needs which can be provided for only by the common efforts of many. It is the great merit of the spontaneous order concerned only with means that it makes possible the existence of a large number of distinct and voluntary value communities serving such values as science, the arts, sports and the like. And it is a highly desirable development that in the modern world these groups tend to extend beyond national boundaries and

that, e.g. a mountain climber in Switzerland may have more in common with a mountain climber in Japan than with the football fan in his own country; and that he may even belong to a common association with the former which is wholly independent of any political organization to which either belongs.

The present tendency of governments to bring all common interests of large groups under their control tends to destroy real public spirit; and as a result an increasing number of men and women are turning away from public life who in the past would have devoted much effort to public purposes. On the European continent the over-solicitude of governments has in the past largely prevented the development of voluntary organizations for public purposes and produced a tradition in which private efforts were often regarded as the gratuitous meddling of busybodies, and modern developments seem progressively to have produced a similar situation even in the Anglo-Saxon countries where at one time private efforts for public purposes were so characteristic a feature of social life.

NOTES

CHAPTER SEVEN GENERAL WELFARE AND PARTICULAR PURPOSES

* David Hume, *Treatise, Works*, ed. T. H. Green and T. H. Grose (London, 1890), vol. II, p. 318.

1 On the meaning of the concepts of common or public utility (or interest) in classical antiquity, when their equivalents were extensively used both in Greek and in Latin, see A. Steinwenter, 'Utilitas publica—utilitas singulorum', *Festschrift Paul Koschaker* (Weimar, 1939), vol. I, and J. Gaudemet, 'Utilitas publica', *Revue historique de droit français et étranger*, 4^e série, 29, 1951. The medieval use is discussed in W. Merk, 'Der Gedanke des gemeinen Besten in der deutschen Staats- und Rechtsentwicklung', *Festschrift für A. Schulze* (Weimar, 1934).

2 For the upshots of the extensive but not very fruitful discussion of this subject, mainly in the USA, see *Nomos V, The Public Interest*, ed. C. J. Friedrich (New York, 1962), and the earlier literature mentioned in that work.

3 J. Bentham, *An Introduction to the Principles of Morals and Legislation*, new ed. (London, 1823), vol. I, p. 4: 'The interest of the community then is, what?—the sum of the interests of the several members who compose it.'

4 James Harrington, *The Prerogative of Popular Government* (1658) in *The Oceana and his Other Works*, ed. J. Toland (London, 1771), p. 224: 'the public interest (which is no other than common right and justice) may be called the empire of laws and not of men.'

5 Cf. the Book of Proverbs, 18:18, 'The lot causes contentions to cease, and parteth between the mighty.'

6 In this sense the 'principle of subsidiarity' is much stressed in the social doctrines of the Roman Catholic Church.

7 I ought probably to have explained earlier why I prefer the expression 'each being allowed to use his own knowledge for his own purposes' to the essentially equivalent expression of Adam Smith that every one should be free 'to pursue his own interest in his own way' (*Wealth of Nations*, ed. E. Cannan, London, 1904 and later, vol. II, p. 43 and elsewhere). The reason is that to the modern ear Smith's

Elizabeth Fox-Genovese,

Marriage: The Dream That

Refuses to Die

(Wilmington, DE: ISI
Books, 2008)

5

Thoughts on the History of the Family

Since the 1950s, but especially since the 1970s, contemporary concerns about the family have generated intense interest in the variety of family forms in different times and places. Recent decades have especially witnessed a veritable explosion of family history, ranging from oral histories of specific families to massive scholarly monographs on the family in specific periods to general interpretations and overviews. This work, at its best, has yielded fascinating results that have decisively expanded our sensitivity to the myriad forms which the purported transhistorical monolith of "the family" may take. Much of it, however, may fairly be viewed as suspect, if only because it was written to serve a specific political or ideological agenda. Above all, for what should be obvious reasons, many of the historical studies of the family originated in a desire to disclose the distinctive,

if not unique, features of the family during the period under consideration and thereby to emphasize the difference rather than the similarity among families in different societies and centuries.

Not for nothing has the family captured the attention of historians: How better to expose an institution as the product of human choice rather than natural or divine order than to call attention to its historical variation? Indeed, during the years following World War II, and especially since the 1960s, historians have explored the multiplicity of family forms as well as the changing patterns of family formation and dynamics. Following the pioneering path traced by the work of the French historian Philippe Ariès, they have, for example, rejected the idea of childhood as a distinct and universal stage of development, insisting that the idea only took shape in Europe during the early-modern period. In earlier times, Ariès insisted, children had been viewed as miniature adults.¹ Others, following the lead of Lawrence Stone, have focused upon the changing character of marriage and its relation to the socialization of the young, beginning with child-rearing practices.² Most historians of the family, notwithstanding differences among them, have tended to follow the lead of Ariès and Stone in insisting upon the close association among the appearance of the idea of childhood and the emergence of the nuclear family, companionate marriage, and, especially, the modern idea of motherhood.³

Drawing freely upon psychology, sociology, and anthropology, historians of the family have, on the whole, emphasized the functional or economic character of marital and family relations. The broad functional perspective might be summarized as, "Each society gets the best forms of marriage and family it deserves or which best serve its purposes." The economic perspective, which shares many assumptions with the functional, shifts the emphasis to the limits that economic possibilities place upon marriage and family, concluding that the nature of both are shaped by economic forces. Both the functional and economic perspectives converge in their emphasis upon the differences among families according to century, location, or social class. Both have, in this respect, paved the way for the contemporary or postmodern emphasis upon the malleability of family composition and the endless variety of family forms.⁴

The emergence of the contemporary infatuation with the infinite plasticity of "the family" helps to explain the fascination with family history. Having, in our own time, called the very notion of the two-parent heterosexual family into question, we seem compelled to prove that it has never been either naturally or divinely sanctioned and, if anything, to deem it more important that most people throughout history have been unwilling or unable to observe its norms.⁵ Thus, the dominant tendency in family history seems to suggest that there have been as many kinds of families as there have been societies

or even individuals. The logical conclusion to be drawn from this work is, accordingly, that the family, like the concept of marriage in which it is anchored, constitutes a relation into which people enter and that they frequently leave according to shifting individual preferences and interests.

In fairness, it is entirely possible that the attitudes toward the family and marriage that many scholars project upon the past may have triumphed in our own time. But, if we are to make any sense of the current debates about marriage and the family, we must understand that the situation of marriage and the family in our time is not merely new but unprecedented. For, until the very recent past, marriage and the family have been universally viewed as the necessary foundation of specific societies and of civilization in general—as the source and manifestation of human and divine order. This understanding of marriage and the family as the most important and abiding system of human relations, as simultaneously necessary to individuals and to society as a whole, has persisted throughout human history. Beneath the surface of changing patterns of marriage and family, the ubiquitous insistence upon the intrinsic value of marriage and family as fundamental goods for the individual and society has endowed the various manifestations and practices with a common character and meaning.⁶

Marriage and the family do change in response to broad social, economic, and cultural changes as well as

in response to political and legal change. To take an easy example, where anti-miscegenation laws prevail, a man and woman of different race do not marry, even if they cohabit, and consequently their children enjoy no legal identity as members of their family. Similarly, slaves in the antebellum South could not legally marry, although they frequently entered into binding relations with a person of the opposite sex, sometimes with the blessing of a minister. And because these marriages had no legal standing, the children they produced were not legally the children of their biological procreators.⁷

The case of slave marriage throws into relief some of the central features of marriage and the family as legally or religiously constituted institutions. Today, many people primarily consider marriage and the family from the subjective perspective of the individual: Do they or do they not further the individual's happiness and fulfillment? Yet if, from the perspective of the individual, marriage and family constitute a subjective story, from the perspective of society they primarily constitute an objective story. Thus, the anthropologist Robin Fox reminds us that marriage figures as a central and enduring feature of "the network of relationships that bind individuals to each other in the web of kinship." And he argues that this network, like marriage itself, has functioned as "the pivot on which most interaction, most claims and obligations, most loyalties and sentiments [have] turned."⁸ In other words, notwithstanding variations in form, marriage and

the family have served as the primary link between the individual and society or the polity—the essential and irreducible social unit. In this role, marriage and the family typically secured the mutual rights and responsibilities of women and men, recognized the right and responsibility of parents to shape the future of their offspring, and secured the ownership and transfer of property. Until very recently, they preceded and outranked the individual, who was socially and politically defined by them rather than by personal attributes or status. Indeed, in the most important respects, marriage and the family, throughout most of history, have grounded and defined the identity of the individual, who is placed at high risk without their legitimization.⁹

At an accelerating rate during the late nineteenth and twentieth centuries, marital and family ties have increasingly come to be viewed as secular contractual relations, which primarily concern the state, if indeed they concern anyone other than the immediate participants. Throughout history, however, marriage and the family have been of primary concern to the church or religious authorities, who have viewed them as inherently sacramental. Until the French Revolution, for example, the records of marriages, births, and deaths were not kept by the state, but by the clergy, who inscribed them in the parish registers from which historians have drawn such valuable information. Throughout history, religious authorities have displayed a special interest in marriage,

presumably because they, like political authorities, have viewed marriage and the family as fundamental agents and sites of the ordering of human life. And most societies have ascribed a primary role to the family in the religious and moral education of the next generation.¹⁰

Today, many dismiss the interest of religious and political authorities in the regularization of marriage and the family as further evidence of the curtailment of individual desire by illegitimate authorities. Others, seemingly in growing numbers, demand that religious and political authorities acknowledge, sanctify, or legitimize various unions between individuals or groupings of individuals as valid forms of marriage or family.¹¹ The mistrust of marriage and the family has especially bedeviled feminists, who are wont to charge both with primary responsibility for the subordination and exploitation of women. And there can be no doubt that the feminist movement has decisively contributed to the dismantling of marriage and the family during recent decades.¹² Yet religious and political interest in marriage and the family testifies less to the determination to oppress women and children than to a deep understanding that marriage and the family have everywhere constituted the fundamental social unit—the fulcrum of civilization, the threshold between nature and culture. The core of the religious and political authorities' interest in marriage and the family may, then, be presumed to have derived from their understanding that these are the relations through which

people recognize themselves as human beings, through which people define themselves. The question was less one of their imposing marriage and the family upon naturally recalcitrant individuals than of their gaining legitimacy by associating political and religious authority with the fundamental social units into which people grouped themselves.

With respect to the bonds between marriage and family on the one hand and religious and political authority on the other, it is worth noting that both religious and political authorities themselves long borrowed heavily from the language of family relations, presumably because that language was taken to be the one that seemed most natural and legitimate to most people. The familial imagery that pervades Christianity begins with God the Father and includes not merely His Son, but also the Blessed Mother and the Holy Family. This same imagery pervaded and structured the early forms of European political authority, which, for centuries, depicted the monarch or the tsar as the father of his people. This form of political authority came appropriately to be known as patriarchy. In its classic formulation by the British political theorist Sir Robert Filmer, it justified the authority of the monarch as a direct inheritance from Adam, the father of the human race.¹³

In theory, patriarchy proclaimed a perfect symmetry between the governance of families and the governance of states—both understood to honor and obey the

divinely sanctioned authority of the father. But variants of patriarchy prevailed in societies that restricted its authority to the private realm and did not take it to justify the governance of public affairs. The leading example may well be ancient Rome, which endowed the father of the family with the power of life and death over family members and slaves. The power of the father in the Roman Republic thus exceeded even that of the power of the father in ancien régime France, who still had the authority to demand that the king imprison a son who dared to defy his wishes.¹⁴ Even after the English had forcefully repudiated public patriarchy and beheaded Charles I, the king who embodied it, they retained traces of its legacy in the assumption that a father would govern the family for which he was responsible, including his adult wife. Thus, in the eighteenth century, when Sir William Blackstone produced his great treatise on English common law, he insisted that in marriage the husband and wife must be one, and that one must be the husband. Blackstone was articulating the law of coverture, according to which the wife lived under the covering wing of her husband, who was held to protect her, govern her, and represent her in the public realm.¹⁵

The assumption that men naturally govern families, including their wives, has prevailed throughout most of history, although most premodern societies have granted more power to the family as a whole than to the specific husband and father, whom they have tended to view as

the delegate of the family—that is, as the steward of an authority that provides for the proper ordering of the family as a whole, which transcends him as an individual. In such a world, it was frequently possible for a woman to step into that role and speak in the name of the family as a whole. Had that not been the case, Elizabeth I would never have succeeded to the throne of her father, and, although questions about the effect her marriage might have upon her role as sovereign persisted throughout her reign and may well have accounted for her never having married, as ruler she proved no more tolerant of challenges to her authority than he.¹⁶

Nor all societies proved as faithful to the principles of delegation as the British, and to avoid complications, the French precociously established or rediscovered the Salic Law according to which a woman could never succeed to the throne. But elsewhere, notably Russia and Austria, women did govern in the name of their families, the interests of which they were believed to represent. Only during the modern and increasingly bureaucratic period did one country after another deem it prudent to institute explicit laws against women's political participation. And they invariably did so following the triumph of liberal, democratic, or individualistic principles that drew a hard line between public and private realms but also opened the way to women's claims to an individual identity independent of the family. Thus, during the second half of the nineteenth century, the United States and

many, if not all, Western European countries explicitly barred—or tacitly excluded—women from activities and occupations. In this respect, a kind of sexual segregation emerged in tandem with the racial segregation that succeeded the northern victory in the American Civil War and the abolition of slavery.¹⁷

Feminists have frequently been tempted to condemn most, if not all, marital and family relations throughout history as patriarchal. Many even argue that an independent system of patriarchy, grounded in men's presumed universal dominance within the family, has prevailed in all times and places.¹⁸ This charge woefully misjudges the true nature of patriarchy, which has been far from universal. More importantly, it fails to capture the complexity and, above all, the interdependence that have normally characterized the relations between women and men within marriages and families. To grasp the normal state of affairs, we need only remember that the vast majority of human beings have traditionally lived in peasant or farm families in which the contributions, including the labor, of the woman have normally been as important as those of the man.¹⁹ We should also recall that historically most married women have lived under conditions in which the reproduction of the population was the first business of society, in which many pregnancies did not come to term and many babies did not survive infancy, and in which artificial contraception was not—or not generally—available. These were conditions

under which the biological difference between the sexes had important consequences and were generally taken to justify significantly different roles for women and men, even when the women also played an important role in provision of the family's resources.²⁰

To identify the principal common denominator among the various historical forms of marriage and the family, we could do worse than settle on the widespread belief that marriage and the family articulate the natural sexual division of labor upon which social order and civilization rest. So widespread has agreement been on this matter that, until recently, one would have been hard-pressed to point to a single system of belief (including the great formal religions), a single theory of government, or a single social system that did not regard that "biological" fact as foundational—as an expression of the natural law that underlies and sets limits upon the positive laws of specific states.²¹ Only in the very recent past have we witnessed significant opposition to the view of men and women as different and complementary and naturally suited to cooperation within marital and familial bonds upon which the future of the succeeding generation is taken to depend. Indeed, had that purportedly natural relation between the sexes not encountered opposition, we, like other societies, would presumably still regard the family as the natural unit of all human society, notwithstanding differing assumptions about its precise composition and size.

Thus far, I have tried to underscore a few enduring, common elements of marriage and family at the expense of the various forms they may take. But historically, the family, precisely because of its pivotal and indispensable role in linking the individual to society, has demonstrated impressive adaptability: According to circumstances, families may be extended or nuclear, multigenerational or two-generational, matrilineal or patrilineal, matrilocal or patrilocal. They may assuredly be patriarchal, although they have probably never, as Friedrich Engels and others speculated, been genuinely matriarchal.²² Marriages themselves have varied not merely by monogamy and polygyny, but with regard to whether they are arranged or freely chosen, established on the basis of a bride price or a dowry, and other factors. Scholars have emphasized the variations, in large measure, to disabuse the complacent assumption that to be legitimate family and marriage must always have observed the model we take for granted. All societies may attempt to ensure their own orderly reproduction through the ways in which they welcome and rear the next generation, but they have not all done so in the same way. Yet the very richness and interest of our new panoramic sense of the diversity of family forms risks obscuring the most important consideration of all. For it may reasonably be argued that none of these seemingly infinite variations matches in significance the sea change that has marked the modern and, especially, the postmodern world.²³

If the modern ideals of companionate marriage and the nuclear family may not claim universal authority, they have nonetheless decisively shaped the ideas of contemporary Americans as well as Western Europeans, and, since World War II, they seem to have exercised some influence within a variety of "modernizing" societies throughout the world. The view of the family as appropriately nuclear and marriage as appropriately the product of the mutual love and choice of the individuals concerned emerged, as Lawrence Stone and others have argued, in Western Europe, notably England, at the dawn of the modern era. Scholars continue to debate the precise origins and causes of the modern ideal of marriage and the family, and most concur that it did not triumph in one fell swoop, much less gain an equal hold upon all social classes or even all regions of a single country. But they increasingly agree that, during the years following 1750, a new ideal of family and marriage was establishing a secure and apparently irreversible foothold among the English upper and upper-middle classes and that inhabitants of Western Europe and the North American colonies were following their lead.

Debates persist about the causes of the change in family size and dynamics toward the end of the early-modern period. Some scholars attribute the decisive role to economics and others to ideology, but most concur about the manifestations. The new attitude toward marriage emphasized the importance of individual choice and love

rather than the preference for arranged marriage designed to serve the political and economic interests of the larger family. In conformity with this preference for companionship and love between the partners, there emerged a new attitude toward children and motherhood. Elite mothers, who had previously turned their children over to wet-nurses, nannies, and governesses, were now expected to nurse their children themselves and to play a major role in the development of their minds and character. These expectations typically arose more or less in tandem with the first stirrings of political individualism, and they derived from the new interest in children as themselves emergent individuals. Indeed, both political individualism and the new psychology of childhood had a common source in the work of John Locke, in which childhood was viewed as a distinct—and formative—stage of life during which children's impressionable minds and hearts were molded by the loving attention and firm discipline of parents, especially the mother.²⁴ Whether as effect or cause, these new convictions about marriage, childhood, and family life generally accompanied an older age at first marriage for women and a gradual decline in the number of children per family. And the whole was ensconced in a view of the family as a private sphere, safely removed from the hurly-burly of public life, and informed by the glow of intimacy and love.²⁵

Most of us recognize this constellation of attitudes, if only because it prevailed among Europeans and Ameri-

cans until at least the upheavals of the 1960s and still prevails among many today. What we do not so readily recognize is that this view, which so many of us cherish, contained within itself the seeds of its own ultimate destruction. Companionate marriage and the loving, child-centered, private family assured tremendous benefits to many people and to society at large, but they also created an array of problems, including men's abuse of women and children, the personal unhappiness of husbands and wives, and the psychic misery of children. We need not exaggerate the abuses, which have occurred in all families in all times and which may actually have diminished during the nineteenth and early twentieth centuries, but we do need to acknowledge them. In recent years, it has become commonplace—in some circles, obligatory—to denounce the repressive and abusive character of the "patriarchal" bourgeois family. But whatever that family was, it was not patriarchal, and it arguably served its members better than any known alternative.

Ironically, the very emphasis upon love and mutuality between husband and wife and among parents and children that fostered the best features of this family also opened the way to its erosion. For example, once one assumes that a marriage must be grounded in love, how does one prohibit divorce when love dies? By the 1920s, divorce had, indeed, become much easier to obtain and was beginning to lose its social stigma. Thereafter, especially in the United States, the divorce rate skyrocketed

ated—all in the name of true love and the fulfillment of individuals. The bonds of the nuclear family were steadily loosening, but the decisive blow came with the extraordinary sexual and economic revolution of the last thirty years.²⁶ That dual revolution has spawned both unprecedented opportunities for women and the modern feminist movement, and has decisively undercut the social centrality of marriage. These explosive changes have given us no-fault divorce, abortion on demand, rampant unwed motherhood, and "children's rights," and now threaten us with same-sex marriage as well.

The numbers that chronicle the proliferation of divorce, the children born to unwed mothers, the children who live all or a large part of their childhood without a resident biological father, and the other casualties of our current attitudes and practices are staggering. But there is a real danger that single-minded attention to the quantitative magnitude of family disruption will obscure the dramatic significance of the qualitative change. For, seen in historical perspective, our contemporary situation is indeed something new under the sun. To be sure, there are many who deny that qualitative change has occurred, arguing, for example, that the proliferation of divorce more often than not results in the formation of new marriages.²⁷ And in truth, many if not most children in the seventeenth-century Chesapeake lost one or both of their parents before they reached their teens. Workers in nineteenth-century Paris frequently lacked the

resources to marry and lived in common-law marriages, which meant their children lacked legal standing. Until the twentieth century, most people died much younger than they die today, which meant that marriages did not last as long as those of today, and the surviving partner often remarried, which meant that many children grew up without either a biological mother or a biological father in residence. As for the contemporary reliance upon daycare and nannies, was such not the experience of countless children throughout history, especially among the well-to-do? All of which and more is true, but the use to which these facts are being put entirely misses the point.

For before the last thirty years or so, no known society has rejected some form of marriage and family as the ideal—and as a norm to which most people were expected to aspire. Exceptions to and violations of the norm were recognized as exceptions and violations. Today, if we credit our senses, we are witnessing a concerted attempt by a portion of the elite to deny the value of the norm. In its place, we are offered marriage as the personal fulfillment of the individual, who must be free to switch partners at will. And we are offered family as “families”—whatever combination of people choose to live together on whatever terms for whatever period of time. It is possible that adults may survive this madness, although one may be permitted to doubt it. It is doubtful that any significant number of children will survive it,

as the mounting evidence of their distress amply warns. History suggests that, since the dawn of time, one of the principal tasks of civilization has been to bind men to families—to hold them accountable for the children they father and for the children's mother. The modern period slowly eroded elements of that accomplishment, while it introduced some salutary reforms. But it left the ideal intact. Since the 1960s, the postmodern elite has, as if with the snap of the fingers, exploded it. What may emerge from the wreckage is anyone's guess, although the initial signs do not inspire confidence.

Permit me then to conclude with this thought: At first glance the history of marriage and the family may appear to offer a wondrous array of diversity, but that first glance, like others, is more deceptive than trustworthy. For, on closer inspection, history teaches that civilization has always been accompanied by—indeed grounded in—an ideal of marriage and the family that attempts to join the biological difference of men and women in the common project of responsibility for the next generation.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

Nos. 14–556, 14–562, 14–571 and 14–574

14–556 JAMES OBERGEFELL, ET AL., PETITIONERS
v.
RICHARD HODGES, DIRECTOR, OHIO
DEPARTMENT OF HEALTH, ET AL.;

14–562 VALERIA TANCO, ET AL., PETITIONERS
v.
BILL HASLAM, GOVERNOR OF
TENNESSEE, ET AL.;

14–571 APRIL DEBOER, ET AL., PETITIONERS
v.
RICK SNYDER, GOVERNOR OF MICHIGAN,
ET AL.; AND

14–574 GREGORY BOURKE, ET AL., PETITIONERS
v.
STEVE BESHEAR, GOVERNOR OF
KENTUCKY

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

[June 26, 2015]

JUSTICE KENNEDY delivered the opinion of the Court.

The Constitution promises liberty to all within its reach, a liberty that includes certain specific rights that allow

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persons, within a lawful realm, to define and express their identity. The petitioners in these cases seek to find that liberty by marrying someone of the same sex and having their marriages deemed lawful on the same terms and conditions as marriages between persons of the opposite sex.

I

These cases come from Michigan, Kentucky, Ohio, and Tennessee, States that define marriage as a union between one man and one woman. See, *e.g.*, Mich. Const., Art. I, §25; Ky. Const. §233A; Ohio Rev. Code Ann. §3101.01 (Lexis 2008); Tenn. Const., Art. XI, §18. The petitioners are 14 same-sex couples and two men whose same-sex partners are deceased. The respondents are state officials responsible for enforcing the laws in question. The petitioners claim the respondents violate the Fourteenth Amendment by denying them the right to marry or to have their marriages, lawfully performed in another State, given full recognition.

Petitioners filed these suits in United States District Courts in their home States. Each District Court ruled in their favor. Citations to those cases are in Appendix A, *infra*. The respondents appealed the decisions against them to the United States Court of Appeals for the Sixth Circuit. It consolidated the cases and reversed the judgments of the District Courts. *DeBoer v. Snyder*, 772 F. 3d 388 (2014). The Court of Appeals held that a State has no constitutional obligation to license same-sex marriages or to recognize same-sex marriages performed out of State.

The petitioners sought certiorari. This Court granted review, limited to two questions. 574 U. S. ___ (2015). The first, presented by the cases from Michigan and Kentucky, is whether the Fourteenth Amendment requires a State to license a marriage between two people of the same sex. The second, presented by the cases from Ohio,

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Tennessee, and, again, Kentucky, is whether the Fourteenth Amendment requires a State to recognize a same-sex marriage licensed and performed in a State which does grant that right.

II

Before addressing the principles and precedents that govern these cases, it is appropriate to note the history of the subject now before the Court.

A

From their beginning to their most recent page, the annals of human history reveal the transcendent importance of marriage. The lifelong union of a man and a woman always has promised nobility and dignity to all persons, without regard to their station in life. Marriage is sacred to those who live by their religions and offers unique fulfillment to those who find meaning in the secular realm. Its dynamic allows two people to find a life that could not be found alone, for a marriage becomes greater than just the two persons. Rising from the most basic human needs, marriage is essential to our most profound hopes and aspirations.

The centrality of marriage to the human condition makes it unsurprising that the institution has existed for millennia and across civilizations. Since the dawn of history, marriage has transformed strangers into relatives, binding families and societies together. Confucius taught that marriage lies at the foundation of government. 2 *Li Chi*: Book of Rites 266 (C. Chai & W. Chai eds., J. Legge transl. 1967). This wisdom was echoed centuries later and half a world away by Cicero, who wrote, “The first bond of society is marriage; next, children; and then the family.” See *De Officiis* 57 (W. Miller transl. 1913). There are untold references to the beauty of marriage in religious and philosophical texts spanning time, cultures,

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and faiths, as well as in art and literature in all their forms. It is fair and necessary to say these references were based on the understanding that marriage is a union between two persons of the opposite sex.

That history is the beginning of these cases. The respondents say it should be the end as well. To them, it would demean a timeless institution if the concept and lawful status of marriage were extended to two persons of the same sex. Marriage, in their view, is by its nature a gender-differentiated union of man and woman. This view long has been held—and continues to be held—in good faith by reasonable and sincere people here and throughout the world.

The petitioners acknowledge this history but contend that these cases cannot end there. Were their intent to demean the revered idea and reality of marriage, the petitioners' claims would be of a different order. But that is neither their purpose nor their submission. To the contrary, it is the enduring importance of marriage that underlies the petitioners' contentions. This, they say, is their whole point. Far from seeking to devalue marriage, the petitioners seek it for themselves because of their respect—and need—for its privileges and responsibilities. And their immutable nature dictates that same-sex marriage is their only real path to this profound commitment.

Recounting the circumstances of three of these cases illustrates the urgency of the petitioners' cause from their perspective. Petitioner James Obergefell, a plaintiff in the Ohio case, met John Arthur over two decades ago. They fell in love and started a life together, establishing a lasting, committed relation. In 2011, however, Arthur was diagnosed with amyotrophic lateral sclerosis, or ALS. This debilitating disease is progressive, with no known cure. Two years ago, Obergefell and Arthur decided to commit to one another, resolving to marry before Arthur died. To fulfill their mutual promise, they traveled from

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Ohio to Maryland, where same-sex marriage was legal. It was difficult for Arthur to move, and so the couple were wed inside a medical transport plane as it remained on the tarmac in Baltimore. Three months later, Arthur died. Ohio law does not permit Obergefell to be listed as the surviving spouse on Arthur's death certificate. By statute, they must remain strangers even in death, a state-imposed separation Obergefell deems "hurtful for the rest of time." App. in No. 14-556 etc., p. 38. He brought suit to be shown as the surviving spouse on Arthur's death certificate.

April DeBoer and Jayne Rowse are co-plaintiffs in the case from Michigan. They celebrated a commitment ceremony to honor their permanent relation in 2007. They both work as nurses, DeBoer in a neonatal unit and Rowse in an emergency unit. In 2009, DeBoer and Rowse fostered and then adopted a baby boy. Later that same year, they welcomed another son into their family. The new baby, born prematurely and abandoned by his biological mother, required around-the-clock care. The next year, a baby girl with special needs joined their family. Michigan, however, permits only opposite-sex married couples or single individuals to adopt, so each child can have only one woman as his or her legal parent. If an emergency were to arise, schools and hospitals may treat the three children as if they had only one parent. And, were tragedy to befall either DeBoer or Rowse, the other would have no legal rights over the children she had not been permitted to adopt. This couple seeks relief from the continuing uncertainty their unmarried status creates in their lives.

Army Reserve Sergeant First Class Ijpe DeKoe and his partner Thomas Kostura, co-plaintiffs in the Tennessee case, fell in love. In 2011, DeKoe received orders to deploy to Afghanistan. Before leaving, he and Kostura married in New York. A week later, DeKoe began his deployment, which lasted for almost a year. When he returned, the two

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settled in Tennessee, where DeKoe works full-time for the Army Reserve. Their lawful marriage is stripped from them whenever they reside in Tennessee, returning and disappearing as they travel across state lines. DeKoe, who served this Nation to preserve the freedom the Constitution protects, must endure a substantial burden.

The cases now before the Court involve other petitioners as well, each with their own experiences. Their stories reveal that they seek not to denigrate marriage but rather to live their lives, or honor their spouses' memory, joined by its bond.

B

The ancient origins of marriage confirm its centrality, but it has not stood in isolation from developments in law and society. The history of marriage is one of both continuity and change. That institution—even as confined to opposite-sex relations—has evolved over time.

For example, marriage was once viewed as an arrangement by the couple's parents based on political, religious, and financial concerns; but by the time of the Nation's founding it was understood to be a voluntary contract between a man and a woman. See N. Cott, *Public Vows: A History of Marriage and the Nation* 9–17 (2000); S. Coontz, *Marriage, A History* 15–16 (2005). As the role and status of women changed, the institution further evolved. Under the centuries-old doctrine of coverture, a married man and woman were treated by the State as a single, male-dominated legal entity. See 1 W. Blackstone, *Commentaries on the Laws of England* 430 (1765). As women gained legal, political, and property rights, and as society began to understand that women have their own equal dignity, the law of coverture was abandoned. See Brief for Historians of Marriage et al. as *Amici Curiae* 16–19. These and other developments in the institution of marriage over the past centuries were not mere superficial changes.

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Rather, they worked deep transformations in its structure, affecting aspects of marriage long viewed by many as essential. See generally N. Cott, *Public Vows*; S. Coontz, *Marriage*; H. Hartog, *Man & Wife in America: A History* (2000).

These new insights have strengthened, not weakened, the institution of marriage. Indeed, changed understandings of marriage are characteristic of a Nation where new dimensions of freedom become apparent to new generations, often through perspectives that begin in pleas or protests and then are considered in the political sphere and the judicial process.

This dynamic can be seen in the Nation's experiences with the rights of gays and lesbians. Until the mid-20th century, same-sex intimacy long had been condemned as immoral by the state itself in most Western nations, a belief often embodied in the criminal law. For this reason, among others, many persons did not deem homosexuals to have dignity in their own distinct identity. A truthful declaration by same-sex couples of what was in their hearts had to remain unspoken. Even when a greater awareness of the humanity and integrity of homosexual persons came in the period after World War II, the argument that gays and lesbians had a just claim to dignity was in conflict with both law and widespread social conventions. Same-sex intimacy remained a crime in many States. Gays and lesbians were prohibited from most government employment, barred from military service, excluded under immigration laws, targeted by police, and burdened in their rights to associate. See Brief for Organization of American Historians as *Amicus Curiae* 5–28.

For much of the 20th century, moreover, homosexuality was treated as an illness. When the American Psychiatric Association published the first Diagnostic and Statistical Manual of Mental Disorders in 1952, homosexuality was classified as a mental disorder, a position adhered to until 1973. See Position Statement on Homosexuality and Civil

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Rights, 1973, in 131 Am. J. Psychiatry 497 (1974). Only in more recent years have psychiatrists and others recognized that sexual orientation is both a normal expression of human sexuality and immutable. See Brief for American Psychological Association et al. as *Amici Curiae* 7–17.

In the late 20th century, following substantial cultural and political developments, same-sex couples began to lead more open and public lives and to establish families. This development was followed by a quite extensive discussion of the issue in both governmental and private sectors and by a shift in public attitudes toward greater tolerance. As a result, questions about the rights of gays and lesbians soon reached the courts, where the issue could be discussed in the formal discourse of the law.

This Court first gave detailed consideration to the legal status of homosexuals in *Bowers v. Hardwick*, 478 U. S. 186 (1986). There it upheld the constitutionality of a Georgia law deemed to criminalize certain homosexual acts. Ten years later, in *Romer v. Evans*, 517 U. S. 620 (1996), the Court invalidated an amendment to Colorado's Constitution that sought to foreclose any branch or political subdivision of the State from protecting persons against discrimination based on sexual orientation. Then, in 2003, the Court overruled *Bowers*, holding that laws making same-sex intimacy a crime "demea[n] the lives of homosexual persons." *Lawrence v. Texas*, 539 U. S. 558, 575.

Against this background, the legal question of same-sex marriage arose. In 1993, the Hawaii Supreme Court held Hawaii's law restricting marriage to opposite-sex couples constituted a classification on the basis of sex and was therefore subject to strict scrutiny under the Hawaii Constitution. *Baehr v. Lewin*, 74 Haw. 530, 852 P.2d 44. Although this decision did not mandate that same-sex marriage be allowed, some States were concerned by its implications and reaffirmed in their laws that marriage is

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defined as a union between opposite-sex partners. So too in 1996, Congress passed the Defense of Marriage Act (DOMA), 110 Stat. 2419, defining marriage for all federal-law purposes as “only a legal union between one man and one woman as husband and wife.” 1 U. S. C. §7.

The new and widespread discussion of the subject led other States to a different conclusion. In 2003, the Supreme Judicial Court of Massachusetts held the State’s Constitution guaranteed same-sex couples the right to marry. See *Goodridge v. Department of Public Health*, 440 Mass. 309, 798 N. E. 2d 941 (2003). After that ruling, some additional States granted marriage rights to same-sex couples, either through judicial or legislative processes. These decisions and statutes are cited in Appendix B, *infra*. Two Terms ago, in *United States v. Windsor*, 570 U. S. ____ (2013), this Court invalidated DOMA to the extent it barred the Federal Government from treating same-sex marriages as valid even when they were lawful in the State where they were licensed. DOMA, the Court held, impermissibly disparaged those same-sex couples “who wanted to affirm their commitment to one another before their children, their family, their friends, and their community.” *Id.*, at ____ (slip op., at 14).

Numerous cases about same-sex marriage have reached the United States Courts of Appeals in recent years. In accordance with the judicial duty to base their decisions on principled reasons and neutral discussions, without scornful or disparaging commentary, courts have written a substantial body of law considering all sides of these issues. That case law helps to explain and formulate the underlying principles this Court now must consider. With the exception of the opinion here under review and one other, see *Citizens for Equal Protection v. Bruning*, 455 F. 3d 859, 864–868 (CA8 2006), the Courts of Appeals have held that excluding same-sex couples from marriage violates the Constitution. There also have been many

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thoughtful District Court decisions addressing same-sex marriage—and most of them, too, have concluded same-sex couples must be allowed to marry. In addition the highest courts of many States have contributed to this ongoing dialogue in decisions interpreting their own State Constitutions. These state and federal judicial opinions are cited in Appendix A, *infra*.

After years of litigation, legislation, referenda, and the discussions that attended these public acts, the States are now divided on the issue of same-sex marriage. See Office of the Atty. Gen. of Maryland, *The State of Marriage Equality in America, State-by-State Supp.* (2015).

III

Under the Due Process Clause of the Fourteenth Amendment, no State shall “deprive any person of life, liberty, or property, without due process of law.” The fundamental liberties protected by this Clause include most of the rights enumerated in the Bill of Rights. See *Duncan v. Louisiana*, 391 U. S. 145, 147–149 (1968). In addition these liberties extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs. See, e.g., *Eisenstadt v. Baird*, 405 U. S. 438, 453 (1972); *Griswold v. Connecticut*, 381 U. S. 479, 484–486 (1965).

The identification and protection of fundamental rights is an enduring part of the judicial duty to interpret the Constitution. That responsibility, however, “has not been reduced to any formula.” *Poe v. Ullman*, 367 U. S. 497, 542 (1961) (Harlan, J., dissenting). Rather, it requires courts to exercise reasoned judgment in identifying interests of the person so fundamental that the State must accord them its respect. See *ibid.* That process is guided by many of the same considerations relevant to analysis of other constitutional provisions that set forth broad principles rather than specific requirements. History and tradi-

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tion guide and discipline this inquiry but do not set its outer boundaries. See *Lawrence, supra*, at 572. That method respects our history and learns from it without allowing the past alone to rule the present.

The nature of injustice is that we may not always see it in our own times. The generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of freedom in all of its dimensions, and so they entrusted to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning. When new insight reveals discord between the Constitution's central protections and a received legal stricture, a claim to liberty must be addressed.

Applying these established tenets, the Court has long held the right to marry is protected by the Constitution. In *Loving v. Virginia*, 388 U. S. 1, 12 (1967), which invalidated bans on interracial unions, a unanimous Court held marriage is "one of the vital personal rights essential to the orderly pursuit of happiness by free men." The Court reaffirmed that holding in *Zablocki v. Redhail*, 434 U. S. 374, 384 (1978), which held the right to marry was burdened by a law prohibiting fathers who were behind on child support from marrying. The Court again applied this principle in *Turner v. Safley*, 482 U. S. 78, 95 (1987), which held the right to marry was abridged by regulations limiting the privilege of prison inmates to marry. Over time and in other contexts, the Court has reiterated that the right to marry is fundamental under the Due Process Clause. See, e.g., *M. L. B. v. S. L. J.*, 519 U. S. 102, 116 (1996); *Cleveland Bd. of Ed. v. LaFleur*, 414 U. S. 632, 639–640 (1974); *Griswold, supra*, at 486; *Skinner v. Oklahoma ex rel. Williamson*, 316 U. S. 535, 541 (1942); *Meyer v. Nebraska*, 262 U. S. 390, 399 (1923).

It cannot be denied that this Court's cases describing the right to marry presumed a relationship involving opposite-sex partners. The Court, like many institutions,

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has made assumptions defined by the world and time of which it is a part. This was evident in *Baker v. Nelson*, 409 U. S. 810, a one-line summary decision issued in 1972, holding the exclusion of same-sex couples from marriage did not present a substantial federal question.

Still, there are other, more instructive precedents. This Court's cases have expressed constitutional principles of broader reach. In defining the right to marry these cases have identified essential attributes of that right based in history, tradition, and other constitutional liberties inherent in this intimate bond. See, e.g., *Lawrence*, 539 U. S., at 574; *Turner*, *supra*, at 95; *Zablocki*, *supra*, at 384; *Loving*, *supra*, at 12; *Griswold*, *supra*, at 486. And in assessing whether the force and rationale of its cases apply to same-sex couples, the Court must respect the basic reasons why the right to marry has been long protected. See, e.g., *Eisenstadt*, *supra*, at 453–454; *Poe*, *supra*, at 542–553 (Harlan, J., dissenting).

This analysis compels the conclusion that same-sex couples may exercise the right to marry. The four principles and traditions to be discussed demonstrate that the reasons marriage is fundamental under the Constitution apply with equal force to same-sex couples.

A first premise of the Court's relevant precedents is that the right to personal choice regarding marriage is inherent in the concept of individual autonomy. This abiding connection between marriage and liberty is why *Loving* invalidated interracial marriage bans under the Due Process Clause. See 388 U. S., at 12; see also *Zablocki*, *supra*, at 384 (observing *Loving* held “the right to marry is of fundamental importance for all individuals”). Like choices concerning contraception, family relationships, procreation, and childrearing, all of which are protected by the Constitution, decisions concerning marriage are among the most intimate that an individual can make. See *Lawrence*, *supra*, at 574. Indeed, the Court has noted it would

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be contradictory “to recognize a right of privacy with respect to other matters of family life and not with respect to the decision to enter the relationship that is the foundation of the family in our society.” *Zablocki, supra*, at 386.

Choices about marriage shape an individual’s destiny. As the Supreme Judicial Court of Massachusetts has explained, because “it fulfils yearnings for security, safe haven, and connection that express our common humanity, civil marriage is an esteemed institution, and the decision whether and whom to marry is among life’s momentous acts of self-definition.” *Goodridge*, 440 Mass., at 322, 798 N. E. 2d, at 955.

The nature of marriage is that, through its enduring bond, two persons together can find other freedoms, such as expression, intimacy, and spirituality. This is true for all persons, whatever their sexual orientation. See *Windsor*, 570 U. S., at ____– ____ (slip op., at 22–23). There is dignity in the bond between two men or two women who seek to marry and in their autonomy to make such profound choices. Cf. *Loving, supra*, at 12 (“[T]he freedom to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State”).

A second principle in this Court’s jurisprudence is that the right to marry is fundamental because it supports a two-person union unlike any other in its importance to the committed individuals. This point was central to *Griswold v. Connecticut*, which held the Constitution protects the right of married couples to use contraception. 381 U. S., at 485. Suggesting that marriage is a right “older than the Bill of Rights,” *Griswold* described marriage this way:

“Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social

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projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.” *Id.*, at 486.

And in *Turner*, the Court again acknowledged the intimate association protected by this right, holding prisoners could not be denied the right to marry because their committed relationships satisfied the basic reasons why marriage is a fundamental right. See 482 U. S., at 95–96. The right to marry thus dignifies couples who “wish to define themselves by their commitment to each other.” *Windsor*, *supra*, at ___ (slip op., at 14). Marriage responds to the universal fear that a lonely person might call out only to find no one there. It offers the hope of companionship and understanding and assurance that while both still live there will be someone to care for the other.

As this Court held in *Lawrence*, same-sex couples have the same right as opposite-sex couples to enjoy intimate association. *Lawrence* invalidated laws that made same-sex intimacy a criminal act. And it acknowledged that “[w]hen sexuality finds overt expression in intimate conduct with another person, the conduct can be but one element in a personal bond that is more enduring.” 539 U. S., at 567. But while *Lawrence* confirmed a dimension of freedom that allows individuals to engage in intimate association without criminal liability, it does not follow that freedom stops there. Outlaw to outcast may be a step forward, but it does not achieve the full promise of liberty.

A third basis for protecting the right to marry is that it safeguards children and families and thus draws meaning from related rights of childrearing, procreation, and education. See *Pierce v. Society of Sisters*, 268 U. S. 510 (1925); *Meyer*, 262 U. S., at 399. The Court has recognized these connections by describing the varied rights as a unified whole: “[T]he right to ‘marry, establish a home and bring up children’ is a central part of the liberty protected by the Due Process Clause.” *Zablocki*, 434 U. S., at 384

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(quoting *Meyer, supra*, at 399). Under the laws of the several States, some of marriage's protections for children and families are material. But marriage also confers more profound benefits. By giving recognition and legal structure to their parents' relationship, marriage allows children "to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives." *Windsor, supra*, at ____ (slip op., at 23). Marriage also affords the permanency and stability important to children's best interests. See Brief for Scholars of the Constitutional Rights of Children as *Amici Curiae* 22–27.

As all parties agree, many same-sex couples provide loving and nurturing homes to their children, whether biological or adopted. And hundreds of thousands of children are presently being raised by such couples. See Brief for Gary J. Gates as *Amicus Curiae* 4. Most States have allowed gays and lesbians to adopt, either as individuals or as couples, and many adopted and foster children have same-sex parents, see *id.*, at 5. This provides powerful confirmation from the law itself that gays and lesbians can create loving, supportive families.

Excluding same-sex couples from marriage thus conflicts with a central premise of the right to marry. Without the recognition, stability, and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser. They also suffer the significant material costs of being raised by unmarried parents, relegated through no fault of their own to a more difficult and uncertain family life. The marriage laws at issue here thus harm and humiliate the children of same-sex couples. See *Windsor, supra*, at ____ (slip op., at 23).

That is not to say the right to marry is less meaningful for those who do not or cannot have children. An ability, desire, or promise to procreate is not and has not been a prerequisite for a valid marriage in any State. In light of

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precedent protecting the right of a married couple not to procreate, it cannot be said the Court or the States have conditioned the right to marry on the capacity or commitment to procreate. The constitutional marriage right has many aspects, of which childbearing is only one.

Fourth and finally, this Court's cases and the Nation's traditions make clear that marriage is a keystone of our social order. Alexis de Tocqueville recognized this truth on his travels through the United States almost two centuries ago:

“There is certainly no country in the world where the tie of marriage is so much respected as in America . . . [W]hen the American retires from the turmoil of public life to the bosom of his family, he finds in it the image of order and of peace [H]e afterwards carries [that image] with him into public affairs.” 1 Democracy in America 309 (H. Reeve transl., rev. ed. 1990).

In *Maynard v. Hill*, 125 U. S. 190, 211 (1888), the Court echoed de Tocqueville, explaining that marriage is “the foundation of the family and of society, without which there would be neither civilization nor progress.” Marriage, the *Maynard* Court said, has long been “a great public institution, giving character to our whole civil polity.” *Id.*, at 213. This idea has been reiterated even as the institution has evolved in substantial ways over time, superseding rules related to parental consent, gender, and race once thought by many to be essential. See generally N. Cott, *Public Vows*. Marriage remains a building block of our national community.

For that reason, just as a couple vows to support each other, so does society pledge to support the couple, offering symbolic recognition and material benefits to protect and nourish the union. Indeed, while the States are in general free to vary the benefits they confer on all married couples, they have throughout our history made marriage the

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basis for an expanding list of governmental rights, benefits, and responsibilities. These aspects of marital status include: taxation; inheritance and property rights; rules of intestate succession; spousal privilege in the law of evidence; hospital access; medical decisionmaking authority; adoption rights; the rights and benefits of survivors; birth and death certificates; professional ethics rules; campaign finance restrictions; workers' compensation benefits; health insurance; and child custody, support, and visitation rules. See Brief for United States as *Amicus Curiae* 6–9; Brief for American Bar Association as *Amicus Curiae* 8–29. Valid marriage under state law is also a significant status for over a thousand provisions of federal law. See *Windsor*, 570 U. S., at ____ – ____ (slip op., at 15–16). The States have contributed to the fundamental character of the marriage right by placing that institution at the center of so many facets of the legal and social order.

There is no difference between same- and opposite-sex couples with respect to this principle. Yet by virtue of their exclusion from that institution, same-sex couples are denied the constellation of benefits that the States have linked to marriage. This harm results in more than just material burdens. Same-sex couples are consigned to an instability many opposite-sex couples would deem intolerable in their own lives. As the State itself makes marriage all the more precious by the significance it attaches to it, exclusion from that status has the effect of teaching that gays and lesbians are unequal in important respects. It demeans gays and lesbians for the State to lock them out of a central institution of the Nation's society. Same-sex couples, too, may aspire to the transcendent purposes of marriage and seek fulfillment in its highest meaning.

The limitation of marriage to opposite-sex couples may long have seemed natural and just, but its inconsistency with the central meaning of the fundamental right to marry is now manifest. With that knowledge must come

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the recognition that laws excluding same-sex couples from the marriage right impose stigma and injury of the kind prohibited by our basic charter.

Objecting that this does not reflect an appropriate framing of the issue, the respondents refer to *Washington v. Glucksberg*, 521 U. S. 702, 721 (1997), which called for a “careful description” of fundamental rights. They assert the petitioners do not seek to exercise the right to marry but rather a new and nonexistent “right to same-sex marriage.” Brief for Respondent in No. 14–556, p. 8. *Glucksberg* did insist that liberty under the Due Process Clause must be defined in a most circumscribed manner, with central reference to specific historical practices. Yet while that approach may have been appropriate for the asserted right there involved (physician-assisted suicide), it is inconsistent with the approach this Court has used in discussing other fundamental rights, including marriage and intimacy. *Loving* did not ask about a “right to interracial marriage”; *Turner* did not ask about a “right of inmates to marry”; and *Zablocki* did not ask about a “right of fathers with unpaid child support duties to marry.” Rather, each case inquired about the right to marry in its comprehensive sense, asking if there was a sufficient justification for excluding the relevant class from the right. See also *Glucksberg*, 521 U. S., at 752–773 (Souter, J., concurring in judgment); *id.*, at 789–792 (BREYER, J., concurring in judgments).

That principle applies here. If rights were defined by who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied. This Court has rejected that approach, both with respect to the right to marry and the rights of gays and lesbians. See *Loving* 388 U. S., at 12; *Lawrence*, 539 U. S., at 566–567.

The right to marry is fundamental as a matter of history and tradition, but rights come not from ancient sources

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alone. They rise, too, from a better informed understanding of how constitutional imperatives define a liberty that remains urgent in our own era. Many who deem same-sex marriage to be wrong reach that conclusion based on decent and honorable religious or philosophical premises, and neither they nor their beliefs are disparaged here. But when that sincere, personal opposition becomes enacted law and public policy, the necessary consequence is to put the imprimatur of the State itself on an exclusion that soon demeans or stigmatizes those whose own liberty is then denied. Under the Constitution, same-sex couples seek in marriage the same legal treatment as opposite-sex couples, and it would disparage their choices and diminish their personhood to deny them this right.

The right of same-sex couples to marry that is part of the liberty promised by the Fourteenth Amendment is derived, too, from that Amendment's guarantee of the equal protection of the laws. The Due Process Clause and the Equal Protection Clause are connected in a profound way, though they set forth independent principles. Rights implicit in liberty and rights secured by equal protection may rest on different precepts and are not always co-extensive, yet in some instances each may be instructive as to the meaning and reach of the other. In any particular case one Clause may be thought to capture the essence of the right in a more accurate and comprehensive way, even as the two Clauses may converge in the identification and definition of the right. See *M. L. B.*, 519 U. S., at 120–121; *id.*, at 128–129 (KENNEDY, J., concurring in judgment); *Bearden v. Georgia*, 461 U. S. 660, 665 (1983). This interrelation of the two principles furthers our understanding of what freedom is and must become.

The Court's cases touching upon the right to marry reflect this dynamic. In *Loving* the Court invalidated a prohibition on interracial marriage under both the Equal Protection Clause and the Due Process Clause. The Court

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first declared the prohibition invalid because of its unequal treatment of interracial couples. It stated: “There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause.” 388 U. S., at 12. With this link to equal protection the Court proceeded to hold the prohibition offended central precepts of liberty: “To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State’s citizens of liberty without due process of law.” *Ibid.* The reasons why marriage is a fundamental right became more clear and compelling from a full awareness and understanding of the hurt that resulted from laws barring interracial unions.

The synergy between the two protections is illustrated further in *Zablocki*. There the Court invoked the Equal Protection Clause as its basis for invalidating the challenged law, which, as already noted, barred fathers who were behind on child-support payments from marrying without judicial approval. The equal protection analysis depended in central part on the Court’s holding that the law burdened a right “of fundamental importance.” 434 U. S., at 383. It was the essential nature of the marriage right, discussed at length in *Zablocki*, see *id.*, at 383–387, that made apparent the law’s incompatibility with requirements of equality. Each concept—liberty and equal protection—leads to a stronger understanding of the other.

Indeed, in interpreting the Equal Protection Clause, the Court has recognized that new insights and societal understandings can reveal unjustified inequality within our most fundamental institutions that once passed unnoticed and unchallenged. To take but one period, this occurred with respect to marriage in the 1970’s and 1980’s. Notwithstanding the gradual erosion of the doctrine of cover-

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ture, see *supra*, at 6, invidious sex-based classifications in marriage remained common through the mid-20th century. See App. to Brief for Appellant in *Reed v. Reed*, O. T. 1971, No. 70–4, pp. 69–88 (an extensive reference to laws extant as of 1971 treating women as unequal to men in marriage). These classifications denied the equal dignity of men and women. One State’s law, for example, provided in 1971 that “the husband is the head of the family and the wife is subject to him; her legal civil existence is merged in the husband, except so far as the law recognizes her separately, either for her own protection, or for her benefit.” Ga. Code Ann. §53–501 (1935). Responding to a new awareness, the Court invoked equal protection principles to invalidate laws imposing sex-based inequality on marriage. See, e.g., *Kirchberg v. Feenstra*, 450 U. S. 455 (1981); *Wengler v. Druggists Mut. Ins. Co.*, 446 U. S. 142 (1980); *Califano v. Westcott*, 443 U. S. 76 (1979); *Orr v. Orr*, 440 U. S. 268 (1979); *Califano v. Goldfarb*, 430 U. S. 199 (1977) (plurality opinion); *Weinberger v. Wiesenfeld*, 420 U. S. 636 (1975); *Frontiero v. Richardson*, 411 U. S. 677 (1973). Like *Loving* and *Zablocki*, these precedents show the Equal Protection Clause can help to identify and correct inequalities in the institution of marriage, vindicating precepts of liberty and equality under the Constitution.

Other cases confirm this relation between liberty and equality. In *M. L. B. v. S. L. J.*, the Court invalidated under due process and equal protection principles a statute requiring indigent mothers to pay a fee in order to appeal the termination of their parental rights. See 519 U. S., at 119–124. In *Eisenstadt v. Baird*, the Court invoked both principles to invalidate a prohibition on the distribution of contraceptives to unmarried persons but not married persons. See 405 U. S., at 446–454. And in *Skinner v. Oklahoma ex rel. Williamson*, the Court invalidated under both principles a law that allowed steriliza-

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tion of habitual criminals. See 316 U. S., at 538–543.

In *Lawrence* the Court acknowledged the interlocking nature of these constitutional safeguards in the context of the legal treatment of gays and lesbians. See 539 U. S., at 575. Although *Lawrence* elaborated its holding under the Due Process Clause, it acknowledged, and sought to remedy, the continuing inequality that resulted from laws making intimacy in the lives of gays and lesbians a crime against the State. See *ibid.* *Lawrence* therefore drew upon principles of liberty and equality to define and protect the rights of gays and lesbians, holding the State “cannot demean their existence or control their destiny by making their private sexual conduct a crime.” *Id.*, at 578.

This dynamic also applies to same-sex marriage. It is now clear that the challenged laws burden the liberty of same-sex couples, and it must be further acknowledged that they abridge central precepts of equality. Here the marriage laws enforced by the respondents are in essence unequal: same-sex couples are denied all the benefits afforded to opposite-sex couples and are barred from exercising a fundamental right. Especially against a long history of disapproval of their relationships, this denial to same-sex couples of the right to marry works a grave and continuing harm. The imposition of this disability on gays and lesbians serves to disrespect and subordinate them. And the Equal Protection Clause, like the Due Process Clause, prohibits this unjustified infringement of the fundamental right to marry. See, *e.g.*, *Zablocki*, *supra*, at 383–388; *Skinner*, 316 U. S., at 541.

These considerations lead to the conclusion that the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry. No

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longer may this liberty be denied to them. *Baker v. Nelson* must be and now is overruled, and the State laws challenged by Petitioners in these cases are now held invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.

IV

There may be an initial inclination in these cases to proceed with caution—to await further legislation, litigation, and debate. The respondents warn there has been insufficient democratic discourse before deciding an issue so basic as the definition of marriage. In its ruling on the cases now before this Court, the majority opinion for the Court of Appeals made a cogent argument that it would be appropriate for the respondents' States to await further public discussion and political measures before licensing same-sex marriages. See *DeBoer*, 772 F. 3d, at 409.

Yet there has been far more deliberation than this argument acknowledges. There have been referenda, legislative debates, and grassroots campaigns, as well as countless studies, papers, books, and other popular and scholarly writings. There has been extensive litigation in state and federal courts. See Appendix A, *infra*. Judicial opinions addressing the issue have been informed by the contentions of parties and counsel, which, in turn, reflect the more general societal discussion of same-sex marriage and its meaning that has occurred over the past decades. As more than 100 *amici* make clear in their filings, many of the central institutions in American life—state and local governments, the military, large and small businesses, labor unions, religious organizations, law enforcement, civic groups, professional organizations, and universities—have devoted substantial attention to the question. This has led to an enhanced understanding of the issue—an understanding reflected in the arguments now presented

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describe. Indeed, with respect to this asserted basis for excluding same-sex couples from the right to marry, it is appropriate to observe these cases involve only the rights of two consenting adults whose marriages would pose no risk of harm to themselves or third parties.

Finally, it must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered. The same is true of those who oppose same-sex marriage for other reasons. In turn, those who believe allowing same-sex marriage is proper or indeed essential, whether as a matter of religious conviction or secular belief, may engage those who disagree with their view in an open and searching debate. The Constitution, however, does not permit the State to bar same-sex couples from marriage on the same terms as accorded to couples of the opposite sex.

V

These cases also present the question whether the Constitution requires States to recognize same-sex marriages validly performed out of State. As made clear by the case of *Obergefell and Arthur*, and by that of *DeKoe and Kostura*, the recognition bans inflict substantial and continuing harm on same-sex couples.

Being married in one State but having that valid marriage denied in another is one of “the most perplexing and distressing complication[s]” in the law of domestic relations. *Williams v. North Carolina*, 317 U. S. 287, 299 (1942) (internal quotation marks omitted). Leaving the current state of affairs in place would maintain and pro-

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mote instability and uncertainty. For some couples, even an ordinary drive into a neighboring State to visit family or friends risks causing severe hardship in the event of a spouse's hospitalization while across state lines. In light of the fact that many States already allow same-sex marriage—and hundreds of thousands of these marriages already have occurred—the disruption caused by the recognition bans is significant and ever-growing.

As counsel for the respondents acknowledged at argument, if States are required by the Constitution to issue marriage licenses to same-sex couples, the justifications for refusing to recognize those marriages performed elsewhere are undermined. See Tr. of Oral Arg. on Question 2, p. 44. The Court, in this decision, holds same-sex couples may exercise the fundamental right to marry in all States. It follows that the Court also must hold—and it now does hold—that there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character.

* * *

No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization's oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right.

The judgment of the Court of Appeals for the Sixth Circuit is reversed.

It is so ordered.

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SUPREME COURT OF THE UNITED STATES

Nos. 14–556, 14-562, 14-571 and 14–574

14–556 JAMES OBERGEFELL, ET AL., PETITIONERS
v.
RICHARD HODGES, DIRECTOR, OHIO
DEPARTMENT OF HEALTH, ET AL.;

14–562 VALERIA TANCO, ET AL., PETITIONERS
v.
BILL HASLAM, GOVERNOR OF
TENNESSEE, ET AL.;

14–571 APRIL DEBOER, ET AL., PETITIONERS
v.
RICK SNYDER, GOVERNOR OF MICHIGAN,
ET AL.; AND

14–574 GREGORY BOURKE, ET AL., PETITIONERS
v.
STEVE BESHEAR, GOVERNOR OF
KENTUCKY

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

[June 26, 2015]

CHIEF JUSTICE ROBERTS, with whom JUSTICE SCALIA
and JUSTICE THOMAS join, dissenting.

Petitioners make strong arguments rooted in social
policy and considerations of fairness. They contend that
same-sex couples should be allowed to affirm their love
and commitment through marriage, just like opposite-sex
couples. That position has undeniable appeal; over the

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past six years, voters and legislators in eleven States and the District of Columbia have revised their laws to allow marriage between two people of the same sex.

But this Court is not a legislature. Whether same-sex marriage is a good idea should be of no concern to us. Under the Constitution, judges have power to say what the law is, not what it should be. The people who ratified the Constitution authorized courts to exercise “neither force nor will but merely judgment.” The Federalist No. 78, p. 465 (C. Rossiter ed. 1961) (A. Hamilton) (capitalization altered).

Although the policy arguments for extending marriage to same-sex couples may be compelling, the legal arguments for requiring such an extension are not. The fundamental right to marry does not include a right to make a State change its definition of marriage. And a State’s decision to maintain the meaning of marriage that has persisted in every culture throughout human history can hardly be called irrational. In short, our Constitution does not enact any one theory of marriage. The people of a State are free to expand marriage to include same-sex couples, or to retain the historic definition.

Today, however, the Court takes the extraordinary step of ordering every State to license and recognize same-sex marriage. Many people will rejoice at this decision, and I begrudge none their celebration. But for those who believe in a government of laws, not of men, the majority’s approach is deeply disheartening. Supporters of same-sex marriage have achieved considerable success persuading their fellow citizens—through the democratic process—to adopt their view. That ends today. Five lawyers have closed the debate and enacted their own vision of marriage as a matter of constitutional law. Stealing this issue from the people will for many cast a cloud over same-sex marriage, making a dramatic social change that much more difficult to accept.

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The majority's decision is an act of will, not legal judgment. The right it announces has no basis in the Constitution or this Court's precedent. The majority expressly disclaims judicial "caution" and omits even a pretense of humility, openly relying on its desire to remake society according to its own "new insight" into the "nature of injustice." *Ante*, at 11, 23. As a result, the Court invalidates the marriage laws of more than half the States and orders the transformation of a social institution that has formed the basis of human society for millennia, for the Kalahari Bushmen and the Han Chinese, the Carthaginians and the Aztecs. Just who do we think we are?

It can be tempting for judges to confuse our own preferences with the requirements of the law. But as this Court has been reminded throughout our history, the Constitution "is made for people of fundamentally differing views." *Lochner v. New York*, 198 U. S. 45, 76 (1905) (Holmes, J., dissenting). Accordingly, "courts are not concerned with the wisdom or policy of legislation." *Id.*, at 69 (Harlan, J., dissenting). The majority today neglects that restrained conception of the judicial role. It seizes for itself a question the Constitution leaves to the people, at a time when the people are engaged in a vibrant debate on that question. And it answers that question based not on neutral principles of constitutional law, but on its own "understanding of what freedom is and must become." *Ante*, at 19. I have no choice but to dissent.

Understand well what this dissent is about: It is not about whether, in my judgment, the institution of marriage should be changed to include same-sex couples. It is instead about whether, in our democratic republic, that decision should rest with the people acting through their elected representatives, or with five lawyers who happen to hold commissions authorizing them to resolve legal disputes according to law. The Constitution leaves no doubt about the answer.

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I

Petitioners and their *amici* base their arguments on the “right to marry” and the imperative of “marriage equality.” There is no serious dispute that, under our precedents, the Constitution protects a right to marry and requires States to apply their marriage laws equally. The real question in these cases is what constitutes “marriage,” or—more precisely—*who decides* what constitutes “marriage”?

The majority largely ignores these questions, relegating ages of human experience with marriage to a paragraph or two. Even if history and precedent are not “the end” of these cases, *ante*, at 4, I would not “sweep away what has so long been settled” without showing greater respect for all that preceded us. *Town of Greece v. Galloway*, 572 U. S. ___, ___ (2014) (slip op., at 8).

A

As the majority acknowledges, marriage “has existed for millennia and across civilizations.” *Ante*, at 3. For all those millennia, across all those civilizations, “marriage” referred to only one relationship: the union of a man and a woman. See *ante*, at 4; Tr. of Oral Arg. on Question 1, p. 12 (petitioners conceding that they are not aware of any society that permitted same-sex marriage before 2001). As the Court explained two Terms ago, “until recent years, . . . marriage between a man and a woman no doubt had been thought of by most people as essential to the very definition of that term and to its role and function throughout the history of civilization.” *United States v. Windsor*, 570 U. S. ___, ___ (2013) (slip op., at 13).

This universal definition of marriage as the union of a man and a woman is no historical coincidence. Marriage did not come about as a result of a political movement, discovery, disease, war, religious doctrine, or any other moving force of world history—and certainly not as a result of a prehistoric decision to exclude gays and lesbi-

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ans. It arose in the nature of things to meet a vital need: ensuring that children are conceived by a mother and father committed to raising them in the stable conditions of a lifelong relationship. See G. Quale, *A History of Marriage Systems* 2 (1988); cf. M. Cicero, *De Officiis* 57 (W. Miller transl. 1913) (“For since the reproductive instinct is by nature’s gift the common possession of all living creatures, the first bond of union is that between husband and wife; the next, that between parents and children; then we find one home, with everything in common.”).

The premises supporting this concept of marriage are so fundamental that they rarely require articulation. The human race must procreate to survive. Procreation occurs through sexual relations between a man and a woman. When sexual relations result in the conception of a child, that child’s prospects are generally better if the mother and father stay together rather than going their separate ways. Therefore, for the good of children and society, sexual relations that can lead to procreation should occur only between a man and a woman committed to a lasting bond.

Society has recognized that bond as marriage. And by bestowing a respected status and material benefits on married couples, society encourages men and women to conduct sexual relations within marriage rather than without. As one prominent scholar put it, “Marriage is a socially arranged solution for the problem of getting people to stay together and care for children that the mere desire for children, and the sex that makes children possible, does not solve.” J. Q. Wilson, *The Marriage Problem* 41 (2002).

This singular understanding of marriage has prevailed in the United States throughout our history. The majority accepts that at “the time of the Nation’s founding [marriage] was understood to be a voluntary contract between

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a man and a woman.” *Ante*, at 6. Early Americans drew heavily on legal scholars like William Blackstone, who regarded marriage between “husband and wife” as one of the “great relations in private life,” and philosophers like John Locke, who described marriage as “a voluntary compact between man and woman” centered on “its chief end, procreation” and the “nourishment and support” of children. 1 W. Blackstone, *Commentaries* *410; J. Locke, *Second Treatise of Civil Government* §§78–79, p. 39 (J. Gough ed. 1947). To those who drafted and ratified the Constitution, this conception of marriage and family “was a given: its structure, its stability, roles, and values accepted by all.” Forte, *The Framers’ Idea of Marriage and Family*, in *The Meaning of Marriage* 100, 102 (R. George & J. Elshtain eds. 2006).

The Constitution itself says nothing about marriage, and the Framers thereby entrusted the States with “[t]he whole subject of the domestic relations of husband and wife.” *Windsor*, 570 U. S., at ___ (slip op., at 17) (quoting *In re Burrus*, 136 U. S. 586, 593–594 (1890)). There is no dispute that every State at the founding—and every State throughout our history until a dozen years ago—defined marriage in the traditional, biologically rooted way. The four States in these cases are typical. Their laws, before and after statehood, have treated marriage as the union of a man and a woman. See *DeBoer v. Snyder*, 772 F. 3d 388, 396–399 (CA6 2014). Even when state laws did not specify this definition expressly, no one doubted what they meant. See *Jones v. Hallahan*, 501 S. W. 2d 588, 589 (Ky. App. 1973). The meaning of “marriage” went without saying.

Of course, many did say it. In his first American dictionary, Noah Webster defined marriage as “the legal union of a man and woman for life,” which served the purposes of “preventing the promiscuous intercourse of the sexes, . . . promoting domestic felicity, and . . . securing the

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maintenance and education of children.” 1 An American Dictionary of the English Language (1828). An influential 19th-century treatise defined marriage as “a civil status, existing in one man and one woman legally united for life for those civil and social purposes which are based in the distinction of sex.” J. Bishop, Commentaries on the Law of Marriage and Divorce 25 (1852). The first edition of Black’s Law Dictionary defined marriage as “the civil status of one man and one woman united in law for life.” Black’s Law Dictionary 756 (1891) (emphasis deleted). The dictionary maintained essentially that same definition for the next century.

This Court’s precedents have repeatedly described marriage in ways that are consistent only with its traditional meaning. Early cases on the subject referred to marriage as “the union for life of one man and one woman,” *Murphy v. Ramsey*, 114 U. S. 15, 45 (1885), which forms “the foundation of the family and of society, without which there would be neither civilization nor progress,” *Maynard v. Hill*, 125 U. S. 190, 211 (1888). We later described marriage as “fundamental to our very existence and survival,” an understanding that necessarily implies a procreative component. *Loving v. Virginia*, 388 U. S. 1, 12 (1967); see *Skinner v. Oklahoma ex rel. Williamson*, 316 U. S. 535, 541 (1942). More recent cases have directly connected the right to marry with the “right to procreate.” *Zablocki v. Redhail*, 434 U. S. 374, 386 (1978).

As the majority notes, some aspects of marriage have changed over time. Arranged marriages have largely given way to pairings based on romantic love. States have replaced coverture, the doctrine by which a married man and woman became a single legal entity, with laws that respect each participant’s separate status. Racial restrictions on marriage, which “arose as an incident to slavery” to promote “White Supremacy,” were repealed by many States and ultimately struck down by this Court.

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Loving, 388 U. S., at 6–7.

The majority observes that these developments “were not mere superficial changes” in marriage, but rather “worked deep transformations in its structure.” *Ante*, at 6–7. They did not, however, work any transformation in the core structure of marriage as the union between a man and a woman. If you had asked a person on the street how marriage was defined, no one would ever have said, “Marriage is the union of a man and a woman, where the woman is subject to coverture.” The majority may be right that the “history of marriage is one of both continuity and change,” but the core meaning of marriage has endured. *Ante*, at 6.

B

Shortly after this Court struck down racial restrictions on marriage in *Loving*, a gay couple in Minnesota sought a marriage license. They argued that the Constitution required States to allow marriage between people of the same sex for the same reasons that it requires States to allow marriage between people of different races. The Minnesota Supreme Court rejected their analogy to *Loving*, and this Court summarily dismissed an appeal. *Baker v. Nelson*, 409 U. S. 810 (1972).

In the decades after *Baker*, greater numbers of gays and lesbians began living openly, and many expressed a desire to have their relationships recognized as marriages. Over time, more people came to see marriage in a way that could be extended to such couples. Until recently, this new view of marriage remained a minority position. After the Massachusetts Supreme Judicial Court in 2003 interpreted its State Constitution to require recognition of same-sex marriage, many States—including the four at issue here—enacted constitutional amendments formally adopting the longstanding definition of marriage.

Over the last few years, public opinion on marriage has

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shifted rapidly. In 2009, the legislatures of Vermont, New Hampshire, and the District of Columbia became the first in the Nation to enact laws that revised the definition of marriage to include same-sex couples, while also providing accommodations for religious believers. In 2011, the New York Legislature enacted a similar law. In 2012, voters in Maine did the same, reversing the result of a referendum just three years earlier in which they had upheld the traditional definition of marriage.

In all, voters and legislators in eleven States and the District of Columbia have changed their definitions of marriage to include same-sex couples. The highest courts of five States have decreed that same result under their own Constitutions. The remainder of the States retain the traditional definition of marriage.

Petitioners brought lawsuits contending that the Due Process and Equal Protection Clauses of the Fourteenth Amendment compel their States to license and recognize marriages between same-sex couples. In a carefully reasoned decision, the Court of Appeals acknowledged the democratic “momentum” in favor of “expand[ing] the definition of marriage to include gay couples,” but concluded that petitioners had not made “the case for constitutionalizing the definition of marriage and for removing the issue from the place it has been since the founding: in the hands of state voters.” 772 F. 3d, at 396, 403. That decision interpreted the Constitution correctly, and I would affirm.

II

Petitioners first contend that the marriage laws of their States violate the Due Process Clause. The Solicitor General of the United States, appearing in support of petitioners, expressly disowned that position before this Court. See Tr. of Oral Arg. on Question 1, at 38–39. The majority nevertheless resolves these cases for petitioners based

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almost entirely on the Due Process Clause.

The majority purports to identify four “principles and traditions” in this Court’s due process precedents that support a fundamental right for same-sex couples to marry. *Ante*, at 12. In reality, however, the majority’s approach has no basis in principle or tradition, except for the unprincipled tradition of judicial policymaking that characterized discredited decisions such as *Lochner v. New York*, 198 U. S. 45. Stripped of its shiny rhetorical gloss, the majority’s argument is that the Due Process Clause gives same-sex couples a fundamental right to marry because it will be good for them and for society. If I were a legislator, I would certainly consider that view as a matter of social policy. But as a judge, I find the majority’s position indefensible as a matter of constitutional law.

A

Petitioners’ “fundamental right” claim falls into the most sensitive category of constitutional adjudication. Petitioners do not contend that their States’ marriage laws violate an *enumerated* constitutional right, such as the freedom of speech protected by the First Amendment. There is, after all, no “Companionship and Understanding” or “Nobility and Dignity” Clause in the Constitution. See *ante*, at 3, 14. They argue instead that the laws violate a right *implied* by the Fourteenth Amendment’s requirement that “liberty” may not be deprived without “due process of law.”

This Court has interpreted the Due Process Clause to include a “substantive” component that protects certain liberty interests against state deprivation “no matter what process is provided.” *Reno v. Flores*, 507 U. S. 292, 302 (1993). The theory is that some liberties are “so rooted in the traditions and conscience of our people as to be ranked as fundamental,” and therefore cannot be deprived without compelling justification. *Snyder v. Massachusetts*, 291

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U. S. 97, 105 (1934).

Allowing unelected federal judges to select which unenumerated rights rank as “fundamental”—and to strike down state laws on the basis of that determination—raises obvious concerns about the judicial role. Our precedents have accordingly insisted that judges “exercise the utmost care” in identifying implied fundamental rights, “lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of this Court.” *Washington v. Glucksberg*, 521 U. S. 702, 720 (1997) (internal quotation marks omitted); see Kennedy, *Unenumerated Rights and the Dictates of Judicial Restraint* 13 (1986) (Address at Stanford) (“One can conclude that certain essential, or fundamental, rights should exist in any just society. It does not follow that each of those essential rights is one that we as judges can enforce under the written Constitution. The Due Process Clause is not a guarantee of every right that should inhere in an ideal system.”).

The need for restraint in administering the strong medicine of substantive due process is a lesson this Court has learned the hard way. The Court first applied substantive due process to strike down a statute in *Dred Scott v. Sandford*, 19 How. 393 (1857). There the Court invalidated the Missouri Compromise on the ground that legislation restricting the institution of slavery violated the implied rights of slaveholders. The Court relied on its own conception of liberty and property in doing so. It asserted that “an act of Congress which deprives a citizen of the United States of his liberty or property, merely because he came himself or brought his property into a particular Territory of the United States . . . could hardly be dignified with the name of due process of law.” *Id.*, at 450. In a dissent that has outlasted the majority opinion, Justice Curtis explained that when the “fixed rules which govern the interpretation of laws [are] abandoned, and the theoretical

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opinions of individuals are allowed to control” the Constitution’s meaning, “we have no longer a Constitution; we are under the government of individual men, who for the time being have power to declare what the Constitution is, according to their own views of what it ought to mean.” *Id.*, at 621.

Dred Scott’s holding was overruled on the battlefields of the Civil War and by constitutional amendment after Appomattox, but its approach to the Due Process Clause reappeared. In a series of early 20th-century cases, most prominently *Lochner v. New York*, this Court invalidated state statutes that presented “meddlesome interferences with the rights of the individual,” and “undue interference with liberty of person and freedom of contract.” 198 U. S., at 60, 61. In *Lochner* itself, the Court struck down a New York law setting maximum hours for bakery employees, because there was “in our judgment, no reasonable foundation for holding this to be necessary or appropriate as a health law.” *Id.*, at 58.

The dissenting Justices in *Lochner* explained that the New York law could be viewed as a reasonable response to legislative concern about the health of bakery employees, an issue on which there was at least “room for debate and for an honest difference of opinion.” *Id.*, at 72 (opinion of Harlan, J.). The majority’s contrary conclusion required adopting as constitutional law “an economic theory which a large part of the country does not entertain.” *Id.*, at 75 (opinion of Holmes, J.). As Justice Holmes memorably put it, “The Fourteenth Amendment does not enact Mr. Herbert Spencer’s Social Statics,” a leading work on the philosophy of Social Darwinism. *Ibid.* The Constitution “is not intended to embody a particular economic theory It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not to conclude our judgment upon the question whether statutes embody-

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ing them conflict with the Constitution.” *Id.*, at 75–76.

In the decades after *Lochner*, the Court struck down nearly 200 laws as violations of individual liberty, often over strong dissents contending that “[t]he criterion of constitutionality is not whether we believe the law to be for the public good.” *Adkins v. Children’s Hospital of D. C.*, 261 U. S. 525, 570 (1923) (opinion of Holmes, J.). By empowering judges to elevate their own policy judgments to the status of constitutionally protected “liberty,” the *Lochner* line of cases left “no alternative to regarding the court as a . . . legislative chamber.” L. Hand, *The Bill of Rights* 42 (1958).

Eventually, the Court recognized its error and vowed not to repeat it. “The doctrine that . . . due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely,” we later explained, “has long since been discarded. We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws.” *Ferguson v. Skrupa*, 372 U. S. 726, 730 (1963); see *Day-Brite Lighting, Inc. v. Missouri*, 342 U. S. 421, 423 (1952) (“we do not sit as a super-legislature to weigh the wisdom of legislation”). Thus, it has become an accepted rule that the Court will not hold laws unconstitutional simply because we find them “unwise, improvident, or out of harmony with a particular school of thought.” *Williamson v. Lee Optical of Okla., Inc.*, 348 U. S. 483, 488 (1955).

Rejecting *Lochner* does not require disavowing the doctrine of implied fundamental rights, and this Court has not done so. But to avoid repeating *Lochner*’s error of converting personal preferences into constitutional mandates, our modern substantive due process cases have stressed the need for “judicial self-restraint.” *Collins v. Harker Heights*, 503 U. S. 115, 125 (1992). Our precedents have required that implied fundamental rights be “objec-

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tively, deeply rooted in this Nation's history and tradition," and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Glucksberg*, 521 U. S., at 720–721 (internal quotation marks omitted).

Although the Court articulated the importance of history and tradition to the fundamental rights inquiry most precisely in *Glucksberg*, many other cases both before and after have adopted the same approach. See, e.g., *District Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U. S. 52, 72 (2009); *Flores*, 507 U. S., at 303; *United States v. Salerno*, 481 U. S. 739, 751 (1987); *Moore v. East Cleveland*, 431 U. S. 494, 503 (1977) (plurality opinion); see also *id.*, at 544 (White, J., dissenting) ("The Judiciary, including this Court, is the most vulnerable and comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or even the design of the Constitution."); *Troxel v. Granville*, 530 U. S. 57, 96–101 (2000) (KENNEDY, J., dissenting) (consulting "[o]ur Nation's history, legal traditions, and practices" and concluding that "[w]e owe it to the Nation's domestic relations legal structure . . . to proceed with caution" (quoting *Glucksberg*, 521 U. S., at 721)).

Proper reliance on history and tradition of course requires looking beyond the individual law being challenged, so that every restriction on liberty does not supply its own constitutional justification. The Court is right about that. *Ante*, at 18. But given the few "guideposts for responsible decisionmaking in this unchartered area," *Collins*, 503 U. S., at 125, "an approach grounded in history imposes limits on the judiciary that are more meaningful than any based on [an] abstract formula," *Moore*, 431 U. S., at 504, n. 12 (plurality opinion). Expanding a right suddenly and dramatically is likely to require tearing it up from its roots. Even a sincere profession of "discipline" in identify-

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ing fundamental rights, *ante*, at 10–11, does not provide a meaningful constraint on a judge, for “what he is really likely to be ‘discovering,’ whether or not he is fully aware of it, are his own values,” J. Ely, *Democracy and Distrust* 44 (1980). The only way to ensure restraint in this delicate enterprise is “continual insistence upon respect for the teachings of history, solid recognition of the basic values that underlie our society, and wise appreciation of the great roles [of] the doctrines of federalism and separation of powers.” *Griswold v. Connecticut*, 381 U. S. 479, 501 (1965) (Harlan, J., concurring in judgment).

B

The majority acknowledges none of this doctrinal background, and it is easy to see why: Its aggressive application of substantive due process breaks sharply with decades of precedent and returns the Court to the unprincipled approach of *Lochner*.

1

The majority’s driving themes are that marriage is desirable and petitioners desire it. The opinion describes the “transcendent importance” of marriage and repeatedly insists that petitioners do not seek to “demean,” “devalue,” “denigrate,” or “disrespect” the institution. *Ante*, at 3, 4, 6, 28. Nobody disputes those points. Indeed, the compelling personal accounts of petitioners and others like them are likely a primary reason why many Americans have changed their minds about whether same-sex couples should be allowed to marry. As a matter of constitutional law, however, the sincerity of petitioners’ wishes is not relevant.

When the majority turns to the law, it relies primarily on precedents discussing the fundamental “right to marry.” *Turner v. Safley*, 482 U. S. 78, 95 (1987); *Zablocki*, 434 U. S., at 383; see *Loving*, 388 U. S., at 12. These cases

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do not hold, of course, that anyone who wants to get married has a constitutional right to do so. They instead require a State to justify barriers to marriage as that institution has always been understood. In *Loving*, the Court held that racial restrictions on the right to marry lacked a compelling justification. In *Zablocki*, restrictions based on child support debts did not suffice. In *Turner*, restrictions based on status as a prisoner were deemed impermissible.

None of the laws at issue in those cases purported to change the core definition of marriage as the union of a man and a woman. The laws challenged in *Zablocki* and *Turner* did not define marriage as “the union of a man and a woman, *where neither party owes child support or is in prison.*” Nor did the interracial marriage ban at issue in *Loving* define marriage as “the union of a man and a woman *of the same race.*” See Tragen, Comment, Statutory Prohibitions Against Interracial Marriage, 32 Cal. L. Rev. 269 (1944) (“at common law there was no ban on interracial marriage”); *post*, at 11–12, n. 5 (THOMAS, J., dissenting). Removing racial barriers to marriage therefore did not change what a marriage was any more than integrating schools changed what a school was. As the majority admits, the institution of “marriage” discussed in every one of these cases “presumed a relationship involving opposite-sex partners.” *Ante*, at 11.

In short, the “right to marry” cases stand for the important but limited proposition that particular restrictions on access to marriage *as traditionally defined* violate due process. These precedents say nothing at all about a right to make a State change its definition of marriage, which is the right petitioners actually seek here. See *Windsor*, 570 U. S., at ___ (ALITO, J., dissenting) (slip op., at 8) (“What *Windsor* and the United States seek . . . is not the protection of a deeply rooted right but the recognition of a very new right.”). Neither petitioners nor the majority cites a

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single case or other legal source providing any basis for such a constitutional right. None exists, and that is enough to foreclose their claim.

2

The majority suggests that “there are other, more instructive precedents” informing the right to marry. *Ante*, at 12. Although not entirely clear, this reference seems to correspond to a line of cases discussing an implied fundamental “right of privacy.” *Griswold*, 381 U. S., at 486. In the first of those cases, the Court invalidated a criminal law that banned the use of contraceptives. *Id.*, at 485–486. The Court stressed the invasive nature of the ban, which threatened the intrusion of “the police to search the sacred precincts of marital bedrooms.” *Id.*, at 485. In the Court’s view, such laws infringed the right to privacy in its most basic sense: the “right to be let alone.” *Eisenstadt v. Baird*, 405 U. S. 438, 453–454, n. 10 (1972) (internal quotation marks omitted); see *Olmstead v. United States*, 277 U. S. 438, 478 (1928) (Brandeis, J., dissenting).

The Court also invoked the right to privacy in *Lawrence v. Texas*, 539 U. S. 558 (2003), which struck down a Texas statute criminalizing homosexual sodomy. *Lawrence* relied on the position that criminal sodomy laws, like bans on contraceptives, invaded privacy by inviting “unwarranted government intrusions” that “touc[h] upon the most private human conduct, sexual behavior . . . in the most private of places, the home.” *Id.*, at 562, 567.

Neither *Lawrence* nor any other precedent in the privacy line of cases supports the right that petitioners assert here. Unlike criminal laws banning contraceptives and sodomy, the marriage laws at issue here involve no government intrusion. They create no crime and impose no punishment. Same-sex couples remain free to live together, to engage in intimate conduct, and to raise their families as they see fit. No one is “condemned to live in loneli-

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ness” by the laws challenged in these cases—no one. *Ante*, at 28. At the same time, the laws in no way interfere with the “right to be let alone.”

The majority also relies on Justice Harlan’s influential dissenting opinion in *Poe v. Ullman*, 367 U. S. 497 (1961). As the majority recounts, that opinion states that “[d]ue process has not been reduced to any formula.” *Id.*, at 542. But far from conferring the broad interpretive discretion that the majority discerns, Justice Harlan’s opinion makes clear that courts implying fundamental rights are not “free to roam where unguided speculation might take them.” *Ibid.* They must instead have “regard to what history teaches” and exercise not only “judgment” but “restraint.” *Ibid.* Of particular relevance, Justice Harlan explained that “laws regarding marriage which provide both when the sexual powers may be used and the legal and societal context in which children are born and brought up . . . form a pattern so deeply pressed into the substance of our social life that any Constitutional doctrine in this area must build upon that basis.” *Id.*, at 546.

In sum, the privacy cases provide no support for the majority’s position, because petitioners do not seek privacy. Quite the opposite, they seek public recognition of their relationships, along with corresponding government benefits. Our cases have consistently refused to allow litigants to convert the shield provided by constitutional liberties into a sword to demand positive entitlements from the State. See *DeShaney v. Winnebago County Dept. of Social Servs.*, 489 U. S. 189, 196 (1989); *San Antonio Independent School Dist. v. Rodriguez*, 411 U. S. 1, 35–37 (1973); *post*, at 9–13 (THOMAS, J., dissenting). Thus, although the right to privacy recognized by our precedents certainly plays a role in protecting the intimate conduct of same-sex couples, it provides no affirmative right to redefine marriage and no basis for striking down the laws at issue here.

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3

Perhaps recognizing how little support it can derive from precedent, the majority goes out of its way to jettison the “careful” approach to implied fundamental rights taken by this Court in *Glucksberg*. *Ante*, at 18 (quoting 521 U. S., at 721). It is revealing that the majority’s position requires it to effectively overrule *Glucksberg*, the leading modern case setting the bounds of substantive due process. At least this part of the majority opinion has the virtue of candor. Nobody could rightly accuse the majority of taking a careful approach.

Ultimately, only one precedent offers any support for the majority’s methodology: *Lochner v. New York*, 198 U. S. 45. The majority opens its opinion by announcing petitioners’ right to “define and express their identity.” *Ante*, at 1–2. The majority later explains that “the right to personal choice regarding marriage is inherent in the concept of individual autonomy.” *Ante*, at 12. This free-wheeling notion of individual autonomy echoes nothing so much as “the general right of an individual to be *free in his person* and in his power to contract in relation to his own labor.” *Lochner*, 198 U. S., at 58 (emphasis added).

To be fair, the majority does not suggest that its individual autonomy right is entirely unconstrained. The constraints it sets are precisely those that accord with its own “reasoned judgment,” informed by its “new insight” into the “nature of injustice,” which was invisible to all who came before but has become clear “as we learn [the] meaning” of liberty. *Ante*, at 10, 11. The truth is that today’s decision rests on nothing more than the majority’s own conviction that same-sex couples should be allowed to marry because they want to, and that “it would disparage their choices and diminish their personhood to deny them this right.” *Ante*, at 19. Whatever force that belief may have as a matter of moral philosophy, it has no more basis in the Constitution than did the naked policy preferences

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adopted in *Lochner*. See 198 U. S., at 61 (“We do not believe in the soundness of the views which uphold this law,” which “is an illegal interference with the rights of individuals . . . to make contracts regarding labor upon such terms as they may think best”).

The majority recognizes that today’s cases do not mark “the first time the Court has been asked to adopt a cautious approach to recognizing and protecting fundamental rights.” *Ante*, at 25. On that much, we agree. The Court was “asked”—and it agreed—to “adopt a cautious approach” to implying fundamental rights after the debacle of the *Lochner* era. Today, the majority casts caution aside and revives the grave errors of that period.

One immediate question invited by the majority’s position is whether States may retain the definition of marriage as a union of two people. Cf. *Brown v. Buhman*, 947 F. Supp. 2d 1170 (Utah 2013), appeal pending, No. 14-4117 (CA10). Although the majority randomly inserts the adjective “two” in various places, it offers no reason at all why the two-person element of the core definition of marriage may be preserved while the man-woman element may not. Indeed, from the standpoint of history and tradition, a leap from opposite-sex marriage to same-sex marriage is much greater than one from a two-person union to plural unions, which have deep roots in some cultures around the world. If the majority is willing to take the big leap, it is hard to see how it can say no to the shorter one.

It is striking how much of the majority’s reasoning would apply with equal force to the claim of a fundamental right to plural marriage. If “[t]here is dignity in the bond between two men or two women who seek to marry and in their autonomy to make such profound choices,” *ante*, at 13, why would there be any less dignity in the bond between three people who, in exercising their autonomy, seek to make the profound choice to marry? If a same-sex couple has the constitutional right to marry because their

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children would otherwise “suffer the stigma of knowing their families are somehow lesser,” *ante*, at 15, why wouldn’t the same reasoning apply to a family of three or more persons raising children? If not having the opportunity to marry “serves to disrespect and subordinate” gay and lesbian couples, why wouldn’t the same “imposition of this disability,” *ante*, at 22, serve to disrespect and subordinate people who find fulfillment in polyamorous relationships? See Bennett, Polyamory: The Next Sexual Revolution? *Newsweek*, July 28, 2009 (estimating 500,000 polyamorous families in the United States); Li, Married Lesbian “Throuple” Expecting First Child, *N. Y. Post*, Apr. 23, 2014; Otter, Three May Not Be a Crowd: The Case for a Constitutional Right to Plural Marriage, 64 *Emory L. J.* 1977 (2015).

I do not mean to equate marriage between same-sex couples with plural marriages in all respects. There may well be relevant differences that compel different legal analysis. But if there are, petitioners have not pointed to any. When asked about a plural marital union at oral argument, petitioners asserted that a State “doesn’t have such an institution.” *Tr. of Oral Arg. on Question 2*, p. 6. But that is exactly the point: the States at issue here do not have an institution of same-sex marriage, either.

4

Near the end of its opinion, the majority offers perhaps the clearest insight into its decision. Expanding marriage to include same-sex couples, the majority insists, would “pose no risk of harm to themselves or third parties.” *Ante*, at 27. This argument again echoes *Lochner*, which relied on its assessment that “we think that a law like the one before us involves neither the safety, the morals nor the welfare of the public, and that the interest of the public is not in the slightest degree affected by such an act.” 198 U. S., at 57.

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Then and now, this assertion of the “harm principle” sounds more in philosophy than law. The elevation of the fullest individual self-realization over the constraints that society has expressed in law may or may not be attractive moral philosophy. But a Justice’s commission does not confer any special moral, philosophical, or social insight sufficient to justify imposing those perceptions on fellow citizens under the pretense of “due process.” There is indeed a process due the people on issues of this sort—the democratic process. Respecting that understanding requires the Court to be guided by law, not any particular school of social thought. As Judge Henry Friendly once put it, echoing Justice Holmes’s dissent in *Lochner*, the Fourteenth Amendment does not enact John Stuart Mill’s *On Liberty* any more than it enacts Herbert Spencer’s *Social Statics*. See Randolph, Before *Roe v. Wade*: Judge Friendly’s Draft Abortion Opinion, 29 Harv. J. L. & Pub. Pol’y 1035, 1036–1037, 1058 (2006). And it certainly does not enact any one concept of marriage.

The majority’s understanding of due process lays out a tantalizing vision of the future for Members of this Court: If an unvarying social institution enduring over all of recorded history cannot inhibit judicial policymaking, what can? But this approach is dangerous for the rule of law. The purpose of insisting that implied fundamental rights have roots in the history and tradition of our people is to ensure that when unelected judges strike down democratically enacted laws, they do so based on something more than their own beliefs. The Court today not only overlooks our country’s entire history and tradition but actively repudiates it, preferring to live only in the heady days of the here and now. I agree with the majority that the “nature of injustice is that we may not always see it in our own times.” *Ante*, at 11. As petitioners put it, “times can blind.” Tr. of Oral Arg. on Question 1, at 9, 10. But to blind yourself to history is both prideful and unwise. “The

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past is never dead. It's not even past." W. Faulkner, *Requiem for a Nun* 92 (1951).

III

In addition to their due process argument, petitioners contend that the Equal Protection Clause requires their States to license and recognize same-sex marriages. The majority does not seriously engage with this claim. Its discussion is, quite frankly, difficult to follow. The central point seems to be that there is a "synergy between" the Equal Protection Clause and the Due Process Clause, and that some precedents relying on one Clause have also relied on the other. *Ante*, at 20. Absent from this portion of the opinion, however, is anything resembling our usual framework for deciding equal protection cases. It is case-book doctrine that the "modern Supreme Court's treatment of equal protection claims has used a means-ends methodology in which judges ask whether the classification the government is using is sufficiently related to the goals it is pursuing." G. Stone, L. Seidman, C. Sunstein, M. Tushnet, & P. Karlan, *Constitutional Law* 453 (7th ed. 2013). The majority's approach today is different:

"Rights implicit in liberty and rights secured by equal protection may rest on different precepts and are not always co-extensive, yet in some instances each may be instructive as to the meaning and reach of the other. In any particular case one Clause may be thought to capture the essence of the right in a more accurate and comprehensive way, even as the two Clauses may converge in the identification and definition of the right." *Ante*, at 19.

The majority goes on to assert in conclusory fashion that the Equal Protection Clause provides an alternative basis for its holding. *Ante*, at 22. Yet the majority fails to provide even a single sentence explaining how the Equal

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Protection Clause supplies independent weight for its position, nor does it attempt to justify its gratuitous violation of the canon against unnecessarily resolving constitutional questions. See *Northwest Austin Municipal Util. Dist. No. One v. Holder*, 557 U. S. 193, 197 (2009). In any event, the marriage laws at issue here do not violate the Equal Protection Clause, because distinguishing between opposite-sex and same-sex couples is rationally related to the States' "legitimate state interest" in "preserving the traditional institution of marriage." *Lawrence*, 539 U. S., at 585 (O'Connor, J., concurring in judgment).

It is important to note with precision which laws petitioners have challenged. Although they discuss some of the ancillary legal benefits that accompany marriage, such as hospital visitation rights and recognition of spousal status on official documents, petitioners' lawsuits target the laws defining marriage generally rather than those allocating benefits specifically. The equal protection analysis might be different, in my view, if we were confronted with a more focused challenge to the denial of certain tangible benefits. Of course, those more selective claims will not arise now that the Court has taken the drastic step of requiring every State to license and recognize marriages between same-sex couples.

IV

The legitimacy of this Court ultimately rests "upon the respect accorded to its judgments." *Republican Party of Minn. v. White*, 536 U. S. 765, 793 (2002) (KENNEDY, J., concurring). That respect flows from the perception—and reality—that we exercise humility and restraint in deciding cases according to the Constitution and law. The role of the Court envisioned by the majority today, however, is anything but humble or restrained. Over and over, the majority exalts the role of the judiciary in delivering social change. In the majority's telling, it is the courts, not the

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people, who are responsible for making “new dimensions of freedom . . . apparent to new generations,” for providing “formal discourse” on social issues, and for ensuring “neutral discussions, without scornful or disparaging commentary.” *Ante*, at 7–9.

Nowhere is the majority’s extravagant conception of judicial supremacy more evident than in its description—and dismissal—of the public debate regarding same-sex marriage. Yes, the majority concedes, on one side are thousands of years of human history in every society known to have populated the planet. But on the other side, there has been “extensive litigation,” “many thoughtful District Court decisions,” “countless studies, papers, books, and other popular and scholarly writings,” and “more than 100” *amicus* briefs in these cases alone. *Ante*, at 9, 10, 23. What would be the point of allowing the democratic process to go on? It is high time for the Court to decide the meaning of marriage, based on five lawyers’ “better informed understanding” of “a liberty that remains urgent in our own era.” *Ante*, at 19. The answer is surely there in one of those *amicus* briefs or studies.

Those who founded our country would not recognize the majority’s conception of the judicial role. They after all risked their lives and fortunes for the precious right to govern themselves. They would never have imagined yielding that right on a question of social policy to unaccountable and unelected judges. And they certainly would not have been satisfied by a system empowering judges to override policy judgments so long as they do so after “a quite extensive discussion.” *Ante*, at 8. In our democracy, debate about the content of the law is not an exhaustion requirement to be checked off before courts can impose their will. “Surely the Constitution does not put either the legislative branch or the executive branch in the position of a television quiz show contestant so that when a given period of time has elapsed and a problem remains unre-

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solved by them, the federal judiciary may press a buzzer and take its turn at fashioning a solution.” Rehnquist, *The Notion of a Living Constitution*, 54 *Texas L. Rev.* 693, 700 (1976). As a plurality of this Court explained just last year, “It is demeaning to the democratic process to presume that voters are not capable of deciding an issue of this sensitivity on decent and rational grounds.” *Schuette v. BAMN*, 572 U. S. ___, ___ –___ (2014) (slip op., at 16–17).

The Court’s accumulation of power does not occur in a vacuum. It comes at the expense of the people. And they know it. Here and abroad, people are in the midst of a serious and thoughtful public debate on the issue of same-sex marriage. They see voters carefully considering same-sex marriage, casting ballots in favor or opposed, and sometimes changing their minds. They see political leaders similarly reexamining their positions, and either reversing course or explaining adherence to old convictions confirmed anew. They see governments and businesses modifying policies and practices with respect to same-sex couples, and participating actively in the civic discourse. They see countries overseas democratically accepting profound social change, or declining to do so. This deliberative process is making people take seriously questions that they may not have even regarded as questions before.

When decisions are reached through democratic means, some people will inevitably be disappointed with the results. But those whose views do not prevail at least know that they have had their say, and accordingly are—in the tradition of our political culture—reconciled to the result of a fair and honest debate. In addition, they can gear up to raise the issue later, hoping to persuade enough on the winning side to think again. “That is exactly how our system of government is supposed to work.” *Post*, at 2–3 (SCALIA, J., dissenting).

But today the Court puts a stop to all that. By deciding

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this question under the Constitution, the Court removes it from the realm of democratic decision. There will be consequences to shutting down the political process on an issue of such profound public significance. Closing debate tends to close minds. People denied a voice are less likely to accept the ruling of a court on an issue that does not seem to be the sort of thing courts usually decide. As a thoughtful commentator observed about another issue, “The political process was moving . . . , not swiftly enough for advocates of quick, complete change, but majoritarian institutions were listening and acting. Heavy-handed judicial intervention was difficult to justify and appears to have provoked, not resolved, conflict.” Ginsburg, *Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade*, 63 N. C. L. Rev. 375, 385–386 (1985) (footnote omitted). Indeed, however heartened the proponents of same-sex marriage might be on this day, it is worth acknowledging what they have lost, and lost forever: the opportunity to win the true acceptance that comes from persuading their fellow citizens of the justice of their cause. And they lose this just when the winds of change were freshening at their backs.

Federal courts are blunt instruments when it comes to creating rights. They have constitutional power only to resolve concrete cases or controversies; they do not have the flexibility of legislatures to address concerns of parties not before the court or to anticipate problems that may arise from the exercise of a new right. Today’s decision, for example, creates serious questions about religious liberty. Many good and decent people oppose same-sex marriage as a tenet of faith, and their freedom to exercise religion is—unlike the right imagined by the majority—actually spelled out in the Constitution. Amdt. 1.

Respect for sincere religious conviction has led voters and legislators in every State that has adopted same-sex marriage democratically to include accommodations for

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religious practice. The majority's decision imposing same-sex marriage cannot, of course, create any such accommodations. The majority graciously suggests that religious believers may continue to "advocate" and "teach" their views of marriage. *Ante*, at 27. The First Amendment guarantees, however, the freedom to "*exercise*" religion. Ominously, that is not a word the majority uses.

Hard questions arise when people of faith exercise religion in ways that may be seen to conflict with the new right to same-sex marriage—when, for example, a religious college provides married student housing only to opposite-sex married couples, or a religious adoption agency declines to place children with same-sex married couples. Indeed, the Solicitor General candidly acknowledged that the tax exemptions of some religious institutions would be in question if they opposed same-sex marriage. See Tr. of Oral Arg. on Question 1, at 36–38. There is little doubt that these and similar questions will soon be before this Court. Unfortunately, people of faith can take no comfort in the treatment they receive from the majority today.

Perhaps the most discouraging aspect of today's decision is the extent to which the majority feels compelled to sully those on the other side of the debate. The majority offers a cursory assurance that it does not intend to disparage people who, as a matter of conscience, cannot accept same-sex marriage. *Ante*, at 19. That disclaimer is hard to square with the very next sentence, in which the majority explains that "the necessary consequence" of laws codifying the traditional definition of marriage is to "demea[n] or stigmatiz[e]" same-sex couples. *Ante*, at 19. The majority reiterates such characterizations over and over. By the majority's account, Americans who did nothing more than follow the understanding of marriage that has existed for our entire history—in particular, the tens of millions of people who voted to reaffirm their States' enduring defini-

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tion of marriage—have acted to “lock . . . out,” “disparage,” “disrespect and subordinate,” and inflict “[d]ignitary wounds” upon their gay and lesbian neighbors. *Ante*, at 17, 19, 22, 25. These apparent assaults on the character of fairminded people will have an effect, in society and in court. See *post*, at 6–7 (ALITO, J., dissenting). Moreover, they are entirely gratuitous. It is one thing for the majority to conclude that the Constitution protects a right to same-sex marriage; it is something else to portray everyone who does not share the majority’s “better informed understanding” as bigoted. *Ante*, at 19.

In the face of all this, a much different view of the Court’s role is possible. That view is more modest and restrained. It is more skeptical that the legal abilities of judges also reflect insight into moral and philosophical issues. It is more sensitive to the fact that judges are unelected and unaccountable, and that the legitimacy of their power depends on confining it to the exercise of legal judgment. It is more attuned to the lessons of history, and what it has meant for the country and Court when Justices have exceeded their proper bounds. And it is less pretentious than to suppose that while people around the world have viewed an institution in a particular way for thousands of years, the present generation and the present Court are the ones chosen to burst the bonds of that history and tradition.

* * *

If you are among the many Americans—of whatever sexual orientation—who favor expanding same-sex marriage, by all means celebrate today’s decision. Celebrate the achievement of a desired goal. Celebrate the opportunity for a new expression of commitment to a partner. Celebrate the availability of new benefits. But do not celebrate the Constitution. It had nothing to do with it.

I respectfully dissent.

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SUPREME COURT OF THE UNITED STATES

Nos. 14–556, 14–562, 14–571 and 14–574

JAMES OBERGEFELL, ET AL., PETITIONERS

14–556

v.

RICHARD HODGES, DIRECTOR, OHIO
DEPARTMENT OF HEALTH, ET AL.;

VALERIA TANCO, ET AL., PETITIONERS

14–562

v.

BILL HASLAM, GOVERNOR OF
TENNESSEE, ET AL.;

APRIL DEBOER, ET AL., PETITIONERS

14–571

v.

RICK SNYDER, GOVERNOR OF MICHIGAN,
ET AL.; AND

GREGORY BOURKE, ET AL., PETITIONERS

14–574

v.

STEVE BESHEAR, GOVERNOR OF
KENTUCKY

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

[June 26, 2015]

JUSTICE SCALIA, with whom JUSTICE THOMAS joins,
dissenting.

I join THE CHIEF JUSTICE’s opinion in full. I write separately to call attention to this Court’s threat to American democracy.

The substance of today’s decree is not of immense personal importance to me. The law can recognize as marriage whatever sexual attachments and living arrangements it wishes, and can accord them favorable civil consequences, from tax treatment to rights of inheritance.

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Those civil consequences—and the public approval that conferring the name of marriage evidences—can perhaps have adverse social effects, but no more adverse than the effects of many other controversial laws. So it is not of special importance to me what the law says about marriage. It is of overwhelming importance, however, who it is that rules me. Today's decree says that my Ruler, and the Ruler of 320 million Americans coast-to-coast, is a majority of the nine lawyers on the Supreme Court. The opinion in these cases is the furthest extension in fact—and the furthest extension one can even imagine—of the Court's claimed power to create "liberties" that the Constitution and its Amendments neglect to mention. This practice of constitutional revision by an unelected committee of nine, always accompanied (as it is today) by extravagant praise of liberty, robs the People of the most important liberty they asserted in the Declaration of Independence and won in the Revolution of 1776: the freedom to govern themselves.

I

Until the courts put a stop to it, public debate over same-sex marriage displayed American democracy at its best. Individuals on both sides of the issue passionately, but respectfully, attempted to persuade their fellow citizens to accept their views. Americans considered the arguments and put the question to a vote. The electorates of 11 States, either directly or through their representatives, chose to expand the traditional definition of marriage. Many more decided not to.¹ Win or lose, advocates for both sides continued pressing their cases, secure in the knowledge that an electoral loss can be negated by a later electoral win. That is exactly how our system of govern-

¹Brief for Respondents in No. 14-571, p. 14.

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ment is supposed to work.²

The Constitution places some constraints on self-rule—constraints adopted *by the People themselves* when they ratified the Constitution and its Amendments. Forbidden are laws “impairing the Obligation of Contracts,”³ denying “Full Faith and Credit” to the “public Acts” of other States,⁴ prohibiting the free exercise of religion,⁵ abridging the freedom of speech,⁶ infringing the right to keep and bear arms,⁷ authorizing unreasonable searches and seizures,⁸ and so forth. Aside from these limitations, those powers “reserved to the States respectively, or to the people”⁹ can be exercised as the States or the People desire. These cases ask us to decide whether the Fourteenth Amendment contains a limitation that requires the States to license and recognize marriages between two people of the same sex. Does it remove *that* issue from the political process?

Of course not. It would be surprising to find a prescription regarding marriage in the Federal Constitution since, as the author of today’s opinion reminded us only two years ago (in an opinion joined by the same Justices who join him today):

“[R]egulation of domestic relations is an area that has long been regarded as a virtually exclusive province of the States.”¹⁰

² Accord, *Schuette v. BAMN*, 572 U. S. ____, ____–____ (2014) (plurality opinion) (slip op., at 15–17).

³ U. S. Const., Art. I, §10.

⁴ Art. IV, §1.

⁵ Amdt. 1.

⁶ *Ibid.*

⁷ Amdt. 2.

⁸ Amdt. 4.

⁹ Amdt. 10.

¹⁰ *United States v. Windsor*, 570 U. S. ____, ____ (2013) (slip op., at 16) (internal quotation marks and citation omitted).

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“[T]he Federal Government, through our history, has deferred to state-law policy decisions with respect to domestic relations.”¹¹

But we need not speculate. When the Fourteenth Amendment was ratified in 1868, every State limited marriage to one man and one woman, and no one doubted the constitutionality of doing so. That resolves these cases. When it comes to determining the meaning of a vague constitutional provision—such as “due process of law” or “equal protection of the laws”—it is unquestionable that the People who ratified that provision did not understand it to prohibit a practice that remained both universal and uncontroversial in the years after ratification.¹² We have no basis for striking down a practice that is not expressly prohibited by the Fourteenth Amendment’s text, and that bears the endorsement of a long tradition of open, widespread, and unchallenged use dating back to the Amendment’s ratification. Since there is no doubt whatever that the People never decided to prohibit the limitation of marriage to opposite-sex couples, the public debate over same-sex marriage must be allowed to continue.

But the Court ends this debate, in an opinion lacking even a thin veneer of law. Buried beneath the mummeries and straining-to-be-memorable passages of the opinion is a candid and startling assertion: No matter *what* it was the People ratified, the Fourteenth Amendment protects those rights that the Judiciary, in its “reasoned judgment,” thinks the Fourteenth Amendment ought to protect.¹³ That is so because “[t]he generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of freedom in all of its

¹¹ *Id.*, at ___ (slip op., at 17).

¹² See *Town of Greece v. Galloway*, 572 U. S. ___, ___–___ (2014) (slip op., at 7–8).

¹³ *Ante*, at 10.

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dimensions”¹⁴ One would think that sentence would continue: “. . . and therefore they provided for a means by which the People could amend the Constitution,” or perhaps “. . . and therefore they left the creation of additional liberties, such as the freedom to marry someone of the same sex, to the People, through the never-ending process of legislation.” But no. What logically follows, in the majority’s judge-empowering estimation, is: “and so they entrusted to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning.”¹⁵ The “we,” needless to say, is the nine of us. “History and tradition guide and discipline [our] inquiry but do not set its outer boundaries.”¹⁶ Thus, rather than focusing on *the People’s* understanding of “liberty”—at the time of ratification or even today—the majority focuses on four “principles and traditions” that, *in the majority’s view*, prohibit States from defining marriage as an institution consisting of one man and one woman.¹⁷

This is a naked judicial claim to legislative—indeed, *super*-legislative—power; a claim fundamentally at odds with our system of government. Except as limited by a constitutional prohibition agreed to by the People, the States are free to adopt whatever laws they like, even those that offend the esteemed Justices’ “reasoned judgment.” A system of government that makes the People subordinate to a committee of nine unelected lawyers does not deserve to be called a democracy.

Judges are selected precisely for their skill as lawyers; whether they reflect the policy views of a particular constituency is not (or should not be) relevant. Not surprisingly then, the Federal Judiciary is hardly a cross-section

¹⁴*Ante*, at 11.

¹⁵*Ibid.*

¹⁶*Ante*, at 10–11.

¹⁷*Ante*, at 12–18.

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of America. Take, for example, this Court, which consists of only nine men and women, all of them successful lawyers¹⁸ who studied at Harvard or Yale Law School. Four of the nine are natives of New York City. Eight of them grew up in east- and west-coast States. Only one hails from the vast expanse in-between. Not a single Southwesterner or even, to tell the truth, a genuine Westerner (California does not count). Not a single evangelical Christian (a group that comprises about one quarter of Americans¹⁹), or even a Protestant of any denomination. The strikingly unrepresentative character of the body voting on today's social upheaval would be irrelevant if they were functioning as *judges*, answering the legal question whether the American people had ever ratified a constitutional provision that was understood to proscribe the traditional definition of marriage. But of course the Justices in today's majority are not voting on that basis; *they say they are not*. And to allow the policy question of same-sex marriage to be considered and resolved by a select, patrician, highly unrepresentative panel of nine is to violate a principle even more fundamental than no taxation without representation: no social transformation without representation.

II

But what really astounds is the hubris reflected in today's judicial Putsch. The five Justices who compose today's majority are entirely comfortable concluding that

¹⁸The predominant attitude of tall-building lawyers with respect to the questions presented in these cases is suggested by the fact that the American Bar Association deemed it in accord with the wishes of its members to file a brief in support of the petitioners. See Brief for American Bar Association as *Amicus Curiae* in Nos. 14–571 and 14–574, pp. 1–5.

¹⁹See Pew Research Center, *America's Changing Religious Landscape* 4 (May 12, 2015).

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every State violated the Constitution for all of the 135 years between the Fourteenth Amendment's ratification and Massachusetts' permitting of same-sex marriages in 2003.²⁰ They have discovered in the Fourteenth Amendment a "fundamental right" overlooked by every person alive at the time of ratification, and almost everyone else in the time since. They see what lesser legal minds—minds like Thomas Cooley, John Marshall Harlan, Oliver Wendell Holmes, Jr., Learned Hand, Louis Brandeis, William Howard Taft, Benjamin Cardozo, Hugo Black, Felix Frankfurter, Robert Jackson, and Henry Friendly—could not. They are certain that the People ratified the Fourteenth Amendment to bestow on them the power to remove questions from the democratic process when that is called for by their "reasoned judgment." These Justices *know* that limiting marriage to one man and one woman is contrary to reason; they *know* that an institution as old as government itself, and accepted by every nation in history until 15 years ago,²¹ cannot possibly be supported by anything other than ignorance or bigotry. And they are willing to say that any citizen who does not agree with that, who adheres to what was, until 15 years ago, the unanimous judgment of all generations and all societies, stands against the Constitution.

The opinion is couched in a style that is as pretentious as its content is egotistic. It is one thing for separate concurring or dissenting opinions to contain extravagances, even silly extravagances, of thought and expression; it is something else for the official opinion of the Court to do so.²² Of course the opinion's showy profundities are often

²⁰ *Goodridge v. Department of Public Health*, 440 Mass. 309, 798 N. E. 2d 941 (2003).

²¹ *Windsor*, 570 U. S., at ____ (ALITO, J., dissenting) (slip op., at 7).

²² If, even as the price to be paid for a fifth vote, I ever joined an opinion for the Court that began: "The Constitution promises liberty to all within its reach, a liberty that includes certain specific rights that

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really dislikes. Hardly a distillation of essence. If the opinion is correct that the two clauses “converge in the identification and definition of [a] right,” that is only because the majority’s likes and dislikes are predictably compatible.) I could go on. The world does not expect logic and precision in poetry or inspirational pop-philosophy; it demands them in the law. The stuff contained in today’s opinion has to diminish this Court’s reputation for clear thinking and sober analysis.

* * *

Hubris is sometimes defined as o’erweening pride; and pride, we know, goeth before a fall. The Judiciary is the “least dangerous” of the federal branches because it has “neither Force nor Will, but merely judgment; and must ultimately depend upon the aid of the executive arm” and the States, “even for the efficacy of its judgments.”²⁶ With each decision of ours that takes from the People a question properly left to them—with each decision that is unabashedly based not on law, but on the “reasoned judgment” of a bare majority of this Court—we move one step closer to being reminded of our impotence.

²⁶The Federalist No. 78, pp. 522, 523 (J. Cooke ed. 1961) (A. Hamilton).

Cicero and The Politics of The Public Orthodoxy

OUR immediate topic: the meaning of what we shall call "public orthodoxy" in the political philosophy of Marcus Tullius Cicero. Our objective: to throw light on the meaning of public orthodoxy in political philosophy in general. We shall investigate Cicero's position on the issue, that is to say, with an eye primarily to its possible usefulness in the resurrection and reconstruction of politics as *scientia*, which is rendered necessary today by the theoretical decay into which that science has fallen under insistent pressures from positivism.

Positivism denies to the concept of public orthodoxy, in effect, any theoretical meaning at all. It reduces public orthodoxy to a factual *datum*; one, moreover, which cannot be penetrated scientifically because it is based upon an irrational *charisma*—the study of which, we are told, belongs properly to the sociology of religion or to the psychology of the collective unconscious.

Clarification and defense of the concept of public orthodoxy as a concept pertaining integrally to politics as science, we shall

contend, is crucial both to an understanding of Cicero's teaching and to an understanding of the very meaning of political science.

Let us provisionally define the public orthodoxy as that tissue of judgments, defining the good life and indicating the meaning of human existence, which is held commonly by the members of any given society, who see in it the charter of their way of life and the ultimate justification of their society.

This provisional definition, it might be objected, raises more problems than it solves. Our reply must be that this is the classical role of a provisional definition within Western logic: to *name* a reality simply by pointing at it, in order that that reality may be brought within the scope of the human intelligence for the sake of scrutiny and ultimate clarification. By pointing at a thing, we make that thing a *subject* of a future judgment, a judgment potentially scientific in nature. And the present essay proposes, *inter alia*, to give to the subject "public orthodoxy" a predicate—a predicate distilled by the Roman experience as understood and thought through by Cicero. That predicate will by no means exhaust the issue at hand; but it will, we think, make it more intelligible to the student of political philosophy.

LET us notice, to begin with, that there can be a purely *legal* "orthodoxy," in terms of which the members of a community merely agree upon the political instruments that are to govern them—for example, the formal orthodoxy that unites most members of the Conservative and Labour parties in Great Britain today, which is a set of common convictions concerning the "goodness" of a bicameral parliamentary system under a ceremonial and symbolic monarch. Such a legal

Dr. Wilhelmsen, professor of philosophy and politics at the University of Dallas, is the author of *Man's Knowledge of Reality*, *Omega*, *Hilaire Belloc*, *The Metaphysics of Love*, and numerous works in Spanish.

Dr. Kendall (1914-1967) was chairman of the department of politics and economics at the University of Dallas. His books included *John Locke and the Doctrine of Majority Rule* and *The Conservative Affirmation*. Dr. Kendall was a frequent contributor to scholarly journals, and a collection of his essays will be posthumously published this year.

"orthodoxy" is certainly a constituent part of the "way of life" of most societies; but it cannot be simply *identified* with that way of life, and it is, therefore, a more restricted topic than ours. As Professor Leo Strauss puts it, "way of life" is a rough translation of the Greek *politeia*, which means the "character" or tone of a community, and is itself dependent upon "what the society regards as most respectable or most worthy of admiration."¹ In classical political philosophy an aristocratic republic, tempered by monarchical and democratic elements, was considered the best form of government because the urban *gentleman*, whose wealth rested on the land, was considered, for purposes of government, the highest type of human being. The excellence of the urban gentleman, in turn, was both measured and created by his allegiance to the institutions of the City, the highest of which were the religious rites that propitiated the gods and thus guaranteed their continued providence over the *politeia*. The aristocratic values enshrined in this class were regarded, accordingly, as the ideals of the *politeia* at large, and acceptance of these "values," and the commitments they involved, constituted the public orthodoxy of the classical society.

Hilaire Belloc detailed a similar public orthodoxy for the England that emerged from the Whig triumph over the Stuart kings and that endured well into the present century—that is, the public acceptance of the *gentleman* as the standard of excellence and as the embodiment of what Britain stood for.² As Belloc argued, with his characteristic irony, a cad might in the long run stand a better chance for salvation than a gentleman, but to suggest that this theological consideration ought to alter the fabric of English society would be unthinkable. Writing far earlier than Belloc, in a vein that might shock those who find "Machiavellianism" in every blunt statement of political ends, Lord Bolingbroke in his famous letter to Sir William Wyndham justifying his political role in the months preceding and following the death of Queen Anne—candidly stated that he and his men, representing as they did the "landed party" of the country gentry, the still powerful yeomanry, the older aris-

tocracy, and the Church of England, considered it only "natural" that they should seize power and exercise it for their own ends against the new financial and commercial aristocracy represented by the Bank of England.³ When Bolingbroke wrote, the English *politeia* was still rural and aristocratic, rather than urban and aristocratic; still agrarian and Christian, rather than commercial and latitudinarian; and the defense of the existent *politeia* seemed to Bolingbroke as absolute and unavoidable a duty as the defense of England itself: England and its *politeia* or way of life, were, for him, one and the same thing. That Bolingbroke himself was neither Christian nor "rural" illuminates rather than obscures his grasp of the meaning of the public orthodoxy as defined here, of a standard of values maintained publicly as ideals even if often sinned against in practice.

THE *politeia*, then, is something more fundamental than "the Laws." Cicero locates the study of "the Laws" in a hierarchy of science which *first* answers the question as to the best regime—as Cicero does by identifying it concretely with the Roman Republic. The Laws must fit the *politeia*, not the *politeia* the Laws: what is just in the best society might be highly unjust in a less perfect society; what is just for a free man might well be crying injustice if done to a slave. Because it is the source of all Laws, though capable of being articulated in law and governmental institutions, the *politeia* raises issues that are prior to those of law and governmental institutions. To what we, following Professor Strauss,⁴ call "regime," T.S. Eliot applies the term "culture"—as when he writes that if bishops and darts do not belong equally to British culture, they nonetheless equally belong!⁵ What we "point" to, in a word, is that matrix of convictions, usually enshrined in custom and "folkways," often articulated formally and solemnly in charter and constitution, occasionally summed up in the creed of a church or the testament of a philosopher, that makes a society The Thing it is and that divides it from other societies as, in

1. Leo Strauss, *Natural Right and History* (Chicago, 1953) p. 137.

2. Hilaire Belloc, *The Nature of Contemporary England* (London and New York, 1936), *passim*.

3. *The Works of the Late Right Honourable Henry St. John, Lord Viscount Bolingbroke* (London, 1809), vol. 1, pp. 8-11.

4. Strauss, *Natural Right and History*, pp. 136-137.

5. T. S. Eliot, *Notes towards a Definition of Culture* (New York, 1949), p. 30.

human thought, one thing is divided always from another.

That is why we may (and do) speak intelligibly of a Greek, a Roman, or an American "way of life." The nominalism that would deny meaning to these phrases might conceivably be defensible, to be sure, if it restricted itself to borderline cases, such as, say, the Bavarian and the Austrian way of life. But it renders itself absurd when it attempts to deny any essential distinction between, for example, societies like the Chinese and the British, because the denial then becomes a denial of what is *evidently* true. The serious political philosopher simply cannot converse with the nominalist on this primitive level; all the less because there is no way in which we can prove the evident. The way in which we can demonstrate strictly that what is evident is evident. What replaces argument on this level is the ability, pure and simple, to see what is *there* to be seen. We must, therefore, draw a distinction between the scientific elaboration of the social disciplines and that intuitive grasp of a cultural complexity which itself precedes all science and, in truth, makes science possible. In fine, the denial of meaning, of intelligibility, to the terms *regime*, *politeia*, "way of life," culture, cannot be refuted rationally because the source of the denial is an intelligence and a sensibility blunted to the historically and socially given; and if the principle of contradiction is the unquestioned point of departure for metaphysics, then the existence of the *politeia* is the unquestioned point of departure for political philosophy.

Should it be objected here that we are labouring the obvious, our reply must be that labouring the obvious is necessary because the *denial* of the obvious regarding these points has been and is laboured constantly elsewhere, in the political literature inspired by positivism, which refuses to touch the question of the *politeia* because the *politeia* enshrines an orthodoxy, and because an orthodoxy is composed of what the positivists call "value judgments," which are precisely what the positivists tell us that political science is *not* about.

The issue may be elucidated further as follows: the *politeia*, in the terminology of Eric Voegelin, is a "cosmion" of meaning illuminated from within by and for the members of a society. Enshrining as it does convictions concerning the existence of God or of the gods, the good life, and the destiny of man and of society, the *politeia* can ultimately be defined only in ontological terms, be they strictly religious,

strictly metaphysical, or a combination of the two. These convictions can be understood, therefore, only on their own terms, terms that are by definition theological and metaphysical. Thus positivism's refusal to admit within the temple of political science judgments of a philosophical and theological nature prevents it from coming to grips with any *politeia* whatsoever. In order to understand a *politeia*, we must think through its ultimate philosophical presuppositions; and the thinking must be *thinking*, not mere reporting. If, therefore, we are denied the right to exercise our philosophical and theological intelligence when functioning as political scientists, the unavoidable result is that while we can understand a *politeia* in our capacity as philosophers or theologians, we can never do so in our capacity as political scientists. In short, a *polis* can never be understood by the *science* of politics!



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THE positivist tries to escape from the horns of this dilemma, but his maneuver only succeeds in goring him the more. I can, he insists, understand a public orthodoxy as "fact," but I cannot criticize it as "value"; to attempt the latter would be to fall into "subjectivism." What he fails to see is that if the phenomenon in question be a judgment of value, a judgment that bears integrally upon the meaning and destiny of human life, then the understanding (for every critique presupposes understanding of the criticized) of that judgment *as it objectively is* involves understanding it *as value*. And the so-called refusal to fall into "subjectivism" is itself subjectivism because it converts what is in fact value into disemboweled "fact," and

so blocks on principle that which it originally sets out to do—namely, to understand the judgment as objectively *there*, as “fact.” There is something radically wrong with the use currently being made of the distinction between judgments of “fact” and judgments of “value,” an epistemological blunder which has prevented contemporary political science from coming to terms with the first indisputable principle of its own discipline—that is, the existence of the *politeia* as a cosmos of meaning ultimately metaphysical and theological in structure—the existence, in short, of the public orthodoxy. If, then, Cicero can help us understand the meaning of a public orthodoxy, he can do so only if we are prepared to *philosophize* with him. Which we can do only if we exorcize the notion that “value judgments” are never “scientific.”

In classical and medieval philosophy, the *subject* is nothing more than—merely—the thing presented to the intelligence; the *object* is the intelligible light under which the subject is understood—that is, the subject as “objectified” in this or that fashion. There is, in other words, no “split” between subject and object: what we have, rather, is an intelligible relation between (in Aristotelian terms) a *potency* and its *act*: the subject is *potentially* “objectifiable” in any given number of ways; it is *actually* “objectified” in single judgments, in each of which the intellect predicates meaning or intelligibility of the subject—that is, asserts that what it understands of the subject *actually exists in the subject*.⁶ The contemporary use of the terms “subject” and “object” is, in consequence, far removed from the classical usage and the doctrine that underlies it—so far, that we can fairly speak of the meanings as having been reversed. The objective, in the classical and medieval sense, is not only “subjective” in the modern sense, but *more* subjective in the modern sense than the “subject” itself in the classical and medieval sense. The “objective” belongs properly to the *mind*; it is the subject as *thought* in this or that way. Similarly, the “subject” in the classical and medieval sense is more “objective” in the modern sense than is the objective in the classical and medieval sense. For the “subject” is the *thing* “extramentally existing”—that is, in independence of the mind.

6. For further treatment of this point, see Frederick D. Wilhelmsen, *Man's Knowledge of Reality* (New York, 1956), pp. 101-157.

Now, the separation of subject and object, which begins as early as the fourteenth century, reaches its apotheosis in German idealism. For it, the human spirit is the sole *subject* in a world of *objects*, and brings out of its own depths *values*, proper to itself, that are duly imprinted upon the world like seals upon wax. But the decay of idealism did not restore the *status quo ante*; rather, it left intact the subject-object dichotomy, and so prepared the way for what we know today as the positivist banishment of values to an interior and irrational world, the Freudian cave of the psyche, a reservoir of demonic and charismatic forces that has nothing to do with the daylight world of “facts”—a world that belongs properly to “science,” which enumerates the facts and classifies them.

In classical and medieval philosophy, the political depends on the metaphysical, as we may see most clearly in Aquinas. For Aquinas, the “ought” is consubstantial with the fullness of the “is”; it is the Good *proper* to man. The Good, viewed most broadly, is that which can *perfect*; that which can perfect, however, can do so only to the degree to which it is perfect in itself; things are perfect in themselves to the degree to which they are in act, and things are in act to the degree to which they are, because existence (*esse*) is the act of all acts and the perfection of all perfections.⁷ It follows that the Good is rooted in being itself, and is, in truth, the fullness of being, of existence. Thus, Aquinas can go on and say that the *ratio boni* belongs to the *ratio esse*: not only is there no discrepancy between the Good and the Is; the Good is, we repeat, the *fullness* of the Is, its flowering into perfection—into an actuality fully perfective and desirable, lovable. Obligation, be it personal or social, is not the command of a *deus ex machina*, but is the in-built dynamic push towards perfection which is man's act of existing and within which is inscribed his humanity. And his humanity is itself the structural limit and therefore the determination of his existential act.

We recapitulate: the root of all intelligibility is being; the act of being is existence; the Good is the fullness of existence. Therefore, the Good is eminently knowable, and from knowledge of the Good there can flow, given a will rectified in the

7. St. Thomas' most celebrated passages dealing with existence are to be found in *De Potentia Dei*, Q. 7, a. 2, ad. 9. The *hoc quod dico esse* clearly shows the importance that he attaches to it.

good proper to a man, the life of virtue itself.⁸ That is the beginning of wisdom in the order of politics, and it has been lost to positivism because the latter has not given itself the pains to master the inheritance that it presumes, out of its ignorance, to supplant.

WE have, up to now, fixed attention on the positivist objection to scientific penetration of the public orthodoxy. We could equally well have discussed the issue, however, from the standpoint of either historicism or existentialism. With respect to the public orthodoxy the three doctrines coincide materially, for all that they move from distinct theoretical positions. The denial of a properly theoretical dimension to the public orthodoxy—this is the point towards which we have been moving—reduces itself, on the one hand, to a positivism that must accept any old orthodoxy on the grounds that it is politically viable, that it is simply given. But that denial may reduce itself, similarly, to a system that identifies transcendent meaning with *historical* factuality, even if this factuality be only an irrational charisma. And it may reduce itself, finally, to a position that justifies the public orthodoxy on the grounds of its *brute* factuality. Theoretically speaking, positivism, historicism, and existentialism come here to one and the same thing, and if we tend to ignore this it is because the three are the existential representatives of three distinct dynamisms within history: positivism, today the ally of liberal democracy in America and yesterday, through the pen of Maurras, the ally of absolutism; historicism, the ally of the marriage of idealism and nationalism within the Germanies and of its progeny; and existentialism, the ally of the counter-revolution against the bankruptcy of nineteenth-century rationalism and liberalism in all its forms.

In sum, the denial that propositions concerning the good life and the end of man have a trans-immanent validity leads to the identification of the content of those propositions with a factual *datum*, a given, whose meaning and justification does *not* transcend its factuality. And this is equally true whether the factuality be termed "the useful" (as in pragmatism),

8. Etienne Gilson, *Le réalisme methodique* (Paris, 1935). This, Gilson's *vade mecum* for any youth aspiring to philosophical realism, lays down the following as a cardinal principle: Never speak of "values," speak always of "goods" or of "the Good."

"the historic" (as in historicism), or "the national inheritance" (as in German existentialism's flirtation with National Socialism); in each case justice and law are conjured away in the name of the relevant factuality, and the ontological must be subordinated, theoretically, to the political—with, in all three cases, the same existential consequences: subordination of both church and intellectual freedom to the State; reduction of transcendent truth to existential truth; the pressing of God into the service of man.

Now, this three-headed refusal to face the issue of a public orthodoxy on properly theoretical grounds, however interesting historically, would lack a properly philosophical interest but for this: the three positions—positions that dominate in varying degrees the academic world within the West—do possess a theoretical dimension, do represent an attempt to come to grips philosophically with a genuine political problem. The no-longer-tacit assertion that the public orthodoxy is the central *fact* around which a society's greatness and even existence must be organized, be that "fact" the American myth of democracy (which is capable of being exploited rationally and scientifically, as in Dewey) or be it the French myth of the *ancien regime* (which can be exploited rationally and scientifically by a Maurras), points to a profound truth, as disturbing as it is unavoidable: *the public orthodoxy* is, after all, *useful*. Not only can society not avoid having a public orthodoxy; even when it rejects an old orthodoxy in the name of "enlightenment," "progress," "the pluralist society," "the open society," and the like, it invents, however subtly, a new orthodoxy with which to replace the old one. As Aristotle is always at hand to remind us, only gods and beasts can live alone—man, by nature, is a political animal—whose very political life demands a *politeia* that involves an at least implicit code of manners and a tacit agreement on the meaning of the good life and, therefore, on the meaning of man within the total economy of existence. Without this political orthodoxy—itsself involving both a metaphysics (and we must never forget that the denial of the metaphysical is itself a metaphysical proposition) and a theology sketched at least in broad outline—respect for the state withers; contracts lose their efficacy; the moral bond between citizens is loosened; the State opens itself to enemies from abroad; and the *politeia* sheds the sacral character without which it cannot long endure. The public orthodoxy

implies, that is to say, a commitment to metaphysical propositions whose claim to acceptance cannot be mere political utility or historical sanction, but the very structure of things as they are in themselves. And this poses a genuine problem: to accept those propositions on existentially political grounds is not really to accept them at all; while if they are not accepted, the political order decays. And we run up hard against the paradox: the political order can be served politically only if its ultimate foundations are *not* accepted on political grounds! Is this perhaps the apparently insoluble dilemma between whose horns man has always been trying to escape?

Such a dilemma certainly faces any man who is aware both of the demands of the transcendent and of society, any man whose soul is turned out towards the truth of things as they are (that is, apart from political considerations), but also faces his responsibilities as a member within a society that incarnates a way of life involving a certain (at least apparent) commitment to the Absolute. Such a man, unable or unwilling to reduce ultimate meaning to utility or to historical factuality, must either find ultimate meaning within his society's orthodoxy, or face up to two alternatives: to seek meaning *beyond* that orthodoxy, and preach this New Truth to the citizenry — thus corrupting the bonds that have hitherto kept his society in being; or to seek meaning beyond the public orthodoxy but keep the New Truth to himself, thus living a public lie. He must choose between rebelling against his society and sinning against the light. His dilemma is terrible, since *either* choice is evil: to destroy an essentially decent society is wrong, even if that society repose upon theoretically erroneous foundations; but to fail to speak the truth when the truth demands that it be spoken is wrong, too. Whatever our hypothetical citizen-philosopher does or fails to do is, on the face of it, evil — at least within the context we have proposed, within the circle we have drawn. If political theory can break this circle it can do so only by exploring it carefully, for the circle captures the insights alike of positivism, historicism, and existentialism, along with those of the classical tradition that modernity in all its forms would jettison.

II

NOW, the citizen-philosopher we have sketched above is one of the giants of the Western tradition, Cicero; and we be-

lieve that after following him as he walks around the circle we have drawn we may be able to do what we have proposed, namely: to give a predicate, a meaning, an intelligibility, to the subject of the public orthodoxy, a light that may lead us beyond the hideous dilemma with which we are confronted: betrayal of the light or betrayal of the community.

Let us speak first of the setting in which Cicero places the opening passages of his *De Legibus*:⁹ a long summer day in Cicero's estate at Arpinum, that Arpinum which he considered his "second fatherland," where grew the Marian Oak, planted not by the hand of man but by the voice of poetry. The reader will remember the grave and eloquent discourse in which Cicero sets forth the doctrine that the whole universe is "one commonwealth of



which both gods and men are members."¹⁰ That which binds men to the gods, especially to the "supreme god," is reason itself, the most divine attribute "in all heaven and earth."¹¹ And reason, Cicero goes on, implies *right* reason: "Since right reason is Law, we must believe that men have Law also in common with the gods." Further, "those who share Law must also share Justice; and those who share these are to be regarded as members of the same commonwealth."¹² For Cicero the commonwealth is not a cosmological but an ontological reflection of the universe. The universe itself is an order of reason and law and therefore a commonwealth in its own right.¹³ Seeking the roots of law and jus-

9. *Laws*, I, i (beginning).

10. I, vii (end).

11. I, vii (middle).

12. I, vii (middle).

13. I, vii (end).

tice deep within virtue itself,¹⁴ Cicero asserts that virtue "is nothing else than Nature perfected and developed to its highest point."¹⁵ Penetrating further, he lays it down as a first principle that although penalties in fact often do keep men from injustice, that which ought to make them just should be nature itself. He thus attempts to disengage the concept of justice from brute factuality and to root it in the structure of nature.¹⁶ He comes to grips, so to speak, with positivist and historicist contentions (as we know them) when he affirms that "the most foolish notion of all is the belief that everything is just which is found in the customs or law of nations."¹⁷ That is, he separates the concept of justice from its historical incarnations, and holds that "Justice is one; it binds all human society, and is based on one Law, which is right reason applied to command and prohibition. Whoever knows not this Law, whether it has been recorded in writing or not, is without Justice."¹⁸

Let us be quite clear as to what Cicero is doing here: he is defending the *naturalness* of justice against the historicists and utilitarians and positivists of his own day. According to Cicero, the doctrines that he is attacking coincide in insisting that the sanction of history gives to the law its usefulness; that history has tested the Laws and found them good, and good because useful to the preservation of the State. He is even willing to use the argument from utility *against* the utilitarians, and, by extension, against the historicists:

But if Justice is conformity to written laws and national customs, and if, as the same persons claim, everything is to be tested by the standards of utility, then anyone who thinks it will be profitable to him will, if he is able, disregard and violate the Laws. It follows that Justice does not exist at all, if it does not exist in Nature, and if that form of it which is based on utility can be overthrown by that very utility itself.

As far as Cicero is concerned, we see clearly, the historicists and the pragmatists are one and the same crowd, at least as regards the central issue. If the former

- 14. I, viii (middle).
- 15. I, viii (middle).
- 16. I, xiv (beginning).
- 17. I, xv (beginning).
- 18. I, xv (middle).

maintain that written and national custom gives the law its sanction and imposes upon us the obligation to observe the law, the latter maintain that the very existence of the law, linked with my existence under the law, makes it expedient that I obey the law. The unexpressed premise is obvious: to disobey the law would be useless to me since, willy-nilly, I find myself subject to the law. Exposing the fallacy of this argument, Cicero points to the clear and cynical truth that a man can disobey a law not profitable to him if he thinks that disobeying would be "useful" to him. Were utility itself the very ground of law, it would follow that laws not useful (read: useful *to him*) could be overthrown by the very principle that establishes them. And Cicero's conclusion is lucidly expressed: "Justice does not exist at all, if it does not exist in Nature."¹⁹

Now, on the surface, this argument against utilitarianism itself does seem to be utilitarian and pragmatic in structure. Justice will go down if justice is based on utility alone. Why not, then, accept the conclusion and *let* justice go down? Why not accept a political jungle? Cicero apparently considers the answer self-evident, though he never tells us, in so many words, why he does. But however that may be, his apparently utilitarian treatment of the issue indicates sufficiently the ontological springs of his thought. Without justice, "where will there be a place for generosity, or love of country, or loyalty, or the inclination to be of service to others or to show gratitude for favours received? For these virtues originate in our natural inclination to love our fellow-men, and this is the foundation of Justice."²⁰ The key word, of course, is "natural." The ground of justice is the ultimate character of nature, and a challenge to nature is a challenge to the very structure of reality. The Ciceronian call to virtue, though fundamentally Platonic, is one with the Stoic insistence that virtue is nothing other than nature itself perfected through right reason.²¹

19. I, xv (middle).

20. I, xv (end).

21. Paul Tillich has brilliantly demonstrated the Stoic identification of the ontological and the ethical in *The Courage to Be* (New Haven, 1952), especially pp. 9-20, 23-26. In Stoicism, he argues, the ethical imperative is one with being itself. To neglect or deny such imperative would be to fall into non-being, into Nothing, the ultimate enemy both of the human spirit and of reality itself.

But these same philosophical considerations, on which Cicero bases the natural foundations of justice, catch up also the religious foundations of the State. If Justice is not founded in nature, "not merely considerations of men but also rites and pious observances in honour of the gods are done away with." And he hastens to state the reason: "For I think that these ought to be maintained, not through fear, but on account of the close relationship which exists between man and God [sic]."22 The reasoning, in other words, harks back to Cicero's opening observations on the grand community of nature, which links man and the gods together in a commonweal as broad as the universe itself. Were justice not one with that nature in which both man and the gods share, then the Laws and the customs of society would not join man to the divine in the intimate bond that is suggested by the very word "religion."

THE argument thus advanced is simply a corollary of Cicero's main discourse, but this corollary leads us into the heart of the problem: it is not only that the Laws receive their sanction from nature; the religious rites of the State receive *their* sanction from nature as well. The theoretical issue could not be drawn more clearly: the religious rites, as also the public orthodoxy they enshrine, are sanctioned by the naturalness of justice; justice is necessary for the preservation of the State; whence it follows that the public orthodoxy *can* be maintained on utilitarian grounds: the law of nature demands the maintenance of the religious rites and observances *for the good of the State*. Cicero, we perceive, refuses to use the argument from utility to establish the naturalness of justice, but does not hesitate to use it to establish the naturalness of the rites. The philosophical precedence of nature and its law over religious convictions and the observances demanded by them forces us to base the latter on the former.

But why, we might and indeed must ask, are the rites of Rome so necessary to the well-being of the State? Here we reach one of those absolutes in evidence upon which all political philosophy is based. We reach here the meaning of the Roman *politeia*. The answer is one with the whole Roman tradition: belief in the gods and pious observance of the rites dedicated to them have bred in the Roman people that

austerity and rectitude, that *gravitas*,23 which has made Rome possible and which alone can assure her continued existence. But the Roman forefathers "believed" in the gods in the sense that they were convinced that the gods really exist, really guide the destiny of the City of Rome. Their belief was not a matter of calculated policy, seeking to instrumentalize a religion for the sake of the greatness or even the continued existence of a State based on justice. Rather, the gods dispense justice and providence to those who tend their rites. It is indeed useful to propitiate the gods; but the belief in their existence, which created the public cult of propitiation, is just that: a belief *not* a policy. Cicero, in deducing the utility of the rites from the harmony of nature, indicates a philosophical sophistication within Roman thought that has moved far beyond the simplicity of belief that marked the attitude of the old Republic.

When Cicero speaks directly to the State in relation to the public orthodoxy, he does not hesitate, then, to give precedence to the political rather than the metaphysical or religious. In "the very beginning," he argues, we must "persuade our citizens that the gods are the lords and rulers of all things"; "what is done, is done by their will and authority."24 The gods are "great benefactors of men" and, make no mistake about it, they "take account of the pious and the impious." (They watch each individual: the wrongs he does, the intentions and the degree of piety with which he fulfills his religious duties.25) If we *do* persuade the citizens' minds in this sense, they "will not fail to form true and useful opinions"; and let no one be so "foolishly proud" as to suppose that "reason and intellect exist in himself, [but] . . . do not exist in the heavens and the universe."26 This would be tantamount to saying that *no* reason guides "those things which can hardly be reached by the highest reasoning powers of the human intellect," and that a man can remain a man and "not [be] driven to gratitude by the orderly courses of the stars, the regular alteration of day and night, the gentle progress of the seasons, and the produce of the earth

23. On the role of *gravitas* in Cicero's thought, see Antonio Fontana, *Artes ad Humanitatem* (Pamplona, 1957), *passim*.

24. Cicero, *Laws*, II, vi (beginning).

25. II, vi (beginning).

26. II, vi (middle).

22. Cicero, *Laws*, I, xv (end).

brought forth for our sustenance."²⁷ The truth is that "all things that possess reason stand above those things which are without reason," and that "reason is inherent in nature"²⁸ — so that to say that anything stands above nature is "sacrilege."²⁹ Then the utilitarian note again: "Who will deny that such beliefs are useful when he remembers how often oaths are used to confirm agreements, how important to our well-being is the sanctity of treaties, how many persons are deterred from crime by the fear of divine punishment, and how sacred an association of citizens becomes when the immortal gods are made members of it, either as judges or as witnesses."³⁰

CICERO'S reasoning here is more subtle than a cursory reading of the text would suggest. The context is a discussion concerning Plato's contention that the Laws ought not merely to coerce, but should win some measure of consent on the part of the citizenry.³¹ Cicero attempts to locate the ground of such consent in a belief in the existence of the gods, and to this end asserts the following things: We must persuade the citizenry that the gods are the lords and guardians of all things and that they exercise a benevolent providence over all who propitiate them, because, to repeat, "minds which are imbued with such ideas will not fail to form true and useful opinions." A belief in the existence of the gods, therefore, is good because it is conducive to the formation of true and useful opinions. Cicero then discusses, one by one, the true and the useful opinions that grow from such a belief, above all this one: He who piously fulfills his duties to the gods will be moved to consider the very structure of the universe in all its orderliness and thus come to assent to the proposition that reason exists, not alone in man, but in the universe as well. In short, Cicero puts religious piety to work for the sake of philosophy, "true opinions": a religious attitude in a man, itself bred by a pious observance of the rites and by a belief in the existence of the gods, is good because it will move him to meditate carefully upon the reasoned course of the universe. True opinions here serve the common good of the polity and true philoso-

27. II, vi (middle).

28. II, vi (beginning).

29. II, vi (middle).

30. II, vi (middle).

31. II, vi (end). Cf. Plato, *Laws*, 718 B - 723 D.

phy serves virtue. Although Cicero formally divides his argument into reasons for the forming of both "true" and "useful" opinions, his "true" opinions are themselves at bottom based on political utility. It is not merely that he argues openly that belief in the gods is useful because it casts a sacred character over all society, which in turn deters evil-doers, sanctifies treaties, and guarantees oaths; his *previous* argument is equally utilitarian: faith breeds sound philosophy and sound philosophy breeds the virtue needed to consent to the Laws and consent to the Laws breeds a sound *politeia*. And what we want, at least as political philosophers, is a sound polity!



Willmoore Kendall

The political expediency of the public orthodoxy, of belief in the gods, is even more nakedly expressed further on in the *Laws*, when Cicero comments on the ancient Twelve Tables and Sacred Laws, those *sacrae leges* which were thought to have been formulated in the earliest days of the Republic and which gave inviolability to the plebeian tribunes.³² They read: "No one shall have gods to himself, either new gods or alien gods, unless recognized by the State. Privately they shall worship those gods whose worship they have duly received from their ancestors. In cities they shall have shrines; they shall have groves in the country."³³ And Cicero takes up the contention — astonishingly "modern" it must seem to us — that the divine can be worshipped not merely in temples and in shrines at designated times, but in any old place and at any old time that suits the whim of the worshipper, as witness his

32. II, vi (end).

33. II, viii (beginning).

reference to the "Persian Magi, in accordance with whose advice Xerxes is said to have burned the temples of Greece on the ground that the Greeks shut up the gods within walls, seeing that this whole universe is their temple and home."³⁴ Cicero's reply is a precious text, not only because it reveals magnificently the piety and reverence of that Roman spirit of which we are all the heirs,³⁵ but also because it introduces us further into the heart of Roman religion and of Cicero's teaching concerning the public orthodoxy:

*The Greeks and Romans have done a better thing: for it has been our wish, to the end that we may promote piety towards the gods, that they should dwell in the cities with us. For this idea encourages a religious attitude that is useful to States, if there is truth in the saying of Pythagoras, a most learned man, that piety and religion are most prominent in our minds when we are performing religious rites, and in the saying of Thales, the wisest of the Seven, that men ought to believe that everything they see is filled with the gods, for all would then be purer, just as they feel the power of religion most deeply when they are in temples.*³⁶

The psychological argument is evident: a sense of piety and reverence is more easily invoked in the atmosphere of a shrine, a place set aside for worship and for worship alone, than in the open air. Even the very conviction that the divine is everywhere is better bred in a man who meditates the divine in some predilected spot that bears in upon him the meaning of divinity in an especial manner. The religious argument is evident: Romans and Greeks set aside shrines and groves in order to produce a greater devotion to the gods. But the political argument is also evident and is, once again, evidently utilitarian down to its very wording: "For this idea encourages a religious attitude that is useful to States." (*Adfert enim haec opinio religionem utilem civitatibus.*)

34. II, x (end).

35. For a profound and beautiful meditation on the Roman sense of *place* and its economy in the religious life of Western man, see Hilaire Belloc, *Hills and the Sea* (New York, 1906), the essay entitled "The Men of the Desert."

36. Cicero, *Laws*, II, xi (beginning; italics ours).

THE text would merely support our earlier conclusions did it not also, as indicated, finger the very meaning of the Roman religious experience, and thereby lead us to the centre of Cicero's dilemma concerning the politics of the public orthodoxy. "It has been our wish . . . that [the gods] should dwell in our cities with us." A Christian must read this text twice in order to believe what is before his eyes, which he can do only when he understands that what we confront here is the difference between transcendence and immanence. The gods come to dwell in the City — at the wish of Rome! Which is to say: the gods can be commanded by man to dwell where man would have them. To the Christian, who believes in a God who commands and is in no sense commanded, the very notion is shocking; but not so in a society that has not yet broken through to transcendence: there, nothing could seem more natural. For the Roman world would have looked, and in fact did look upon the Christian claim to a God beyond the cosmos as blasphemy. As Cicero puts it: the contention that "anything stands above universal nature" is "sacrilege";³⁷ and this "sacrilege" is precisely the Christian claim, the claim to know a God who forms no part of the world but who infinitely transcends it. The classical universe was a closed universe and the gods dwelt within it as ultimate principles of order, themselves immanent to the order they established.³⁸ There is hence a certain equality between gods and men, an equality that emerges at its clearest in Cicero because of the Stoic overtones in his thought: gods and men themselves share a reason more fundamental than either of them. Although man must propitiate the gods, man can in a sense call upon them to dwell in the City in order that he may the better worship them — and we must add, in order that the gods can better assure the common good of the commonwealth (which itself participates in a universal harmony that includes gods and men alike).

We can turn for assistance here to Eric Voegelin: St. Augustine, he notes, could not understand Varro when he argued that "as the painter is prior to the painting, and the architect prior to the building, so are the cities prior to the institutions of the

37. II, vi (beginning).

38. Cf. Romano Guardini, *The End of the Modern World* (New York and London, 1956); Etienne Gilson, *God and Philosophy* (New Haven, 1939).

cities."³⁹ And Voegelin comments: "What St. Augustine could not understand was the compactness of Roman experience, the inseparable community of gods and men in the historically concrete *civitas*, the simultaneousness of human and divine institutions of a social order."⁴⁰ Cicero, when he argues that the Twelve Tables are in accord with the law of nature, would seem to avoid the blunt and more clearly formulated Varronic conception of the Roman experience. But if we examine Cicero's text we find that "Nature" is made to justify divination, the ritual games, and the institution of soothsayers;⁴¹ and to the objection that the House of Augurs was "invented to be of practical use to the State," Cicero can only answer vaguely that "there is no doubt that this art and science of the augurs has by now faded out of existence on account of the passage of time and men's neglect."⁴² Moreover, after discussing the religious functions of the pontiffs in connection with the laws of burial and the consecration of land, Cicero tips his hand, and we see his real interest in the Roman religious observances, in the candid assertion that "we make so much of these matters" in order that "these rites shall be preserved and continuously handed down in families, and, as I said in my Law, that they must be continued forever (*perpetua sint sacra*)."⁴³ Here again we are in the presence of the panegyrist of the Roman State. The *Civitas* demands the rites for its preservation and grandeur. For this reason, regardless of the religious truth that the rites may or may not contain, they must be perpetuated and observed down to the last flourish of ritual so long as time shall be.

ERIC Voegelin points up sharply the significance of the *De Natura Deorum* in the Ciceronian corpus.⁴⁴ The work of a man profoundly affected by Greek philosophy, especially in its Platonic and Stoic forms, the *De Natura Deorum* remains the exercise of a Roman who cannot really

take philosophy seriously, who cannot permit philosophical conclusions concerning the meaning of things as they are and the structure of the soul to alter his inherited commitments to the Roman Order. The key figures in the drama are Cotta and Balbus. The latter represents the claims of philosophy — claims that transcend the rites of the city and the institutions of the State; the former, a *pontifex maximus*, stands for the civil sacredness of the old Roman orthodoxy. He insists throughout the discourse on the differing sources of authority in any discussion concerning the gods.

There are, he says, those who rest their claims upon authority, an authority inherited from the State. He, Cotta, as a pontiff, is bound by his very office to accept the authority of the State concerning the existence and nature of the gods and the rites required for their propitiation. Cotta admits the authority of Balbus ("the authority of reason, of philosophy"), as also, however, the justice of Balbus' plea that he (Cotta) remember that he is a pontiff:

This no doubt meant that I ought to uphold the beliefs about the immortal gods which have come down to us from our ancestors and the rites and ceremonies and duties of religion. For my part I shall always uphold them and always have done so, and no eloquence of anybody, learned or unlearned, shall ever dislodge me from the belief as to the worship of the immortal gods which I have inherited from our forefathers. But on any questions of religion I am guided by the high pontiffs, Titus Coruncanus, Publius Scipio and Publius Scaevola, not by Zeno or Cleanthus or Chrysippus; and I have Gaius Laelius, who was both an augur and a philosopher, to whose discourse upon religion, in his famous oration, I would rather listen than to any leader of the Stoics. The religion of the Roman people comprises ritual, auspices, and the third additional division consisting of all such prophetic warnings as the interpretations of the Sybil or the soothsayers have derived from portents and prodigies. Well, I have always thought that none of these departments of religion was to be despised, and I have held the conviction that Romulus by his auspices and Numa by his establishment of our ritual laid the foundations of our state, which assuredly could never have been as great as it is had not the fullest measure of divine

39. Saint Augustine, *The City of God*, vi. 4.

40. Eric Voegelin, *The New Science of Politics* (Chicago, 1952), p. 88.

41. Cicero, *Laws*, II, xiii.

42. II, xiii-xiv.

43. II, xix (italics ours).

44. Voegelin, *New Science*, pp. 87-91. In the following paragraphs of our text we have drawn heavily upon Professor Voegelin's analysis.

*favour been obtained for it. There, Balbus, is the opinion of a Cotta and of a pontiff; now oblige me by letting me know yours. You are a philosopher, and I ought to receive from you a proof of your religion, whereas I must believe the word of our ancestors even without proof.*⁴⁵

Cotta represents the Cicero, if not always of the Platonic and Stoic meditations, at least the Cicero of *The Laws*, who lays it down as a first principle that the public orthodoxy must be preserved forever in order that Rome remain the Eternal City. Confronting the philosopher Balbus, Cotta is content to say that a "single argument would have sufficed" to convince him of the existence and nature of the gods, namely: "that it has been handed down to us by our ancestors." "But," he goes on, "you despise authority, and fight your battles with the weapon of reason."⁴⁶ On the surface, the issue seems to be quite simple: a Roman priest, representing the full authority of the civic theology of the Fathers of Rome, confronts a representative of that Greek philosophy that would meddle with matters long ago settled and agreed upon, who would meddle in the name of reason, of some authority superior to that of the *politeia*. Did not the Assembly so stand up to Socrates? And did not the eventual victory of Socrates, a victory achieved beyond his grave, mark the dissolution of the archaic Greek city state in the name of speculation and the impieties that spawn therefrom?

THE issue, however, is not simple, though the critic is forced to read twice in order to understand what has *really* been said. Balbus, representing philosophy and her claims — claims that transcend allegiance to the State and to the public orthodoxy that supports it — takes his stand with the Stoics, throughout the *De Natura Deorum*, in favour of the whole pantheon of the gods, insisting that our very dreams are sent to us by Jupiter.⁴⁷ Balbus rejects authority as a safe ground for believing in the gods, asserting that their reality can be established by reason itself. Cotta, the Roman priest and avowed representative of the gods, however, advances every argument in the arsenal of the classical world *against* the existence of the

gods. He heaps scorn upon the philosophical arguments marshalled by Balbus. He stoutly maintains that a meditation on the heavens can lead to disbelief as readily as to belief;⁴⁸ that awe before nature can lead to atheism;⁴⁹ that divination even if it occurs, is beside the point;⁵⁰ that the arguments of Zeno would force us to accept such absurdities as that "the world will also be an orator, and even a mathematician, a musician, and in fact an expert in every branch of learning, in fine a philosopher";⁵¹ that the Stoic contention that a universal reason gave birth to all the arts in which man is skilled would necessitate our holding that the world was itself "a harper and a fluteplayer."⁵² Admitting the irrationality of the pantheon of the gods, Cotta insists that when he reflects "upon the utterance of the Stoics," he "cannot despise the stupidity of the vulgar and the ignorant."⁵³ If the Stoic arguments hold that the world is god, "then why do we add a number of other gods as well? And what a crowd of them there are!" Admitting that intelligence is forced to combat superstition, the pontiff renews his attack by damning Stoicism for absorbing every god dreamed by the fevered mind of man within its system, which is itself little more than the personification of allegorized virtue.⁵⁴ Moving to the core of the classical religion, Cotta points to the belief in providence and in a reward for the just and a punishment for the wicked: our experience, he maintains, simply fails to show us this hoped for providence because the evil are exalted and the good are often despised and trod upon by the powers of this supposedly rational and benevolent world.⁵⁵

Balbus, shocked by this defense of atheism, appeals to Cotta's character as a pontiff, declaring that the "habit of arguing in support of atheism, whether from conviction or in pretense, is wicked and impious."⁵⁶ Cotta replies modestly, perhaps coyly, that he only "desires to be refuted," and assures his philosopher opponent that

45. Cicero, *On the Nature of the Gods*. III, ii-iii.

46. iii-iv.

47. xi.

48. iii-iv.

49. v-vi.

50. vi-vii.

51. viii-ix.

52. viii-ix

53. xv-xvi.

54. xxiii-xxiv.

55. xxx-xxxvi.

56. xxvii.

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he is "confident" that he can "easily refute" him.⁵⁷ "No doubt," sarcastically answers Velleius, the partisan of Cotta, "why, he [Balbus] thinks that even our dreams are sent to us by Jupiter — though dreams themselves are not so unsubstantial as a Stoic disquisition on the nature of the gods."⁵⁸ The book ends with Cicero's doubtful affirmation that Balbus "approximated more nearly to a semblance of the truth" than Cotta.⁵⁹

We can marshal Cotta's arguments under five points, which follow one another in logical sequence:

1) He distinguishes between Stoicism, as such, and the *authority* advanced by Stoicism for the doctrines it maintains: an authority transcending that of society and of the State — that is, the authority of reason. Against this authority for belief in the gods Cotta — as a Roman pontiff — pits the authority of the fathers, of society, of the State. His attack must not, there-

fore, be read as though it were a philosopher's controversy with another philosopher. Representing as he does the authority of the State, Cotta sets himself squarely against the supposed authority of a reason that pretends to by-pass the exigencies and demands of society. Cotta is the Assembly against Socrates.

2) Cotta grants that reason might lead us to belief in, and adherence to, the gods, to the public orthodoxy; however, reason might equally *fail* to lead us to such belief and adherence. Reason might lead us into impiety and unbelief. *A priori*, before I begin to philosophize, I confront two possibilities: a confirmation of, or a destruction of, the public orthodoxy. Philosophy is a risk, and nobody knows where its siren call may lead him.

3) In fact, philosophy might well take a man into atheism (Cotta's whole discourse is an exercise in metaphysics aimed at revealing that very possibility).

4) Should reason lead a man into atheism — and we must remember that Cotta never says that it *must* lead a man in that direction — belief in the gods will collapse

57. xxxiv-xl.

58. xl.

59. xl.

and will bring with it the eventual ruin of the State. Religion is not only eminently useful to the State; it is the very cornerstone of the *politeia*.

5) The conclusion is inexorable: the authority of the *politeia* and the public orthodoxy it enshrines must have precedence over that of reason. Should a man engage in the business of philosophizing about the origins of the universe and the ultimate truth of things, he must not do so seriously but only as though he were playing a game. And his conclusions, should they violate the public beliefs of society, must be set aside like toys.

Up until this point, Cicero speaks through Cotta, the high priest. But we must remember that Cicero is more than Cotta, that Cicero is not only a Roman statesman but a philosopher in his own right, a philosopher deeply grounded in Plato, and by no means the popularizer and rhetorician of Stoic doctrine that some commentators have made him out to be. Underneath the doctrines of Cotta, and forming a dimension of Cicero's thought, there are three Ciceronian positions, already adverted to, that buttress Cotta on *philosophical* grounds:

1) If the State collapses, justice collapses; and justice is rooted in the very fabric of universal nature. This is the central meaning of *The Laws*, which has as its heart — as we have seen earlier — the demonstration of the naturalness of justice.

2) It follows that reason itself, philosophy, dictates that we give precedence to the authority of society, to the authority of the public orthodoxy over that of private philosophical speculation. Philosophy must doff its cap to the public faith; it must even humble itself before the claims of religion, even to the extent of declaring irrational its own rationality, should that ultimate sacrifice be demanded. There is a fragment from the lost passages of the third book of the *De Natura Deorum* in which Cicero, stating the case for the Censor, makes the point in the most naked manner possible: Lactanius, filling in the lost text, writes of it: "Cicero was aware that the objects of man's worship were false. For after saying a number of things tending to subvert religion, he adds nevertheless that" — and now we are given Cicero's own words — " 'these matters ought not to be discussed in public, lest much discussion destroy the established religion of the nation.' " (*Non esse illa vulgo disputanda, ne susceptas publice religiones disputatio talis exstinguat*)⁶⁰

60. xl.

CICERO was, clearly, confronted with a frightening contradiction between his natural law doctrine and his public worship of the gods — a worship that his own philosophical convictions rejected on theoretical grounds, but that he freely accepted in the name of his Roman citizenship. As a philosopher committed to justice and to the naturalness of justice, as a philosopher aware of the impossibility of maintaining the State (and therefore justice) without a public adherence to a commonly accepted religious orthodoxy, Cicero was forced into what we may fairly call a public lie for the sake of a properly philosophical truth. The Ciceronian position absorbs within itself the insights of positivism and pragmatism, of historicism, and of existentialism of the political order; but the Ciceronian position transcends them all in that Cicero was philosopher enough to know that all three positions are theoretically fallacious.

The positivist and pragmatist epistemology, as indicated, reduces truth to empirical factuality and usefulness. We find the doctrine in its most articulate form in John Dewey, who held that the predicate of every judgment is nothing other than a cerebral instrument for the solution of a problem presented by the subject. Predicates belong in subjects, are "true" only when they resolve the problem of the subject, only when they are useful; and Dewey tries to resolve the problem of American society in terms of the highly elaborated predicate, "the democratic society and adjustment thereto." This predicate, when applied in government, in education, and in life, "works." Democracy is the ideal solution to the complexities of the American experience. The predicate "adjustment to a democratic society" (the myth has been expressed in any number of ways) becomes therefore the sole content of the American public orthodoxy, and this orthodoxy is justified exclusively in terms of its utility. John Dewey is an admirable Cotta, a high priest of an orthodoxy, of a public faith. What Dewey and his disciples call "Absolutism" could not be made to "work" in America, and — asserts Dewey — given the American experience and temperament, *ought* not to be made to "work." It follows that the utility of the democratic *process* (whether it be expressed mythologically or conceptually is irrelevant in this context) is its own justification to the title of public orthodoxy within twentieth-century America. From this American Maurrasianism have come forth "adjustment to the community,"

"education for life," "the open society," "the pluralist society," and many similar myths. Nor does it matter here that pragmatists, failing to distinguish between the existential and theoretical meanings of the term, avoid the word "orthodoxy." Existentially, the "orthodoxy" they reject is the Western Christian experience as permeated by the classical inheritance. Existentially the term "orthodoxy" attaches in letters and in history to *that* doctrine; in rejecting that doctrine, positivism and pragmatism indeed reject "orthodoxy." But theoretically orthodoxy refers to any public doctrine accepted unconditionally by a community, even if the orthodoxy in question is somebody else's heresy; and the emotional reaction of positivists to the word "orthodoxy" is only one aspect of *their* orthodoxy. From a theoretical point of view the positivist and liberal myth, that is to say, is as much an orthodoxy as any other that ever has existed on this globe: an *ultimate* frame of reference, a court of doctrine and dogma before which all other doctrines and opinions must present themselves for judgment. The fact that many Christians (Catholics and Protestants alike) in America feel obliged, at least publicly and academically, if not in their hearts, to justify their Christianity in terms of its supposed affinities with democracy and liberal myths indicates, moreover, that positivism and liberalism are well on the road, in certain quarters at least, to establishing *their* orthodoxy as the public one. The main point, however, is that the positivist insight is englobed within the Ciceronian experience: the utility of the existent (or nascent) orthodoxy justifies its preservation and commands for it the assent of the citizenry. In Cicero's time that orthodoxy was the public Roman cult of the gods. Without that cult, the State would collapse. Therefore its very utility was its *laissez-passer* to the theatre of existence and meaning.

The notion (associated with the name of Dilthey) that man is his history, Cicero rejected when he spoke as a philosopher. But when he spoke as a Roman, when he spoke through the mouth of Cotta the high priest, he spoke good Dilthey. The House of Augurs may not be much good at divination nowadays, but the House of Augurs is the product of history, and history justifies its own products. The City of Rome is given us as a concrete cosmion, incarnating its own meaning in terms of its own historical experience. It stands up against nature as it stands against the forests and the mute skies above: every

ultimate source of meaning must be found within the walls of the City itself. The City establishes its institutions, its own gods, insisted Varro; the City calls upon the gods to live within shrines and groves that they may better be seen and thus may better fill the hearts of the people with piety and awe, insisted Cicero. This is but a blunt way of stating the historicist thesis, of identifying meaning with its generation.

THE existentialist contention that meaning is one with the brute existent, that theoretical formulation cannot look out towards a possible actualization that transcends the existent in this given moment of time, is due to the existentialist identification of existence and possibility, of actuality and potentiality. If man is nothing other than his own possibility, then possibility cannot look beyond man but *is* man, in the terrible drama of perpetual crisis. It follows that every theoretical formulation must be justified in terms of man as we find him here and now. There can be no appeal to a possibility beyond the present, itself promising a future and better actuality. All meaning is reducible to what is given because the annoying Aristotelian distinction between the possible and the actual has been rubbed away, thus leaving man a naked existence thrown into the world, an existence identical with its own possibility and therefore not the standard for a politics that transcends the immanence of the historical moment. In the political order the given is the State as we find it, society as we encounter it. Theory must be validated in terms of this given, and politics becomes a justification for a nationalist charisma or a gnostic dream simply because these happen to be the historical given. Thus with one hand Cicero rejects the existentialist thesis, but with the other accepts it. "In the debate about the best political order (*Status civitatis*) . . . Scipio takes his stand against Socrates. Scipio refuses to discuss the best order in the name of the Platonic Socrates; he will not build up a 'fictitious' order before his audience, but will rather give an account of the origins of Rome."⁶¹ What we here find thrown up against a problematic universe is Rome Herself: splendid; erect; the City Eternal. Let all political and philosophical meaning square itself with this Thing, the *res publica*. The gods have this advantage over their enemies, that they exist as instituted by our fathers. This institutional

61. Voegelin, *New Science*, p.90: Cicero, *The Republic*, ii, 3.

existence of the gods is the ground of their theoretical reality, and let every theory — says Cicero through Cotta — be squared with the fact that these gods, our own, live with us, and that if we carried the household deities from burning Troy, they in turn blessed the enterprise that is Rome.

Cicero, we repeat, truly gathers the positivist, historicist, and existentialist insights into his philosophy. But unlike the proponents of these theories, Cicero — as philosopher — cannot *really* reduce meaning either to utility, or to history, or to factuality. He is forced, as we have pointed out, to invent two truths, two orders of meaning that cross and clash and that therefore find themselves related one to another: the meaning of theoretical truth, of philosophy, is not that of society; but the former demands that the latter be upheld, no matter how false it may be theoretically. Centuries later Thomas Aquinas, a philosopher who had absorbed the experience of the Christian West, met a similar doctrine,⁶² that of Siger de Brabant and the Parisian Averroists, according to which one and the same thing can be true *theologically* and false *philosophically*, can be and ought to be believed on faith while rejected by reason, and pronounced it damnable. (We do not suggest that the Ciceronian and Brabantian positions coincide, but rather that the same theoretical principle is involved in the two cases.)

In order to live such a doctrine, a man needs an heroic cynicism that can face intellectual suicide in the name of the intelligence and the will at the service of society — an attitude that can be maintained only by a few, and by them not for long. Psychologically, man's drive towards unity pushes him to seek a third doctrine, a higher truth, that somehow reconciles the theoretical and existential contradiction. Cicero, writing in an age when ancient Roman patriotism was disintegrating but had not yet disintegrated under the impact of the Greek philosophical breakthrough to the truths of the soul, invented a strategy that soon collapsed in the tolerant theology of the late Empire, itself destined to give way soon enough to the Christian Empire of Constantine that incarnated a new orthodoxy (what we have since named "Orthodoxy"), a faith that could be and was believed by Western society at large.

WE have come close to fulfilling the purpose of this essay, the giving of a theoretical predicate to the subject: "public

62. Saint Thomas Aquinas, *De unitate intellectu contra Aver.*

orthodoxy." The public orthodoxy, let us recall, involves propositions assent to which must be made not on political, but on ontological and religious grounds. It asserts something, let us recall, too, about the structure of things as they are, about man's relation to the divine and about the destiny of the human soul; and assent to that something on purely political grounds is not really assent at all, since — let us emphasize, even at the risk of laboring the point — the assent required is theoretical, ontological. Cicero teaches, let us recall finally, that the public orthodoxy is necessary for the preservation of the State: that although philosophical inquiry into the public orthodoxy might well support it, it also might well destroy it; and that the destruction of the public orthodoxy is the destruction of the State and therefore of justice, itself an imperative of nature. Now, as we confront this circle of meanings and this vicious contradiction we might well conclude that there is no way out. There may, however, be a way *in*. Should transcendence cross over into immanence, should God speak to man and thus reveal His Truth and His Will, the public orthodoxy — enshrining that Truth and Will — would have a guarantee beyond itself, beyond the immanent demands and requirements of society: the will of God. Were this so, man could reverently and intelligently probe the rationality of this orthodoxy, knowing in advance that whatsoever he might discover would conform itself with what has been taught, since what has been taught, has as its Teacher God Himself, whose grace guarantees the faith with which we receive His Word. Such a man might well ask himself whether he has an immortal soul, whether justice is more than a word, and whether God exists. These questions would be the *videtur quod non* of the Middle Ages — not a doubt exercised on the origins of a civilized and Christian polity, but a weighing of possible objections to these origins, objections whose resolution man would confidently expect to discover by his own reason because God Himself had guaranteed their resolution.

OUR conclusion, our predicate, belongs properly to political theory, but to a political theory dependent on a metaphysics open to Revelation. Where the public orthodoxy is not guaranteed by transcendence, it is always open to the charge that it is opposed to philosophical truth and is the enemy of the soul.

Conversely, the friend of the soul (a soul well-ordered in accord with the structure of reality as it is) might well find himself the enemy of the State, a State not necessarily completely evil in itself; he might find himself, therefore, the enemy of justice itself. His choice will be awful: the guaranteed well-being of society *versus* the demands that wisdom may lay upon him, even if these demands mean the end of society as he has known it. Should he choose to philosophize, and should society then silence him or even kill him for his pains, let him know that society is acting in its own self-defense, a self-defense de-

manded on philosophical grounds. Let him, therefore, rejoice at the moment of his execution that society has fulfilled *its* duty, a duty that he as philosopher is sworn to uphold in the name of philosophy itself.

But where the public orthodoxy is guaranteed by transcendence, by the Word of God, then the truths of the soul and of society, the first principles of the *politeia* and of metaphysics (that is, the very being of both), are theoretically guaranteed. Beyond this guarantee, which can be had only as a gift and as a blessing, there is no other for any human society born upon this earth.

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CHAPTER 4

GLOBALIZATION

IT IS THANKS to Western prosperity, Western legal systems, Western forms of banking, and Western communications that human initiatives now reach so easily across frontiers to affect the lives and aspirations of people all over the globe. However, as my argument has implied, Western civilization depends on an idea of citizenship that is not global at all, but rooted in territorial jurisdiction and national loyalty. By contrast, Islam, which has been until recently remote from the Western world and without the ability to project its message, is founded on an ideal of godliness which is entirely global in its significance, and which regards territorial jurisdiction and national loyalty as compromises with no intrinsic legitimacy of their own. Although there have been attempts to manufacture nationalisms both appropriate to the Islamic temperament and conducive to a legitimate political order, they have fragmented under the impact of sectarian or tribal allegiances, usually giving way to military dictatorship or one-man, one-family, or one-party tyranny. Islam itself

remains, in the hearts of those who live under these tyrannies, a permanent call to a higher life, and a reminder that power and corruption will rule in this world until the reign established by the Prophet is restored.

Terrorism has a long history in the Islamic countries, being the usual recourse of those who reject the legitimacy of the prevailing sovereign power. Until recently, however, it modeled itself on the Assassins, and took powerful or symbolic individuals as its targets. In nineteenth-century Russia, terrorism took a new and more destructive form, involving indiscriminate bombings and acts of destruction which, according to one estimate, claimed 17,000 victims between 1894 and 1917.¹ The Russian methods finally led to a successful revolution, and have been adopted by the postwar nationalist movements in Western Europe, notably by the IRA and ETA, as well as by the urban revolutionaries of the 1960s in Italy, France, and Germany, by the PLO, and by the left-wing insurgents in Latin America. Those groups have formed mutually supportive networks for the exchange of training and expertise, and it is due to the globalizing process that these networks are available also to the Islamist extremists.

Nevertheless, Islamist terrorism is a distinct development in two ways. Islamism is not a nationalist movement, still less a bid to establish a new kind of secular state. It rejects the modern state and its secular law in the name of a "brotherhood" that reaches secretly to all Muslim hearts, uniting them against the infidel. And because its purpose

is religious rather than political, the goal is incapable of realization. The Muslim Brotherhood failed even to change the political order of Egypt, let alone to establish itself as a model of Koranic government throughout the Muslim world. Where Islamists succeed in gaining power—as in Iran, Sudan, and Afghanistan—the result is not the reign of peace and piety promised by the Prophet, but murder and persecution on a scale matched in our time only by the Nazis and the Communists.² The Islamist, like the Russian nihilist, is an exile in this world; and when he succeeds in obtaining power over his fellow human beings, it is in order to punish them for being human.

Globalization does not mean merely the expansion of communications, contacts, and trade around the globe. It means the transfer of social, economic, political, and juridical power to global organizations, by which I mean organizations that are located in no particular sovereign jurisdiction, and governed by no particular territorial law. The growth of such organizations is, in my view, a regrettable by-product of our addiction to freedom. Whether in the form of multinational corporations, international courts, or transnational legislatures, these organizations pose a new kind of threat to the only form of sovereignty that has brought lasting (albeit local) peace to our planet. And when terrorism too becomes globalized, the threat is amplified a hundred-fold.

With al-Qa'eda, therefore, we encounter the real impact of globalization on the Islamic revival.³ To belong to

this "base" is to accept no territory as home, and no human law as authoritative. It is to commit oneself to a state of permanent exile, while at the same time resolving to carry out God's work of punishment. But the techniques and infrastructure on which al-Qa'eda depends are the gifts of the new global institutions. It is Wall Street and Zurich that produced the network of international finance that enables Osama bin Laden to conceal his wealth and to deploy it anywhere in the world. It is Western enterprise with its multinational outreach that produced the technology that bin Laden has exploited so effectively against us. And it is Western science that developed the weapons of mass destruction he would dearly like to obtain. His wealth, too, would be inconceivable without the vast oil revenues brought to Saudi Arabia from the West, there to precipitate the building boom from which his father profited. And this very building boom, fueled by a population explosion that is itself the result of global trade, is a symbol of the West and its outreach. The appearance of Arabia has been permanently altered by it—and altered, in the feelings of many Muslims, for the worse. Concrete high-rises dwarf the minarets, domestic alleyways give way to pretentious boulevards or jerry-built slums, and the hideous, unfriendly style of international modernism overlays and extringuishes the delicate fabric of the Muslim city.

It may seem quixotic to emphasize the role of architecture in the present conflict. But we should remember

Mohammed Atta's nostalgia for the old town of Aleppo and reflect on what has happened to the face of the Middle East under the impact of Western architectural norms, which have a symbolic significance at least equal to that of Western dress and Western manners. Architectural modernism was introduced with fanfares of globalist propaganda by the Bauhaus and by Le Corbusier, who envisaged their new style of architecture as both the symbol and the instrument of a radical break with the past. This architecture was conceived in the spirit of detachment from place and history and home. It was "the international style," a gesture against the nation-state and the homeland, an attempt to remake the surface of the earth as a single uniform habitat from which differences and boundaries would finally disappear.

In the West, where democratic procedures and legal norms give power to the citizen, the impact of international modernism has here and there been controlled and limited. Although the damage has been great, many cities retain their local character, and villages hold out against the tide. The great exception—Germany—remains committed to architectural modernism as a symbol and instrument of its cultural self-repudiation. And the modern German city can be seen as part of the long sad coda of Germany's defeat—the final transformation of a nation that does not dare to show its face without the benefit of plastic surgery. Elsewhere in Europe—notably in Italy, France, and Spain—the international style has been re-

sisted; churches dominate the skyline and streets are still bordered by humane facades. A conscious effort has been made to retain the character of both town and country, in the knowledge that they define an experience of the homeland, and that the homeland is the thing to which the citizen's loyalty is owed.

Americans have been careless of their cities, with the result that no one wants to live in them. But their suburbs radiate homeliness and comfort, and the country itself lies somewhere out there along the interstate, a still wild, open frontier that belongs to all of us, and we to it. Against the odds America has retained the aspect and the atmosphere of home.

In the Middle East, however, where land is disposed of by the governing power, and planning regulations are either non-existent or ignored, the landscape and cityscape have been mutilated beyond recognition. It was Le Corbusier who showed the way. Having failed to persuade the French authorities to adopt his plan to bulldoze Paris north of the Seine and replace it with militarized towers of glass, Le Corbusier worked on successive French governments, including the Vichy regime, to implement his insolent plan to raze the old city of Algiers, capital of Algeria, which was then a French colony. He succeeded at last, and after the war the bulldozers moved in, with catastrophic results. Thanks to the enormous profits that accrue to the modernist ways of building, Le Corbusier became a hero of the architectural establishment, and his repulsive plan for this

once beautiful city is now illustrated in all the standard Western textbooks of architecture.

Le Corbusier showed the European intelligentsia how the inferior people of North Africa should be treated: such, surely, was Attra's perception. Since Le Corbusier's time, the rush of speculative building—most of it illegal and on land that is officially "publicly owned," and fueled by the demographic explosion—has entirely transformed the visual aspect and daily rhythm of the Middle Eastern cities.⁴ Whatever hope there might have been that people would come to define their loyalties in terms of territory rather than faith has been obliterated by the impact of Western technology, which seems to believe in neither. And if we wish to understand in full the resentment of Palestinians towards Israeli settlements on the West Bank, we should not neglect the visual damage that these settlements have caused, introducing modernist styles and materials, sweeping roadways, and ubiquitous light pollution into a landscape that had worn its biblical aspect for centuries, with star-spangled nights above stone-built villages and historic cities like Jenin.

As the examples of bin Laden, al-Qa'eda, and the September 11 terrorists demonstrate, Islamism is not a cry of distress from the "wretched of the earth." It is an implacable summons to war, issued by globetrotting middle-class Muslims, many of them extremely wealthy, and most of them sufficiently well versed in Western civilization and its benefits to be able to exploit the

modern world to the full. These Muslims are products of the globalizing process, and Western civilization has so amplified their message that it travels with them around the world.

It may be hard to sympathize with these spoiled and self-indulgent advocates of violence. But it is not hard to sympathize with the feelings upon which they depend for their following. Globalization, in the eyes of its advocates, means free trade, increased prosperity, and the steady erosion of despotic regimes by the growing demand for freedom. In the eyes of its critics, however, it means the loss of sovereignty, together with large-scale social, economic, and aesthetic disruption. It also means an invasion of images that evoke outrage and disgust as much as envy in the hearts of those who are exposed to them. In the United States, where pornography is protected as free speech, people are able to accept that this assault on human dignity is the price we must pay for freedoms too precious to relinquish. But if you have not known those freedoms, and believe in any case that happiness resides not in freedom but in submission to God's law, the impact of pornography is devastating.⁵ No less devastating, for pious Muslims, are what they see as the indecent clothes and behavior of young women in the West—clothes and behavior that are in no way modified when those women travel on business or as tourists to Muslim countries, there to presume on a toleration which they are willing to reciprocate but do little or nothing to earn.

People in the West live in a public space in which each person is surrounded and protected by his rights, and where all behavior that poses no obvious physical threat is permitted. But people in Muslim countries live in a space that is shared but private, where nobody is shielded by his rights from communal judgment, and where communal judgment is experienced as the judgment of God. Western habits, Western morals, Western art, music, and television are seen not as freedoms but as temptations. And the normal response to temptation is either to give in to it, or to punish those who offer it. Many Muslim *mubajiroun* do both. Like Artta, they drink, gamble, and fornicate in the flesh-pots of America, while secretly plotting revenge against the thing that made these indulgences possible.

Globalization, therefore, offers militant Islam the opportunity that it has lacked since the Ottoman retreat from central Europe. It both concentrates the resolve of the believer and offers him a sword with which to prosecute God's will. Muslim states do not have the loyalty of their people, who are not citizens but subjects, contemptuous (for the most part) of their rulers. Hence, Muslim *states* have not recently posed a threat to the West. If they seem to do so, it is only because they form the shield around some crazy tyrant, whose power reaches no further than his weapons. Globalization, however, has brought into being a true Islamic *umma*, which identifies itself across borders in terms of a global form of legitimacy, and which attaches itself like a parasite to global institutions

and techniques that are the by-products of Western democracy. This new form of globalized Islam is undeniably threatening, since it satisfies a hunger for membership that globalization itself has created. It calls on the old nostalgia of the *mubajir*, and directs it not at some local usurper but at God's enemies, wherever they are.

THE PERSONAL STATE

Interestingly, however, the principal target of al-Qa'eda, as of the late Ayatollah Khomeini, is neither Western civilization, nor Christianity, nor global capitalism, nor anything else that can be given an abstract profile—it is the United States, conceived as a sovereign nation-state. In an uncanny way, the Islamists have identified the core component of the system that they wish to destroy. It is not the American people who are the enemy. It is the American state, conceived as an autonomous agent acting freely on the stage of international politics, and so calling on itself the wrath of God. When Khomeini described America as "the Great Satan" he meant it literally. And his doing so showed that he had grasped the fundamental difference between the West and the rest: namely, that in the West, but not in the rest, there is a political process generating corporate agency, collective responsibility, and moral personality in the state.

The point here may easily be overlooked by those who see politics in terms of movements, processes, forces, and

power struggles, and who neglect the difference that has been made to all these things by the legacy of over two millennia of Roman law. Like a firm or a church, a nation-state is not merely a collection of individuals. It is a moral and legal person, which acts on its own behalf and is liable for what it does. The nation-state can therefore be praised and blamed, hated and loved, and the form of membership that it offers is also a bond of trust between individual citizens and the corporation in whose decision-making they share.

The very same political process that turns subjects into citizens turns the state into a collective expression of its citizens' way of life. When we speak of the United States as negotiating a treaty, as building up its army, as declaring war on terrorism, we are not speaking metaphorically. These things are the genuine actions of a corporate person, in which all U.S. citizens are to some extent implicated, but which are the actions of no individual. When we speak in the same terms of Iraq or North Korea, however, we are speaking obliquely. There is no such entity as Iraq, only a legal fiction erected by the United Nations for the purpose of dealing with whichever individual, clique, or faction is for the moment holding the people of that country hostage. The form of corporate agency established by Western political systems has not been established elsewhere in the world. The states of the non-Western world are impersonal states, machines in their rulers' hands. They make no decisions, take no responsi-

bility, and can be neither praised nor blamed, but exist merely as shields and weapons in the hands of those whose advantages they secure. This was made explicit under the Leninist system of communist government, which was founded on the theory of "parallel structures." Every office of the Soviet state was shadowed by an office of the "vanguard Party," which exercised all the power but was wholly unaccountable for doing so.

This too casts some light on September 11. The attacks were designed to wound the United States in its decision-making part. The Pentagon, the White House, and the World Trade Center represent the three principal spheres of political agency—military, governmental, and economic—and the three ways in which the United States makes itself felt around the globe. And they bear witness to the reality of the country as an autonomous agent that can make decisions on its own behalf and can call upon the loyalty of its citizens to adopt those decisions as their own. The attacks were assaults on the *person* of the United States, and therefore on each and every citizen of that country.

The difference between "the West and the rest" is captured in this idea of the corporate person—an idea that has its origins in Roman law and no real equivalent in the *fiqh*. The personal state is characterized by a constitution, by a rule of law, and by a rotation of office-holders. Its decisions are collectively arrived at by a process that may not be wholly democratic, but which nevertheless includes every citizen and provides the means whereby each citizen

can adopt the outcome as his own. Personal states have an inherent preference for negotiation over compulsion, and for peace over war. They can live peacefully side-by-side despite disputed borders, as do the United States and Canada, while awaiting the outcome of a legal case that will settle the dispute. And they foster the growth of a national loyalty and a territorial jurisdiction in which the absolute demands of religion are tempered by the overarching need for toleration and common obedience to a secular power. The legitimacy of this power resides partly in custom, tradition, and the long-standing habits of the homeland; but it also depends upon the negotiated consent of the citizens who, through their participation in the political process, make the decisions of the state into decisions of their own.

Of course, that is a somewhat idealized picture of the modern nation-state. But it conveys the ideal to which Western states have aspired, and which has shaped their distinctive form of politics. Although democracy has been an immensely important component in the emerging nation-states of the modern world, it is more a consequence than a cause of their personality. In the absence of corporate personality, experiments in democratic government lead to social disruption, factionalism, and either the tyranny of the majority or the seizure of power by a clique. This we have witnessed time and again in Africa, and those who believe that the remedy for the "failed states" of the region is to introduce democratic elections fail to see

that without the framework of institutions and the underlying territorial loyalty, democratization is merely a staging post on the way to tyranny.

The personal state is answerable to its citizens, and its decisions can be imputed to them not least because they, as citizens, participate in the political process. When it fights on their behalf it does not drag them into conflicts that are none of their business but involves them in conflicts of their own. In this it should be contrasted with the principal forms of government that prevail outside the "West": the one-party state, the religious state, individual tyranny, and the so-called "failed state," in which the apparatus of government has simply fallen into disuse, leaving the people unprotected against criminals, marauders, and terrorists, as they are now unprotected in many parts of South America. Although all these varieties of state are represented at the United Nations, and all are accorded there the status of persons in international law, none of them has full corporate personality as I have described it. For one thing, they all lack effective internal opposition. Often during the Cold War commentators wrote of a contest between "hawks" and "doves" in the Kremlin, or of opposition to communist policies in this or that professional or military grouping within the party. And similar things are said today about the Islamic Republic of Iran. The fact remains, however, that there is no defined role for opposition in those states, no way in which an opposing party can peacefully compete for power with the one that

currently possesses it, and therefore no way in which opposition can be used to create a government based on dialogue. Decisions are made by an unanswerable minority and imposed willy-nilly on the country. The role of opposition, which is to make government accountable to the people, remains unfulfilled.

Any conflict with a non-personal state is therefore a conflict with some faction or individual within it. There cannot be victory in such a conflict unless the faction or individual is destroyed. This we have already experienced in the Gulf War. The Iraqi soldiers who had occupied Kuwait were quickly driven from their positions—after all, it was not their war, and not one of them had the slightest desire to lay down his life for Saddam Hussein. They were helpless conscripts in the schemes of a dictator. But because the allies did nothing to depose Saddam Hussein, the seeming victory was not a victory at all, but merely a restoration of the status quo ante and a renewal of Saddam's implacable enmity. The formal defeat of Iraq was the defeat of a legal fiction. The real victory was that of Saddam, who retained control over his subjects in the face of an alliance of nation-states that proved powerless to unseat him.

The asymmetry between personal states and the impersonal forces that now confront them can be witnessed in the case of Israel. The British protectorate of Palestine, carved out of the defunct Ottoman Empire, was opened to large-scale Jewish immigration by the Balfour Declaration

of 1917. Later, in the wake of the Holocaust, the desire of Jews for a state of their own became irresistible, and the retreat of the British from their protectorate was hastened by the terrorist methods of the Stern Gang. Israel quickly transformed itself thereafter into a nation-state by allying a historical national identity with an existing territorial jurisdiction. The Jews' pre-existing attachment to the Promised Land endowed the rule of law that the British had begun to establish in Palestine with the much-needed territorial loyalty. The result is that the state of Israel exhibits personal sovereignty on the Western model, and a genuinely democratic system of government. Few people doubt the injustice done to the Palestinian Arabs, both Muslim and Christian, in this process. But the fact remains that, for better or worse, Israel now exists in the heart of the Middle East, a personal nation-state surrounded, since the virtual annexation of Lebanon by Syria, by tyrannies, factional groupings, and terrorist movements that have only a fictitious personality either in fact or in law.

There is as yet no Palestinian state, nor was there ever, strictly speaking, a Palestinian nation, over and above the collection of historic creed communities that coexisted in the Holy Land under a succession of imperial rules—most recently Ottoman and British. The nominal leader of the Palestinians—Yassir 'Arafat—has never been elected by them, but was projected into eminence by the PLO, itself a terrorist organization on the model of the IRA, with a global network devoted to a local cause.⁶ By astute diplo-

macy on the world stage 'Arafat has won recognition for that cause; but he has neither the authority to pursue accommodation with Israel, nor the power to lead the Palestinians in an all-out war. Nor can he control the terrorist organizations that reside under his aegis and draw on the support of Islamic militants throughout the world.

Organizations like Hamas and the Islamic Jihad take their inspiration from the Muslim Brotherhood and the Hizbullah. They do not work through diplomacy or negotiation, but through violence, and suicide bombings are now their principal device. In these circumstances it is almost impossible for Israel to form a coherent policy towards the Palestinians. To destroy 'Arafat is pointless, if it leads to no change in the suicide attacks. To negotiate with him is also pointless, since he does not represent the people on whose behalf he claims to speak. In the absence of a corporate person with which the Palestinians as a whole can identify, and whose decisions they can make their own, all negotiation is futile, and all force unfocused.

In the face of this, the argument for a Palestinian state is surely overwhelming. However it is doubtful that a Palestinian state, if founded, would easily develop the kind of corporate personality that I have attributed to the United States. For this would require, if my argument is right, the emergence of territorial loyalties that transcend the bonds of religion and *'asabiya* and express themselves through some participatory form of citizenship. It would require, in other words, the same kind of radical break

with local history that we see in Israel.

Israel, meanwhile, suffers all the agonies of a personal state at war. It takes collective responsibility for its aggressive gestures, and its politicians rise and fall in response to the constant internal dialogue over principles and policies. Its leaders are subjected to criticism both at home and abroad, and, in its efforts to maintain the freedoms and rights that are the hallmark of personal government, Israel exposes itself to a constant stream of atrocities. The world supposes that Israel is at war with the Palestinians: but the Palestinians do not exist as a genuine agent in this war, and besides it is only in Israel that any Palestinian Arab can cast his vote in an election and expect to have some influence on what is done. To say this is not to approve of Israel's current policy towards the West Bank. Nor is it a reason to deny the plight of the Palestinians. It is simply to indicate the structural difficulty of the problem, and the near impossibility of making peace when there is no accountable agent with whom to negotiate.

If we see the Palestinian conflict in this way, we shall be led to reject the currently fashionable view that the terrorist threat to America comes from America's support for Israel. On the contrary. It is Israel's relation to America that makes *Israel* the target of militant Islam. The Palestinians have a legitimate grievance. But the Muslim states of the Middle East have done little or nothing to support them in this grievance. Instead they have exploited it for

their own imperial ends, like the Syrians and the Iranians in Lebanon, or Saddam Hussein in Kuwait. When Israel became the target for the Islamic militants of Hizbullah it was not in order to achieve some settlement favorable to the Palestinian people. It was in order to punish Israel as an outreach of the West in the *dar al-islam*. The Islamic militants can therefore be satisfied with nothing short of the total destruction of Israel. For Israel is a nation-state established where no nation-state should be—a place where the only law should be the *shari'a*, and the only loyalty that of Islam. Meanwhile, the occupation of the West Bank, proceeding as it does not through administration but through modernist architecture, is a vivid symbol of the globalizing process: it exhibits a will to permanent and irreversible change, by which local identities are razed and the earth re-shaped as an ubiquitous nowhere.

The problem posed by conflict when one of the parties has no real corporate personality is not confined to the Middle East. Globalization is spreading it to the West, and the terrorist attacks are our first large-scale encounter with it. Furthermore, they bring home to us the fact that the remedies devised for dealing with global problems are ineffective against the new kinds of agency that globalization has created. International law can do nothing to control al-Qa'eda, nor is the United Nations effective against organizations that neither are, nor aspire to be, nation-states. While it is possible to bring pressure to bear on individual states that harbor terrorists, this pressure is in-

effective against a failed state, or against a state like Iran, which is happy to ignore requests from Satan.

TRANSNATIONAL GOVERNMENT

But there is another and, in a way, more serious aspect of globalization. It has been a ruling principle of Western politics that every extension of human powers should be accompanied by an extension of the law, as a means of controlling those powers and ensuring that they are not abused. Inevitably, therefore, as the global impact of human decisions increases, so does the demand for new legislative bodies with which to control that impact and direct it to the common good. Until recently this kind of legal control was exerted through international law, backed by treaties, of which the charter forming the United Nations was the most important. It was assumed that sovereignty remained with the individual states, and that the benefits from international law were such that they would willingly uphold its judgments, lest they be excluded from the club. As originally conceived, therefore, the United Nations was exactly that—a union of nations, each of which could one day be constituted as a nation-state, and each of which meanwhile enjoyed the legal personality bestowed upon it by international law.

Many commentators still believe that the UN is the benign institution that its founders intended it to be, and that the problems of the modern world arise largely be-

cause powerful countries like the United States prefer to settle their disputes directly, on terms more favorable to themselves than could be obtained from the court of international opinion. It seems to me, however, that this optimistic view is no longer sustainable. For it ignores the fact that, with the exception of delegates from personal states, those who turn up to UN meetings literally have no business being there. They are not the representatives of the people from whose territory they come, and if they speak for anyone it is for the party, faction, or tyrant who sent them. Moreover, as Rosemary Righter has shown, the UN and its subordinate institutions are wholly prey to corruption, consuming vast resources by the relentless extension of unaccountable bureaucratic power.⁷ These institutions are less means of resolving disputes than means of creating them, by dressing up the crimes of unaccountable tyrants as though they were the corporate decisions of nation-states.

Matters have significantly worsened in recent decades, as new forms of transnational legislation threaten the sovereignty and the aspirations of the smaller countries of the world. It would be a coherent response to globalization to encourage the emergence of nation-states in all places where there is an embryonic territorial jurisdiction. In this way each nation could make its own choices for the future, and avoid being swept away by the global tide. And with the emergence of territorial jurisdictions and genuinely accountable governments, the terrorist threat would almost certainly dwindle, as people learn to attach their loyalties to

real fragments of earth rather than imaginary vistas of heaven and thereby to see human life for what it is—namely, a process of accommodation with one's neighbors. But this is not what is happening. The embryonic states of Africa and Asia, for example, are subject to WTO regulations that will unavoidably ruin their local food economies by forcing them to compete on equal terms with massively subsidized industrial food producers in the West. Genetically modified crops, whose seeds are patented by Western multinationals, will very probably drive the old crops from the market, compelling third-world farmers, through the system of Trade Related Intellectual Property Rights, to buy their seeds in the West. In other words, the agrarian economies of Africa will be expropriated by transnational legislation that their people are powerless to annul.

I mention the WTO because it is so widely perceived as an instrument of "Western imperialism," and not only by those Westerners who fly around the world to demonstrate against its meetings. In fact, almost every international institution, however good its intentions, is attempting to pass laws, conventions, and treaties—if only to justify its existence and to have something for its overpaid bureaucrats to do.⁸ Repeated protests against the decisions of global summits go unheeded, and a constant stream of unaccountable regulations issues from the meetings of the Western powers as though the rest had no choice but to accept them.

The global financial institutions have acquired com-

parable sovereign powers. The World Bank and the IMF, though founded with the purpose of securing global financial stability, are now widely perceived as instruments of Western domination. After all, they deal in dollars, and the money that they give or lend can be spent only in an economy dominated by Western technology and Western exports. By accepting this money a state is dragged unavoidably into the global maelstrom.⁹ Moreover, being compelled in the nature of things to negotiate with governments, the World Bank and the IMF subsidize the tyrants and gangsters who have expropriated the political life of the countries where they have come to power. Nor is there any real pressure on such transnational institutions to account for their actions. A large number of the enormous IMF loans made in recent years to the states of the former Soviet Union have disappeared into the same Swiss bank accounts that have been used to milk the Soviet people for fifty years. This has led to a few vaguely reproachful noises, but to no penalties corresponding to the enormity of the crime.

To some extent the United States has remained unaffected by this growth in transnational legislation. Its presidents have been reluctant to sign any treaty not clearly in the nation's interest, and they react adversely to any proposals that would diminish United States sovereignty or the ability of the country to defend its territory. But, the critics say, this is because the United States is able to dominate the crucial bodies, and to ensure that regulations—

such as those issued by the WTO—operate always in its national interest.

A telling example is the proposed treaty to establish an International Criminal Court—a pie-eyed dream of Western liberals, designed to replace wars by judicial processes, and to charge belligerents with war crimes. It seems clear that the Senate will not ratify this treaty even though President Clinton reluctantly added his signature to it. For the treaty will curtail the freedoms to make sound military judgments and to make pre-emptive strikes against a potential enemy. Hence, it will violate national sovereignty in an area where sovereignty is the pre-condition of survival. The court will be appointed by no accountable government, and its judges will include many from impersonal states, who will act simply as tools in the hands of unscrupulous factions or dictators. It is surely a welcome development that the United States is rebelling against this particular piece of transnational legislation. But it has yet to wake up to the principle that almost all transnational legislation is a threat to *someone's* sovereignty.

Pertinent in the present context is the UN Convention on Refugees and Asylum, ratified in 1951, at a time when migration was not common and asylum rarely offered or sought. This piece of legislation obliges our governments to offer asylum to all who need it, and to give hospitality meanwhile to those who claim it. As a result of global mobility, some two million people arrive every year in Europe, ostensibly seeking asylum but in

fact wishing to profit from the black economy, and in any case enjoying the obligatory hospitality required by the UN Convention. As a result, European states have lost control of their borders, have unknown numbers of illegal residents, and have black economies that grow larger by the week. Moreover, anyone who suggests that the UN Convention is anachronistic, politically dangerous, and socially destructive is subjected to intimidating criticism and risks being denounced as a “racist” or worse.

The political and economic advantages that lead people to seek asylum in the West are the result of territorial jurisdiction. Yet territorial jurisdictions can survive only if borders are controlled. Transnational legislation, acting together with the culture of repudiation, is therefore rapidly undermining the conditions that make Western freedoms durable. The effect of this on the politics of France and Holland is now evident to everyone. And when we find among the “asylum seekers” the vast majority of those Islamist cells that have grown up in London, Paris, and Hamburg, we begin to recognize just how much the political culture of the West is bent on a path of self-destruction.

THE NEW IMPERIUM

But this brings us to a deeper question: is the nation-state a durable arrangement? Consider England—the most successful example of a localized territorial jurisdiction in the

modern world. Just when and for how long did it exist as a nation-state? The skeptic would say: for about the length of time required to absorb its northern neighbor; in other words, from the Glorious Revolution of 1688 to the Act of Union with Scotland of 1707. Thereafter it expanded relentlessly into an empire, acquired, in Sir John Seeley's famous words, "in a fit of absence of mind"¹⁰—i.e., not by policy, still less by any corporate decision on the nation's behalf, but by "an invisible hand," in other words, as the unintended by-product of a myriad actions, very few of which were actions of the state. And those who accuse the United States of being, or becoming, a new imperial power are pointing to a similar process, whereby the legislative powers of smaller states are being steadily expropriated by transnational institutions that only the United States can really control or escape from.

Perhaps the most telling example of the invisible hand of imperialism, however, is not the United States, but the European Union (EU). Europe is the home of the nation-state, and the crucible in which the idea of secular and territorial jurisdiction first took shape. At the same time recent history has implanted in many of the European elites a skepticism towards the national idea and a desire for a transnational federation in place of it. The British and Scandinavian people are reluctant to accept this; the Mediterranean people accept it only because they do not take it wholly seriously. But many of the French and the Germans remain wedded to the idea as the best way of maintaining

the peace and prosperity of Europe. At the same time, the majority of the decisions that are forcing the Europeans to abandon their national sovereignties are made by people who have no intention to produce an imperial power.

Nevertheless, despite the fact that virtually nobody explicitly wants it, a process is under way that will effectively extinguish the national democracies of Europe and erect in their place a European superstate, nominally a democracy but with largely unaccountable legislative powers, hidden in bureaucratic institutions with their own long-term agendas. Already most laws passed by the United Kingdom Parliament are imposed by *diktat* from the Brussels bureaucracy, and the few areas of legislative competence that remain are being steadily eroded by revisions to the Treaty of Rome. Scotland and Wales are still present on the official maps of Europe. But the nation-state that did most to create the modern world—namely England—has already been replaced by "regions" that have no historical meaning and defy all the local loyalties to which English patriotism responds.

There are those who regret this, and those who welcome it, as an opportunity to revive the idea of Western civilization on the continent where that civilization was born. The question that we need to ask, however, is whether this new form of imperial government can really answer to the problems that now confront us. If my argument in this book is correct, the European superstate will not be held in place by its political institutions. Only in the context of a

pre-political loyalty will those institutions have legitimacy in the eyes of the citizens, and it is precisely the absence of a pan-European loyalty that gave rise to the federal project in the first place.

Suppose a village has existed for centuries as an autonomous community, its residents making decisions collectively through their elected council and enjoying all the benefits and burdens of self-government. And suppose that a neighboring, similarly self-governing but somewhat larger, town proposes to amalgamate with the village, arguing that the increased prospects for trade and commerce fully justify the move, and that the new community will be just as democratic and self-governing as the old ones. Suppose, finally, that the villagers are persuaded, and do indeed enjoy the promised commercial benefits. They will find themselves as a result in a minority whenever a decision affecting their interests is to be made, and will be overridden by the town whenever the interests of town and village conflict. The new waste-disposal site will be placed on the borders of the village, not the town; the highway will be built through the village, not the town; and so on. In short, the villagers will experience their new democratic regime as a loss of sovereignty and a diminution in their democratic powers.

That is what is beginning to happen in Europe; indeed it has already happened with such measures as the expropriation of British fisheries by France and Spain and the imposition on Britain of metric weights and measures.

Americans do not need reminding, in this context, of the controversy over "states' rights." The evident conclusion is that, just as the village in my example will begin to resent the town and regard its decisions as illegitimate, so will the nation-states of Europe seek to break away from the Union, as the conflicts of interest re-animate the desire for national autonomy.

It is significant that, in all major crises that affect the root sentiments of the people, the national governments of Europe entirely set aside the transnational project to which they profess to be committed. After September 11 the British Prime Minister immediately joined with the United States, not only in condemning terrorism, but in committing his country and its armed forces to the fight against it. Other European countries made vague noises in the same direction, but did nothing. And subsequent pronouncements from France, Italy, and Germany have played a veiled but growing anti-Americanism, and a wish not to be involved. The French in particular prefer to see September 11 as an alien event affecting an alien people. A book arguing that no plane crashed into the Pentagon on September 11 and that those which hit the twin towers were guided there by the CIA has even become a bestseller in France.¹¹

Similarly the French have refused to police the entrance to the channel tunnel, knowing that the best way to rid themselves of illegal immigrants is by passing them on to Britain, where the welfare deal is more attractive. In

this matter that affects the national interest and national identity of the two countries, pre-political loyalty shows itself at once, and it is the very same loyalty that shaped Europe as a system of nation-states.

Nor is it likely that a new kind of pre-political loyalty could arise from the European Union. All the factors that formed the loyalties of the European peoples—shared language, shared religion, shared customs, shared legal systems, and shared ways of life—are absent. Hence, the European Union is rapidly destroying the territorial jurisdictions and national loyalties that have, since the Enlightenment, formed the basis of European legitimacy, while putting no new form of membership in their place. It is significant that separatist and nationalist movements, far from being eroded by the project of union, have grown under its aegis, taking heart from the EU's antipathy to existing nationalisms to promote rival nationalisms of their own. Hence the renewed activities of the IRA and the Basque separatist organization ETA.

On the other hand, the very fervor with which the project of union is promoted by the European elites is some indication that the national loyalties of Europe are in decline. The EU is a political expression of the culture of repudiation that I described in chapter 2, and goes hand-in-hand with legislative initiatives from the European Commission and the European courts that could be used to bind the entire continent in a regime of enforced political correctness. The commission proposes a Europe-wide

police force, with power to extradite from any jurisdiction to any other within the Union, and with a list of extraditable offenses that include "racism and xenophobia." This offense is unrecognized in English law and as yet undefined by the courts. But anybody who has followed the reasoning of the European elites knows how it could be used: namely, to suppress any kind of nationalist opposition to the centralized bureaucracy.

Entering this new and bewildering political labyrinth the Muslim immigrant will certainly find a freedom and a prosperity that are unfamiliar in his country of origin. He will also enjoy welfare benefits, free education—or at any rate "education"—for his children, and free medical services. He will find plenty of work on the illegal market, since the states of the European Union have raised the cost of employing people to the point where small enterprises can no longer afford to offer work in the official economy. What the Muslim immigrant will not find, however, is any process of nation-building that might serve to recruit him to membership in the surrounding social order. He will live in strict isolation, and regard the world in which he earns his living as of no independent concern to him. Such membership as he enjoys will come to him from his family and the immigrant community to which his family belongs. And it will depend upon their shared obedience to the rituals of prayer and fasting and to the revealed will of God.

The new European superstate therefore offers a

breeding ground for Islamic terrorists. Just as the official culture of Europe involves a repudiation of the nation and its pride, so does the Muslim terrorist target the nation-state as the true work of Satan. The attacks on America were a response to the world's most successful attempt at nation-building, which projects its power, its freedom, and its detritus so effectively around the globe. All the principal actors in the atrocities of September 11 had resided in Europe, and received there both training and indoctrination through the local cells of al-Qa'eda. The plot to attack America was not hatched in any Muslim country, but on the continent where the West began.

CHAPTER 5

CONCLUSION

MANY TERRORISTS are nihilists, who wish to vent their disappointment by destroying the sham society by which they are surrounded. Such were the terrorists so brilliantly portrayed by Turgenev and Conrad, and whose murderous campaigns have been described by Anna Geifman.¹ But nihilism is the other side of religion: it is the disappointed howl of the believer on discovering that God is dead. The true nihilist is incapable of settling for the world of compromise, toleration, and secular loyalties that the rest of us enjoy, since it is a world deprived of absolutes. The death of God leaves only one remaining absolute, which is Nothingness. The duty to annihilate is the last remaining glimpse of the transcendental in the heart of the one who has lost all belief in it and who cannot live with the loss. The "death-intoxicated" character of the Russian nihilists, and of the revolutionaries who trod in their footsteps, is therefore of a piece with the "God-intoxicated" frenzy of the Shi'ite martyr.

Globalization has plunged the Islamic world into crisis by offering the spectacle of a secular society maintained

The Immigration Charade

Christopher Jencks
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State of Emergency: The Third World Invasion and Conquest of America

by Patrick J. Buchanan

St. Martin's, 308 pp., \$24.95

America's ongoing argument about immigration has followed a fairly consistent sequence for three decades. Each round begins with news reports about the fact that thousands of new immigrants are settling here illegally every week. These reports lead to charges that the United States has lost control of its borders and is being overrun by foreigners. Congress holds hearings. Employers say that they need foreign-born workers to fill jobs that Americans don't want and that they cannot distinguish those with fake credentials from those with genuine ones. Legal immigrants push for higher family reunification quotas, hoping to hasten the day when their grown children, parents, or siblings will get a visa.

Congress then cobbles together a plan that includes tighter control of the border and a better system for identifying job applicants with fake credentials. In deference to pro-immigration groups it sometimes also includes more family reunification slots or an amnesty for illegal immigrants currently living in the United States. Occasionally Congress passes such legislation. But no matter what Congress does, the provisions that are supposed to prevent employers from hiring illegal immigrants remain unenforced, such immigrants continue to slip across the border, temporary visitors continue to overstay their visas, and the number of people living in the United States without permission from Washington continues to rise. So after a few years the same cycle begins again.

In 2006 the Senate, with the backing of President Bush and some leading Democrats and Republicans, voted 62–36 for an immigration bill that included provisions making it harder to cross the Mexican border and easier to identify firms that hire illegal immigrants, along with a new guest worker program allowing employers to recruit unskilled workers overseas for short stints of

employment here. Its most controversial provision, which eventually killed it in the House, would have allowed people who had been in the United States illegally for five or more years to become legal residents if they paid both a \$2,000 fine and back taxes on their past earnings. If they then worked in the United States for another six years they would have become eligible for permanent residence and eventually for citizenship. Because illegal immigrants were to be fined, supporters usually called the proposal a “path to citizenship” rather than an “amnesty.” Its opponents continued to call it an amnesty, since it still rewarded lawbreakers. In what follows I use the terms “amnesty” and “legalization” interchangeably, and refer throughout to “immigrants,” whether they intend to become citizens or not.

This year’s immigration bill was broadly similar to last year’s. Its most controversial feature was again an amnesty, which would have covered more people than last year’s amnesty but would also have imposed more onerous conditions on applicants.¹ Sixteen senators who had voted for last year’s bill voted against this year’s version, and it was defeated 46–53. Of the ten Republicans who changed sides almost all were hard-core conservatives like Sam Brownback of Kansas and Mitch McConnell of Kentucky. The five Democrats who changed sides were all traditional liberals, like Tom Harkin of Iowa and Evan Bayh of Indiana, but none came from a reliably Democratic state.

Few senators switched sides because they thought this year’s bill was worse than last year’s. Some Republicans switched partly because they no longer felt it was risky to oppose the President on legislation he badly wanted. But most senators switched primarily because conservative talk-show hosts and anti-immigrant groups such as the Minuteman Civil Defense Corps and

NumbersUSA had mobilized an unprecedented level of grass-roots opposition to any form of legalization. If opposition to legalization remains as intense and well-organized as it was this year, immigration reform may prove elusive for years to come.

1.

When surveys ask how the government should deal with illegal immigrants, Americans' answers depend on how the question is posed. Consider three examples from surveys conducted last spring.² When the CBS News/*New York Times* poll asked "Should ILLEGAL immigrants be prosecuted and deported for being in the US illegally, or shouldn't they?," 69 percent of respondents favored deportation. When the same interviewers asked the same respondents what should happen to "illegal immigrants who have lived and worked in the United States for at least two years" and offered respondents a specific alternative to deportation, only 33 percent said such people should be deported while 62 percent said "they should be given a chance to keep their jobs and eventually apply for legal status." When Gallup offered four choices, only 14 percent of those queried said illegal immigrants should be required to leave the United States and not return, while a total of 78 percent thought illegal immigrants should be able to achieve citizenship, either after returning home or without doing so.

If support for legalizing illegal immigrants can run as high as 78 percent, it seems fair to conclude that intense opposition to such a step is confined to a small minority. But if support for deporting illegal immigrants can run as high as 69 percent when no alternative is offered, effective organizing can easily make the anti-amnesty vote look much larger.

One reason legalization arouses such intense opposition among "law and order" advocates is that they see little evidence that the federal government will ever make a serious effort to prevent further illegal immigration in the future. The 1986 Immigration Reform and Control Act (IRCA) was supposed to be a compromise that linked amnesty to a crackdown on firms that hired illegal immigrants in the future. But once IRCA passed, the amnesty was implemented while the crackdown never occurred. As a result, the number of illegal immigrants kept growing. This history has sent out a worldwide message: if you are an unskilled worker who dreams of living in America, your best bet is to find a way into the United States, get a job, and wait for a new amnesty.

There are two basic strategies for limiting the number of illegal immigrants in the United States: policing the border and policing employers. Policing the border antagonizes people who have little political influence. Policing employers antagonizes people who have quite a lot of influence. Thus while immigration reform usually promises more policing of both the border and employers, it usually delivers bigger changes along the border than at worksites.

Between 1992 and 2003 the Border Patrol quadrupled the number of hours its agents spent watching the border.³ Along the Mexican border more fences were built, especially in urban areas, and major crossing points were more closely monitored. Patrols were also stepped up in rural areas, although the Mexican border is two thousand miles long, so surveillance is still far from complete. Tighter border control forced more illegal immigrants to cross in remote desert areas and hire a *coyote* to guide them. Despite the *coyotes* there is currently about one death for every thousand successful crossings.⁴

The Border Patrol now estimates that it catches about a third of the people who try to cross the Mexican Border illegally. It sends almost everyone it catches back to Mexico, where they are free to try again. Those who keep trying are thus almost certain to get across eventually. Building more fences and hiring more Border Patrol agents will probably increase the fraction of illegal immigrants who are caught, but modest increases are unlikely to have a big effect on the number of people who eventually make it across. In order to do that, the penalty for getting caught would have to be increased. Threat of imprisonment for six months, for example, might significantly reduce the number of people attempting to enter. But such a policy would also poison relations with Mexico, infuriate immigrant groups in the United States, offend many American voters, and cost a lot of money.

Policing the places where immigrants work can also reduce the number of illegal immigrants living in the United States, because it can reduce the number of jobs open to them and thus eliminate a principal reason for coming here. Nonetheless, the United States has never made much effort to reduce employers' willingness to hire illegal immigrants. Only fifteen firms were fined more than \$5,000 for employing unauthorized immigrants in 1990, and the number dropped to twelve in 1994, two in 1998, and zero in 2004. The number of hours spent on worksite inspections also fell by more than half between 1999 and 2003.⁵ After September 11, 2001, inspections also focused more on

airports, nuclear power plants, and other likely terrorist targets. Illegal immigrants who avoided such employers were therefore even less likely than before to be arrested on the job.

Inspections at workplaces did pick up after 2004. Immigration and Customs Enforcement (ICE) made five times as many worksite arrests in 2006 as in 2004. But even in 2006 ICE made fewer than five thousand worksite arrests, so an illegal worker still had less than one chance in a thousand of getting arrested at work.⁶ (Once arrested, those with neither proof of American citizenship nor a valid visa are supposed to be deported, but it is not clear how often this happens.)

Under current law employers have to check a job applicant's documents, but they are not responsible for determining whether those documents are authentic. That seems reasonable. Yet as Peter Salins, a political scientist at the State University of New York, recently pointed out in *The New York Times*, the federal government could check the authenticity of workers' documents soon after they are hired without even visiting worksites.⁷ Informed estimates suggest that roughly seven million people are working in the United States illegally.

About half these men and women are thought to hold regular jobs, while the rest work off the books. To get a regular job workers must give their employer a Social Security number. Employers send these numbers to the Social Security Administration (SSA), so that it can credit workers' retirement accounts with both the worker's and the employer's contribution. When the SSA tries to credit an unauthorized worker's account, the number usually shows up as either nonexistent or belonging to someone with another name.

In 2002, according to Salins, the SSA took the unprecedented step of sending 950,000 letters to employers identifying such "mismatches." Employers and immigrant advocacy groups raised so many objections that the SSA cut back the program. As a result, "no-match" accounts now hold more than \$586 billion. Some of these unmatched numbers can be traced to clerical errors, and some arise because people forget to tell the SSA that they have changed their name after a marriage or divorce. But the SSA believes that most unmatched numbers come from illegal immigrants using fake numbers to get work.

In August of this year the administration announced that employers who submit a significant number of "no-match" numbers will have to clear up the

problem within ninety days and dismiss any worker who cannot comply. The administration also warned firms that ignoring the new rule could expose them to prosecution for hiring illegal immigrants. Large firms will get warning letters if more than 0.5 percent of their workers have Social Security numbers that the SSA cannot match. Smaller firms will get warnings if they have more than ten workers with unmatched numbers. The SSA expects to send warnings in the next few months to well over 100,000 such firms.

The SSA does not have legal authority to fine or prosecute firms that employ undocumented immigrants. Nor is it entirely clear that current law allows the SSA to hand over suspicious cases to Immigration and Customs Enforcement. If the SSA does pass information to ICE, its decision to do so is likely to be challenged in court. Congress could, of course, explicitly authorize the SSA to cooperate with ICE. But the threat of prosecution has provoked strong protests from firms that hire a lot of immigrants, so Congress might just duck the issue.

If the administration successfully implements its “no-match” program, demand for illegal workers will diminish, but it will not disappear. The SSA takes a long time to identify employers who submit a lot of unmatched Social Security numbers. That means workers with fake credentials can find a job, hold it until the SSA catches up with their employer, and then move on to a new job. A better long-term solution would be for the SSA to replace today’s Social Security card with a tamper-proof card that included both a photo and information on whether the person was a citizen, a permanent resident authorized to work here, or a temporary resident with permission to work here until some specified date. The employer could then determine the legal status of all job applicants before making an offer. Moreover, courts could assume that employers who hired undocumented workers knew what they were doing. Civil libertarians have traditionally opposed such an identification system, but 86 percent of Americans now support the idea.⁸

Even a secure Social Security card will not have much impact on the informal labor market, where people work off the books and are paid in cash. Policing this part of the economy is difficult but not impossible. ICE could, for example, monitor street corners where men gather in search of day labor to see whether everyone looking for work had a valid Social Security card. But ICE cannot be expected to look for every nanny who has overstayed her visa or check the credentials of every man behind a power mower in an American suburb. In any event, it makes more sense to start by trying to keep most illegal immigrants out of the formal economy. If that effort succeeds, it may then make sense to

begin policing some parts of the informal economy as well. But if addressing the problem of illegal immigrants in the formal economy succeeded, the country might also conclude that aggressive efforts to find all those in the informal economy were not worth the cost.

2.

Those who oppose enforcing laws against hiring illegal immigrants often argue that the American economy needs these workers, because they fill jobs Americans do not want. One problem with this argument is that in many parts of the United States native-born workers still do the jobs—on farms or in restaurants, for example—that immigrants do in states like California, Texas, Florida, and New York. Furthermore, while some industries in areas with a lot of immigrants do rely heavily on their labor, what most employers seem to want is an ample supply of foreign-born workers, not illegal immigrants per se.²

Because business interests exert so much political influence in the United States, no serious crackdown on employing undocumented workers is likely to last unless it is accompanied by a large-scale legalization program that allows employers to retain most of the undocumented workers already on their payroll. As we learned after 1986, the crucial question about legalization is what happens next. If employers are allowed to keep hiring new illegal immigrants, legalizing those who are currently undocumented will not change much in the long run.

The obvious alternative is to combine a crackdown on hiring illegal immigrants with an increase in the number of unskilled immigrants given legal permission to work here. Whether that would be a good idea is far from clear. There are two basic arguments for such a policy. First, unskilled and semi-skilled service occupations in fields like home health care, hotel work, fast food shops, landscaping, construction, and moving freight or retail stock are growing faster than the labor force as a whole.

Second, many employers now prefer to fill such jobs with immigrants because they usually accept lower wages. When employers say immigrants “take jobs Americans don’t want,” they really mean that immigrants “take jobs Americans don’t want at the wages I want to pay.” Employers’ ideas about what they can afford to pay depend, however, on whether they think they can pass the cost along to their customers. That depends on what their competitors are charging

for the same service. If every lawn service has to raise wages, they will all have to charge their customers a little more. The impact of such a change is likely to be comparable to the impact of raising the minimum wage. A few customers will decide to mow their own lawns, but most will just pay up.

Employers also say that foreign-born workers tend to work harder, be more reliable, and complain less than the natives they can hire at the same wage. This is not surprising. Unskilled immigrants have seldom finished secondary school, but they have overcome all kinds of obstacles both to get here and to stay here. Native-born high school dropouts often lack that kind of ambition and perseverance, and surveys invariably show that they have more than their share of problems with alcohol, drugs, impulsiveness, unreliability, and crime. No employer wants to deal with such problems if there is a cheaper alternative. But allowing employers to hire immigrants almost guarantees that unskilled natives will have more trouble finding steady work. Between 2000 and 2005 the unemployment rate among eighteen- to sixty-four-year-old natives without high school diplomas rose from 10 to 14 percent; among their foreign-born counterparts it fell from 9 to 7 percent.¹⁰

This pattern suggests that what is good for employers may not be so good for the country. If we do not want poorly educated natives to become an idle underclass, they must be able to find steady jobs. Such jobs cannot replace all the benefits of further education, but they are probably our best hope for keeping families together and keeping people out of trouble. There is no simple formula for balancing employers' desire for immigrant workers against society's need to keep its unskilled natives working. Nor is there any simple way to balance the economic desperation of immigrants against the economic claims of poor natives, especially if the natives are African-Americans or second-generation immigrants. But we cannot hope to strike the right balance—or any balance—if we continue to let millions of unskilled immigrants come here and work illegally, because we cannot regulate their numbers. The only way to strike a balance is to crack down on employers who hire illegal immigrants, offer visas to more unskilled foreign-born workers, and set the number of visas with an eye on how that number will affect job opportunities for unskilled natives.

3.

Patrick Buchanan is a conservative populist who worked in the White House under both Richard Nixon and Ronald Reagan and ran unsuccessfully for the Republican presidential nomination in 1992 and 1996. He hates George W. Bush, foreign entanglements, economists, businessmen who think only about money, elites who pay no attention to “middle America,” and large-scale immigration. In *State of Emergency: The Third World Invasion and Conquest of America* he voices all the anxieties a sensible person might feel about the current immigration system, along with a lot of other worries that seem apocalyptic about the future, nostalgic about the past, or misinformed about the present. Much of what he says also illustrates the ease with which a good writer can get carried away by his own rhetoric.

Buchanan thinks Americans were once bound together by shared history (Lincoln’s “mystic chords of memory”), common ancestry (“consanguinity”), and pride in being American. Now he sees us becoming a tangle of warring ethnic factions held together by little more than a shared passion for shopping. If current trends continue, he predicts that by 2050:

African Americans and Hispanics will be hugely overrepresented among our poor and working classes. Our affluent and professional classes will be dominated by Asians and whites. Our country will look like Latin America, with its chasm between rich and poor. Politically, this will produce a lunge toward statism. Demands for new social spending for health, education, and welfare...and for quotas, racial and ethnic set-asides, affirmative action, and proportional representation for all minorities will be irresistible. We will never escape the prison of race.

Buchanan sees little hope of reversing this trend, not because today’s predominantly white electorate favors it but because both Republican and Democratic strategists are desperate to win the allegiance of future Hispanic voters, who they think could give one party or the other a lock on national power for decades to come. As a result, he claims that both parties are trying to appear immigrant-friendly.

Buchanan thinks that Republicans who pursue this strategy are deluding themselves. Hispanics, he says, gave Mondale 54 percent of their votes when he was running against Reagan in 1984. Since then they have given every Democratic presidential candidate 60 to 75 percent of their votes.¹¹ They have also transformed California from a Republican to a Democratic state. In Buchanan’s view Republicans would fare better in the long run if they wrote

off the Hispanic vote and tried to restrict Hispanic immigration. The fact that thirty-seven out of forty-nine Republican senators voted against the immigration bill last June suggests that elected Republicans may now be ready to follow Buchanan's advice.

Buchanan is also worried about long-term political developments in the Southwest. Mexicans are unlike other immigrants, he argues, because many of them believe they have an historic claim on American lands. A Zogby poll conducted in 2002 asked Mexicans (in Mexico), "Do you agree or disagree that the territory of the United States Southwest belongs to Mexico?" In response, 58 percent agreed that the Southwest belonged to Mexico, 28 percent disagreed, and 14 percent were unsure. Buchanan argues that many Mexicans now hope for a cultural and political *reconquista* of the American Southwest. Non-Hispanic whites are already a minority in California, Texas, and New Mexico. Unless immigration is curtailed, the day will come when most southwestern voters are of Mexican descent.

The linguistic future of the Southwest depends mainly on whether second- and third-generation Mexican-Americans become fluent in Spanish. Children of Mexican descent are more likely to speak Spanish at home than most other immigrant groups, because their parents are less educated and less likely to work in settings where fluent English is essential. If Spanish were to be required at school, and if the prospect of a Mexican-American majority makes Southern California, Arizona, and Texas less and less attractive to Anglos, Spanish could conceivably become the lingua franca of the region. Is such an outcome likely?

Except in a few rural areas, nothing like this has ever happened before in the United States. It is true that no alternative to English has ever been as readily available to as much of the population as Spanish is likely to be in places like Los Angeles, San Diego, San Antonio, and Houston. Even so, I would still bet against Spanish becoming the primary language of second- and third-generation immigrants. And even if it does, few Mexican-Americans in Texas or California would want their state returned to Mexico unless Mexico were a lot richer and a lot better governed than it is now.

While the future of the Southwest is an open question, Buchanan has worries about the present that seem harder to justify. He claims, for example, that illegal immigrants cause far more than their share of crime in the United States. As evidence he reports that 30 percent of federal prison inmates are aliens

(noncitizens), compared to only 12 percent of the general population. That comparison sounds alarming, but both figures are deceptive. To begin with, state prisons have seven times as many inmates as federal prisons, and noncitizens are less than 5 percent of the state prison population. If we pool federal and state prisoners, only 6 to 7 percent of them are noncitizens.¹²

Nor do aliens make up 12 percent of the relevant comparison group. Buchanan's 12 percent includes immigrants who have become citizens, whereas prison counts include only those who are not citizens. His 12 percent figure also includes children and the elderly, who are hardly ever imprisoned. If we focus on eighteen-to-fifty-four-year-olds, 10.7 percent of them are noncitizens. Since only 6 to 7 percent of federal and state prisoners are noncitizens, prison statistics would, if taken at face value, suggest that noncitizens are considerably more law-abiding than citizens of the same age.¹³

Buchanan concedes that most immigrants come to the United States to better themselves and their children. But from his point of view that is precisely the problem. In a section entitled "An Economy Is Not a Country" he writes:

In Catholic doctrine, death occurs when the soul departs the body, after which the body begins to decompose. So it is with nations.

Patriotism is the soul of a nation. It is what keeps a nation alive. When patriotism dies, when a nation loses the love and loyalty of its people, the nation dies and begins to decompose.

Patriotism is not...that spirit of nationalism that must denigrate or dominate other nations. It is a passionate attachment to one's own country—its land, its people, its past, its heroes, literature, language, traditions, culture, and customs.

Buchanan is surely right that affection and loyalty are the glue that holds nations together, and that the hidden hand of capitalism is no substitute. But "passionate attachment" to a country's heroes, literature, language, and traditions is a demanding standard for newly arrived immigrants. Not many of those who came to America would have passed this test at any time in our history. A better question is how many children and grandchildren of immigrants had such sentiments in the past, and how many are likely to have them in the future. Buchanan is pessimistic about the future because "nearly 90 percent of all immigrants now come from continents and countries whose peoples have never been assimilated fully into any Western country." But

elsewhere in his book he goes out of his way to argue that Americans of African descent have been assimilated. He does not discuss Asians, but most of them seem to be assimilating at least as well as the descendants of Europeans. The descendants of Mexicans who came to the United States before 1965 were less likely than Europeans to become American citizens, but since they were treated as second-class citizens and were often rounded up and sent back to Mexico, that is hardly surprising.¹⁴

Recent research also suggests that more assimilation has been taking place than Buchanan may realize. Roughly a third of second-generation Asian and Hispanic immigrants marry a non-Asian or non-Hispanic, and the figure is well over half for the third generation.¹⁵ Children of unskilled immigrants also move up the economic ladder at about the same rate as children of unskilled native-born workers, closing roughly half the gap between their parents and the average American.¹⁶

Second-generation immigrants have plenty of problems, but these problems are a consequence of assimilation, not its absence. Second-generation immigrants have sex at an earlier age than their parents did; they also drink more, and are more likely to join violent gangs.¹⁷ All these changes make the children of immigrants more like the children of natives, which is one reason why many immigrants resist the idea of across-the-board assimilation. Buchanan recognizes this fact, observing:

The parents may work hard, attend church, and still carry with them the conservative and Catholic values with which they were raised in the Latin America and Mexico of yesterday. But these good people are not changing our culture. Our polluted culture is capturing and changing their children.

I can see why Buchanan might view contemporary American culture as polluted, but that makes it hard to understand why he is so worried about immigrants not assimilating. What really seems to worry him is that immigrants are not making America more like the country he thinks it once was. That is asking a lot.

4.

The federal government's policy of opposing illegal immigration while refusing to enforce laws against hiring illegal immigrants has had huge costs. It

has exacerbated popular distrust of the federal government (as indeed it should have). It has also increased hostility to foreigners, especially Mexicans, who are all suspected of having entered the country illegally. To many Americans Washington's failure to control illegal immigration, like its failure to deal with the aftermath of Hurricane Katrina, is just another example of how out of touch, duplicitous, and incompetent federal officials really are. In the short run such views are good for Republicans who want to discredit government and cut federal spending. In the long run, however, extreme distrust of government also precludes sensible policies that even conservatives should favor.

The collapse of this year's bipartisan push for immigration reform suggests that ending the charade will be extremely hard. This should not be the case. Many employers would accept more stringent penalties for hiring illegal immigrants in the future if that were the only way to legalize their current workers, and many immigrant groups would do the same. On the other side, many conservative activists might accept legalization of today's illegal immigrants if that were the only way to ensure a crackdown on hiring illegal immigrants in the future. In principle, therefore, a deal should be possible.

But this deal turns out to have a fatal flaw. Legalization can be implemented within a few years, while penalties for hiring illegal immigrants have to be enforced indefinitely. That means employers get what they want right away, while opponents of illegal immigration have to wait. In view of the federal government's miserable record on enforcement, no sensible conservative—indeed no sensible person of any political persuasion—would now accept mere promises. The conservative mantra is therefore “enforcement first.” For many employers that sounds like the road to bankruptcy. They want “legalization first.” As long as each side insists on getting what it wants before the other side does, no deal is possible and illegal immigration, with all its unhappy consequences, will persist.

—August 28, 2007

Letters

Have Illegals Paid for Iraq? November 22, 2007

1 This year's proposal also altered the family reunification quotas by adding a point system that would have favored those with professional skills and fluency in English. Hispanic groups opposed this provision. —

See Table 1. All the survey results in this section plus many others can be found at www.pollingreport.com/immigration.htm. ↵

- 3 All the numbers in this paragraph are from Gordon Hanson, "Illegal Migration from Mexico to the United States," *Journal of Economic Literature* Vol. 44, (December 2006), pp. 869–924. ↵
- 4 In the mid-1990s, deaths averaged about one hundred per year. Between 2000 and 2004 they averaged just over four hundred per year (see Hanson's footnote 30). An estimated 300,000 new undocumented immigrants enter the United States every year. In addition, an unknown but sizable number leave and reenter, so there appear to be something like 400,000 successful illegal crossings a year. ↵
- 5 See Hanson, "Illegal Migration," p. 910. ↵
- 6 For arrests at workplaces see US Department of Homeland Security, Bureau of Immigration and Customs Enforcement, "Fact Sheets," June 12, 2007. ↵
- 7 Peter D. Salins, "Use Social Security to Seal the Border," *The New York Times*, July 3, 2007. If the SSA and the ICE were to compare their files, the ICE could also identify workers with valid Social Security numbers but expired work permits. ↵
- 8 Last March the Gallup poll asked the following question: "As you may know, the government is considering issuing new tamper-proof Social Security cards as a way for people to prove they are eligible to work in the United States. Would you favor or oppose requiring people to show this card in order to get a job in the US?" Among those queried, 86 percent favored such a requirement, while only 10 percent were opposed. ↵
- 9 Hanson reports that illegal immigrants who benefited from the 1986 amnesty experienced a very modest increase in wages, at least in the short run, suggesting that employers do not save much by hiring illegal immigrants. ↵
- 10 Steven Camarota, "Dropping Out: Immigrant Entry and Native Exit from the Labor Market, 2000–2005," Center for Immigration Studies, 2006. ↵
- 11 The 2004 exit poll run by the big news organizations (the National Election Pool) initially reported that Bush got 44 percent of the Hispanic vote, but it later revised the figure down to 40 percent. Smaller exit polls reported that Bush got less than 40 percent of all Hispanic votes. Geographic analysis of the 2004 results did not suggest a bigger swing toward Bush in states with more Hispanic voters. ↵
- 12 See Sourcebook of Criminal Justice Statistics Online, Tables 6.13.2006, 6.42.2006, and 6.53 (www.albany.edu/sourcebook). Although all these tables come from the US Bureau of Justice Statistics they cover slightly different populations, so the estimate in the text is approximate. ↵
- 13 Prison statistics will underestimate noncitizens' share of serious offenses if noncitizens are less likely to be arrested and convicted for the offenses they commit or if a significant fraction of those arrested are deported rather than being sent to an American prison. ↵
- 14 Cybelle Fox, "The Boundaries of Social Citizenship: Race, Immigration, and the American Welfare State, 1900–1950," doctoral dissertation, Harvard University, 2007. ↵
- 15 *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration*, edited by James P. Smith and Barry Edmonston (National Academy Press, 1997). ↵

NATIONAL AFFAIRS, No. 9

The Muslim-American Muddle

(Fall, 2011)

PETER SKERRY

A decade after 9/11, America has reached a political and intellectual stalemate regarding the Muslims in its midst. Many Americans continue to fear their Muslim neighbors and fellow citizens, if not as potential terrorists then as terrorist sympathizers — or, more generally, as the bearers of an alien culture shared by America's enemies.

Stoking these fears are a handful of zealous investigative journalists and bloggers who recycle a body of facts about the Islamist origins of most Muslim leaders and of virtually all major American Muslim organizations. Largely taken from the federal government's successful prosecution of the Holy Land Foundation, a Hamas front group, this evidence is incontrovertible — yet its implications are far from clear. As critics repeat and re-examine them, the facts take on a frozen-in-time quality, like artifacts of political archeology never put into any wider context. The critics fail to acknowledge that individuals who once espoused Islamist views do not necessarily remain committed to them over time. People do mature beyond youthful folly and rage, and America causes immigrants to change.

On the other hand, our political, media, and intellectual elites routinely dismiss these findings as irrelevant ancient history. This, too, is a mistake, both substantively and politically: Though these Muslim leaders and organizations do not represent all (or even most) Muslim Americans, they do dominate the relevant political space. Moreover, their Islamist ideology has had, and continues to have, a formative influence on how Muslims think of their place in America and of America's relationship to the Islamic world. Elite opinion also systematically denies or ignores the fact that Islam is a dynamic, even aggressively proselytizing religion. This is *not* to suggest that Muslim-American leaders are terrorists or terrorist sympathizers; nor is it to criticize how they interpret the call to advance Islam. Like many Christians, many Muslims regard their own exemplary actions as the best way to spread their faith. Nevertheless, Muslim leaders readily acknowledge that not so long ago they dreamt of, as some have put it, "the crescent flag one day flying over the White House." For most leaders, perhaps for all, this fantasy has long since collided with reality. Yet its influence lingers.

The failure of our elites to acknowledge such evidence has fueled the anxieties of Americans. But if elites have been too cavalier about the challenges Islam poses to America, ordinary citizens and their tribunes have been too alarmist, depicting scenarios in which Muslim leaders are not only devious (which many have been) but also omniscient — as if they were exempt from the difficult tradeoffs that all political actors inevitably face. In fact, Muslim leaders have typically been recent arrivals largely ignorant of America's huge, dynamic society and its complicated politics. Like other immigrants forced to learn and adapt, they have made many mistakes.

Remarkably absent from both the elite and popular story lines is an appreciation of how America has changed Muslims. To be sure, not all of these changes have been benign. But we must address them all the same. Such a reckoning would not only abate our credulity about the competence of Islamists, but would also help to restore our faith in the resilience of American values and institutions — a faith that has been strikingly absent among American Islam's most strident critics. Most important, it would facilitate our addressing the real challenges posed to America by Islam.

Among these challenges, the most salient is the loyalty of Muslim Americans. This is not to suggest that Muslims are actively disloyal. Yet their loyalty to this nation is muddled. This confusion is due in part to the influence of cosmopolitan values and corresponding policies (such as dual citizenship), and partly to contemporary America's apparent unwillingness to place serious demands on its citizens. Beyond these factors, however, the Muslim-American confusion over loyalty also reflects the lingering influence of Islamist leaders, institutions, and ideology. This more subtle challenge is hardly unprecedented in our history as a nation of immigrants — but in our debates about America's Muslims, it has been overlooked both by complacent elites and by alarmist populists.

WHO ARE AMERICA'S MUSLIMS

In assessing America's Muslim community, even basic facts can be hard to come by. For example, after years of interviews and field research, I have met only one Muslim who did not confidently assert that there are 6 to 10 million of his brothers and sisters in the United States, and that their number is growing all the time. This second point is correct, but the first certainly is not. The U.S. census is prohibited from collecting information about religion, so there are no precise data about the size of the Muslim community. The most authoritative, however, are those from the Pew Research Center, which estimates that there are about 2.75 million Muslims in the United States. Of those age 18 or older, more than 60% are foreign-born. Other reliable estimates tend to hover in the same range.

Muslims therefore represent less than 1% of the U.S. population, a much smaller proportion than in the nations of Western Europe. In further contrast with European Muslims, Muslims in the United States tend to attain education and income levels roughly comparable to those of the broader population. For instance, according to Pew, the share of Muslims who have graduated from college is about the same as the portion of all American adults who have done so: 26% of Muslims, compared to 28% of the population at large. Similarly, American Muslims report household incomes of \$100,000 or more at about the same rate as Americans generally: 14% of Muslims, compared to 16% of all U.S. adults. These figures undoubtedly reflect the fact that Muslims have typically come to the United States in pursuit of higher education. Yet as pockets of poverty among groups like Somalis and Yemenis suggest, this has not always been the case: Pew also finds that, in 2011, a higher percentage of Muslims than Americans generally report household earnings under \$30,000 (45% of Muslims, compared to 36% of all Americans).

In light of questions about Muslim loyalty to the United States, it is also worth pointing out that Pew reports high naturalization rates among Muslims. Seventy percent of foreign-born Muslims here are American citizens. Among those who arrived before 1980, virtually all are now citizens; among those who arrived during the 1980s, about 95% are; and of those who arrived in the 1990s, 80% are citizens.

Frequently remarked on, but little appreciated, is the enormous diversity of this small (but growing) population. America is home to the most varied agglomeration of Muslims on the planet. The overwhelming majority are Sunnis, but Shias represent about a tenth. Among the Sunnis, there are also significant differences stemming from allegiances to different interpretive legal traditions, or *madhhabs*. For instance, the leaders of the largest Muslim-American organization, the Islamic Society of North America (ISNA), cope every year with disputes among their primarily Sunni membership over how best to determine by moon-sighting the start of Ramadan. And because Islam is an "orthopractic" religion — concerned more with appropriate behavior than with doctrine — similar disputes abound.

There are also racial and ethnic differences. The most visible and important is that between immigrant-origin and African-American Muslims. This refers not to Louis Farrakhan's Nation of Islam — a small, racist cult that never had much to do with Islam — but to African-Americans either raised in or converted to orthodox Islam, typically Sunnis but also a few Shias. Overall, according to Pew, these represent 13% of all Muslims in America. (If one includes the substantial number of Muslim immigrants from Africa, then about 23% of Muslims here are racially black.)

African-American Muslims typically gather in their own mosques and have their own distinctive styles of worship. Generally unfamiliar with Arabic, the language of the Qur'an, they often feel at a disadvantage relative to their immigrant-origin brothers and sisters. Such feelings are exacerbated by glaring disparities in income, education, and occupational status. And because African-Americans are typically drawn to Islam's emphasis on equality among believers, they are often disappointed when practice falls short of the ideal. Disappointment can sometimes turn to outrage; both sides, however, make continual efforts to overcome this divide, driven in part by political expediency.

Less volatile are ethnic, national-origin, and linguistic differences. The Pew Research Center identifies at least 77 source countries for Muslims residing in the United States. The most salient distinction is between Arabic speakers from the Middle East and Urdu, Pashto, and Hindi speakers from South Asia. In most metropolitan areas, one finds "Arab mosques" and "Indo-Pak mosques," at least among Sunnis. Among Shias, the most relevant ethno-national distinction is between Iranians (Persians) and Indo-Pakistanis.

To be sure, neither South Asians nor Arabs necessarily cohere to form distinct groups. The line dividing Indians from Pakistanis (and Bangladeshis) is obvious. Different Arab sub-groups also have divergent histories and political contexts. Egyptian-Americans, for instance, do not see the world the same way Moroccan-Americans do, nor do they have the same concerns about American policy toward their respective countries of origin — where they invariably have continuing family,

business, and political ties. Palestinians have their own unique and tragic experience. And as the Arab Spring reminds us, when it comes to U.S. policy, individuals often organize not as Muslim Americans but as Libyan-Americans, Syrian-Americans, and so forth.

Another fault line emerges based on the relevance of religion to people's lives. According to Pew, nearly seven in ten Muslims in America say religion is "very important" to them. Yet less than half report performing the five daily prayers required of all Muslims. Most Muslims in the United States do not attend mosque regularly; indeed, about one-fifth seldom or never attend. Only about one-third report to Pew that they go to a mosque to participate in social or religious activities other than the customary religious services. It is difficult to say what exactly explains these differences, of course. Some Muslim Americans regard religion as a private matter that does not belong in the public square, and many of these presumably do not attend a mosque or get involved in Muslim-American organizations. But there is also a sizable segment of Muslims here who have rejected the faith, or at least have chosen not to act on it in any obvious way. Such individuals are likely to identify themselves simply in terms of their national origins.

Taken together, these differences make it highly problematic to speak of any single Muslim-American community. Non-Muslims generally fail to appreciate how challenging this extraordinary diversity is to Muslim-American leaders. Indeed, the imperative of overcoming fragmentation and forging a "Muslim-American" political identity explains a good deal of the behavior of both the leaders and their organizations.

THE CHANGING FACE OF ASSIMILATION

The other prominent element in any demographic portrait of Muslim Americans is the extent of their social and cultural assimilation. In this case, too, reliable data are difficult to come by. But there is a good deal of anecdotal and fragmentary evidence underscoring how much Muslim immigrants have adapted to life in America.

One reason this trend has not received more attention may be the embarrassment of Muslims at where they began, in cultural terms. Like many other immigrants, the Muslim students who started arriving in the late 1960s did not typically intend to remain permanently; even after securing jobs in their chosen professions, most planned to return home someday. But unlike other immigrants, these newcomers were profoundly alienated from American culture and society. Not only did they regard Islam as superior to Judaism and Christianity, they also feared that their salvation was threatened by their very presence in America.

This was certainly what their leaders were telling them. Consider, for example, the *Parents' Manual: A Guide for Muslim Parents Living in North America*. It was first produced in 1976 by the Women's Committee of the Muslim Students' Association of the United States and Canada, and was re-issued in 1992 by American Trust Publications — both organizations established by Muslim Brotherhood activists. Widely available for many years from book merchants at Islamic conferences and meetings, the manual states that "Islam is a total system of life for man and his society . . . hence it is infinitely superior to any system or ideology which man can devise." And as the chapter on sex and marriage declares, "We are actually living in an environment in which our Islamic standards of purity and modesty meet with a continual threat and can easily be destroyed altogether." The authors then urge Muslims to avoid Christmas, Easter, Halloween, Valentine's Day, Mother's Day, and even birthdays:

The sincere Muslim is very modest about himself and is shy of being the center of attention. He knows that he did not create his own life, does not sustain it day by day and year by year, and does not consider his particular existence as deserving public attention on the anniversary of his birth.

Even more revealing is the manual's depiction of America as *jahiliyyah*. As the authors explain, the term designates "a society which is ignorant of the purposes of man's creation, his relationship and responsibility to his Creator, and the goals for which he should strive in this world." *Jahiliyyah* comes from the lexicon of Islamist intellectuals such as Abul A'la Mawdudi and Sayyid Qutb; in the hands of violent Islamists, it has justified terrorism. The manual does not use the term this way, but it does urge parents to "strive to keep our Islam and the Islam which we pass on to our children pure and uncontaminated by the attitudes of this *jahiliyyah*, and . . . to change this *jahiliyyah* little by little into Islam."

At the same time, the manual states that "none of these ideas is offered as a *fatwa* or dogma," and invites readers to be reasonable and rely on common sense. Indeed, despite its clear condemnation of birthday celebrations, the manual acknowledges that "if the young Muslim child feels very strongly about it, probably little harm will be done to celebrate his birthdays in a moderate manner during his early years." Regarding non-Muslim acquaintances, it says that while one's closest friends must necessarily be Muslims, parents should teach their children that "Muslims must treat non-Muslims just as kindly and fairly as they treat Muslims so that [they] will never use their being non-Muslim as an excuse for misconduct toward them."

A similar pattern is evident in a more authoritative source: Muzammil Siddiqi, a graduate of the Islamic University of Medina, former official at the Saudi-backed Muslim World League, and long-time member of the Fiqh Council of North America (the juridical body interpreting *sharia* law for Muslims here). In a 1986 article in *Islamic Horizons*, a periodical sent out by ISNA to thousands of Muslim households, Siddiqi invokes the classic distinction between *Darul-Islam*, those places where Islamic law prevails, and *Darul-kufr*, those where it does not. Citing the teaching that a Muslim may reside in the latter to perform a specified task but "must return to *Darul-Islam* as soon as the task is finished," Siddiqi leaves no doubt that America is *Darul-kufr*, and that "we are in real danger of assimilation to a non-Islamic culture." But then, surprisingly, Siddiqi concludes, "We do not suggest that Muslims should leave America or go back home whence they came." And he reassures his readers that his proposed course of action "will not deprive you of your jobs or your professions."

So what does this leading Islamic jurist propose? That Muslims "make the intention of hijra for the sake of Allah." *Hijra* literally means migration, but here the allusion is to the flight of Mohammad and his followers from Mecca, where they were being persecuted, to Medina, where they formed the first Muslim community. In contemporary Islamist thought, *hijra* refers specifically to withdrawing from modern secular society. Accordingly, Siddiqi urges Muslims in America to establish and support mosques, to build Islamic schools and colleges, to read Islamic books and magazines, and to ensure "an Islamic system of marriage for Muslim youth."

Is this a viable strategy? Siddiqi was proposing a bargain that other immigrant groups have managed to pull off, at least for a generation or so. But the stakes are different — and higher — for Muslims. Indeed, Siddiqi, the authors of the *Parents' Manual*, and other Islamists left their people in a real dilemma: You have chosen to live in a corrupt and ungodly society where the fabric of daily life is completely at odds with the teachings of Allah, they told their followers. Yet you should be nice to your non-Muslim neighbors and co-workers, pursue your careers in medicine and engineering, and send your children to American universities, as long as you stick close to your mosques and schools and make sure your daughter marries a good Muslim.

No wonder so many Muslims have shunned this advice. As noted above, most American Muslims do not attend mosque regularly. Moreover, the available evidence indicates that fewer than 5% of Muslim-American children attend full-time Islamic schools. Even if many Muslim immigrants have not quite assimilated to the broader American culture, in many respects their children have.

From another perspective, though, Siddiqi's formula can be deemed a success. Before 9/11, many Muslims managed to pursue careers and education while remaining aloof from the mainstream of American life. Fueled in part by continuing immigration and some conversions, mosques and Islamic schools grew in size and number. The few Muslim forays into the wider society, particularly into politics, were defensive in nature — for example, the response to fallout from the 1993 bombing of the World Trade Center. Many Muslims, probably most, continued to believe that it was *haram* (forbidden) to vote in America. In any event, those interested in politics tended to focus on developments back in their home countries, to which many still planned to return.

By the 1990s, a few Muslim leaders were heard to complain that mosques were "ethnic country clubs" and "Islamic fortresses." Islamic schools, they felt, were too isolating. As countless Muslims have recounted to me, however, it took the events of 9/11 to finally "force us out of our cocoons."

Over the past decade, Muslim leaders have seriously endeavored to get ordinary Muslims to engage with American society and politics. Yet there are still counter-currents pulling them away from anything not tied to their faith. For example, at meetings nominally devoted to Islamophobia or civil-rights issues, attendees not infrequently change the subject and ask leaders if it is permissible to befriend non-Muslims or attend business luncheons where alcohol is served.

Such questions do not necessarily come only from recent immigrants. At one memorable session at the 2004 annual conference of the Islamic Circle of North America, Siddiqi found himself before a roomful of agitated young men preoccupied with the upcoming presidential election. They fervently wanted to punish George Bush for both his domestic and foreign policies and to vote for Bush's Democratic opponent, John Kerry. One young man stood and pleaded: "Imam, wouldn't my support for the Democrats, who clearly favor homosexual rights, jeopardize my good standing as a Muslim?" Another queried: "Does voting for Democrats make you complicit in homosexuality?"

Siddiqi's response was direct and startling: "Let them have homosexuality No one is forcing you to be a homosexual." He continued: "If you think Kerry and the Democrats are the best candidates, then vote for them."

There is no way of proving that Siddiqi meant what he said that day, though I believe he did. In either case, as noted by Olivier Roy, one of the foremost students of Muslims in the West, "Politics has little to do with sincerity." More important is that Siddiqi and other Muslim leaders are publicly pushing back against the same conservatism they once worked to instill. We should be under no illusion that his foundational views have changed, but Siddiqi, like other leaders, has been desperately trying to extricate Muslims from the bind he helped lead them into.

Back in his 1986 *Islamic Horizons* article, Siddiqi discussed *da'wah* — the practice of inviting others to accept Islam — as one potential way out of that bind. *Da'wah* is analogous to Christian missionary work, though it is important not to lose sight of contemporary Islam's particular dynamism and the triumphalism of many of its adherents. Muslims debate the precise nature of the obligation to do *da'wah*, but because there are no clergy specifically tasked with it, Muslims regard it, one way or another, as the responsibility of each individual. In his article, Siddiqi presented *da'wah* as the only possible justification for permanent residence in America.

Yet these leaders — and many of their non-Muslim critics — fail to consider how *da'wah* is to be pursued by Muslims bound in their self-protective cocoons. How can Muslims engage non-Muslims about the virtues of Islam if they are not allowed to have lunch with them? One legitimate response has been to do *da'wah* among lapsed Muslims. But this has only exacerbated the isolation of Muslims from the broader American community.

Thus, after decades of calling for more engagement with non-Muslims, Muslim leaders are still caught up in habits that undermine their stated goals. For example, I recall the 2007 annual convention of the Muslim American Society (MAS) at a hotel outside Chicago. Taking advantage of low rates, Muslim organizations typically schedule their major gatherings over holiday weekends, including Christmas and Easter. On this occasion, MAS leaders were especially mindful of the need to reach out to non-Muslims, but also mightily aware that few if any were in attendance. Speaker after speaker urged that next year's convention involve more non-Muslims. Yet as my conversations and interviews revealed, even the most earnest did not realize that this objective would require that they not gather on Christmas Eve. (Last year, MAS again convened over the Christmas holiday.)

PARAMOSQUE ORGANIZATIONS

The Muslim American Society is one of several national organizations dominating the political space of the Muslim-American mainstream. The others are the Islamic Society of North America (ISNA), the Muslim Public Affairs Council (MPAC), the Islamic Circle of North America (ICNA), and the Council on American Islamic Relations (CAIR). As a recent Gallup survey confirms, only a small segment of American Muslims (12%, at most) regard any one of these organizations as representing their interests. Nevertheless, these groups define and articulate the Muslim-American agenda and they are where non-Muslim elites in the media, the government, and the academy turn for Muslim interlocutors.

As noted above, these national organizations were all initiated and shaped by Islamists. Nevertheless, they differ in revealing (but overlooked) ways. The oldest and largest is ISNA, which attracts more than 30,000 Muslims to its annual convention. Over the years, however, ISNA has evolved into an all-purpose umbrella organization that lacks a clear mission. It is therefore more useful to examine ICNA and MAS — smaller activist groups founded for the explicit purpose of building an Islamist movement in the United States — and to then turn to the newest and most controversial Muslim-American organization, CAIR.

ICNA and MAS are sufficiently alike that, over the past decade, they have been pursuing a gradual merger. These so-called paramosque organizations were both founded to overcome the inevitable parochialism of mosques. In this sense, they can be likened to the YMCA, whose Protestant founders were similarly impatient with the way that individual congregations sapped energy that could otherwise be used for more dynamic outreach.

Membership in ICNA and MAS is open to both mosques and individuals. The latter, known as "Islamic workers," are critical to the mission, meeting frequently in small, tightly knit groups called *usra* (meaning "family") for study, discussion, and outreach. Their reading lists inevitably include a few Western authors, but the emphasis is on the Islamist canon: Abul A'la Mawdudi, founder of the Pakistani Islamist party, Jama'at-i Islami; Hasan al-Banna, Egyptian founder of the Muslim Brotherhood; Sayyid Qutb, Islamist theoretician and martyr; and Yusuf Al-Qaradawi, contemporary Islamist theologian.

Yet ICNA and MAS differ in critical ways, which helps explain why their merger is expected to fail. ICNA emerged from ISNA in 1974, when a group of Indo-Pakistanis caucused to form their own organization. For many years, ICNA meetings were conducted entirely in Urdu, reflecting the group's immigrant membership. Today, business is conducted in English, but large gatherings inevitably include break-out sessions in Urdu and other regional languages. From its inception, ICNA has had direct

ties to Jama'at-i Islami, and in the early 1990s a prominent insider wrote that ICNA was "controlled" by that Islamist party. Today that link looks to be much more attenuated.

By contrast, MAS traces its lineage directly to the Muslim Brotherhood, and most of its membership is Arab. For many years, MAS was not a single organization but a network of affiliates tied to Brotherhood organizations back in Egypt, Tunisia, Lebanon, and other Arab countries. Focused on developments back home, these groups lacked coordination and were often at odds. Periodically, the Egyptian Brotherhood would seek to impose order through mediators dispatched to the United States. Over time, these groups did come together and in 1992 formed MAS, making it a much younger organization than ICNA. Up to that point, these networks had operated clandestinely in America, reflecting habits developed to evade intelligence services back home, where comrades and families remained vulnerable. As a result, MAS and its predecessors did not proselytize — and even today, after almost 20 years aboveground, it still does not focus on *da'wah*.

ICNA, on the other hand, has always operated openly in America, just as the Jama'at-i Islami does in Pakistan. Thus ICNA has engaged in *da'wah*, especially among non-Muslims. Its workers compete to spread the faith, and it is clearly more preoccupied with outreach than is any other mainstream Muslim organization. Indeed, the only time I have ever been pressed to convert was by a young physician, an immigrant from India, working at an ICNA-sponsored health clinic in Chicago.

This focus on *da'wah* has led to ICNA's commitment to providing social services to struggling families, Muslim and non-Muslim alike. The organization's national headquarters has long been in Jamaica, Queens, where many of its resources are devoted to assisting neighbors, including many African-Americans. Indeed, ICNA has particularly strong ties to American blacks, who are noticeably present at its meetings and conventions. In this same vein, ICNA has long been engaged in *da'wah* to prisoners. No similar commitment is evident at MAS.

ICNA has also spawned a media initiative, SoundVision, which operates bookstores and produces videos on topics ranging from the life of the prophet to teen sex. In the aftermath of 9/11, ICNA established a hotline — 877-WHY-ISLAM — to inform non-Muslims about the faith. Most recently, the organization has sponsored an annual ad campaign in transit systems in New York and other cities. Typical messages placed on the sides of buses are: "Why Are So Many People Like You Becoming Muslim?" or "Islam — Submission to God." Such efforts reveal ICNA's commitment to *da'wah*, as well as its naïveté, as its leaders fail to appreciate how provocative and threatening such campaigns can be to non-Muslims.

There is considerable irony in the contrast between ICNA's sustained outreach to non-Muslims and its institutional ethos, which is strikingly parochial and rigid, especially when compared to that of MAS and the other mainstream organizations. For instance, one encounters more *nigabs* and *burquas* (though relatively few in absolute terms) at ICNA gatherings than at MAS and ISNA conferences. Even more telling is the segregation of the sexes: Along with a Sisters' Wing, ICNA holds separate "sisters' sessions" at its conventions, and in joint sessions enforces separate seating and other arrangements more fastidiously than do other organizations. When a woman was elected president of ISNA a few years ago, an ICNA leader commented to me, "It will be a very long time before a woman ever heads ICNA!"

MAS leaders display a similar conservatism, but also a certain cosmopolitanism, expressing disdain for ICNA's naïve approach to *da'wah* or criticizing the group's rigid sex segregation. In general, one finds in MAS greater openness to American culture, especially popular culture, than in ICNA. For example, at a lecture on relations between the sexes for male college students sponsored by the Bay Area chapter of MAS, the speaker indicated that it was not absolutely mandatory that a Muslim woman wear *hijab*, and also argued that dating was not necessarily contrary to Islamic law. What Islam does require, he said, is respectful and decorous relations between the sexes, based on an understanding of their critical emotional as well as physical differences. Toward that end, he urged his young listeners to read linguist Deborah Tannen on gender differences in language.

Then there was the national hip-hop concert tour sponsored by MAS in the summer of 2007. Featuring the group Outlandish (consisting of two Danish-born Muslims and one Honduran Catholic), the tour was an effort by some MAS leaders to reach out to their youth. It proved controversial when, at the Manhattan concert I attended, scores of Muslim teenagers began to move to the music in a way that looked a lot like dancing, which Muslims typically do not condone. Failing even to turn a profit, the tour antagonized conservatives in MAS, and its sponsors eventually left the organization. When I related this episode to an ICNA official, he rolled his eyes and declared that nothing similar would ever have been attempted by his organization.

STASIS AND CHANGE

Despite these differences, ICNA and MAS share the same basic Islamist ideology and place the same emphasis on the work of the *usras*. They also organize very similar regional and national conferences. Indeed, the most visible step toward a merger

between the two groups has been their joint sponsorship of each other's annual conventions — events that attract between 5,000 and 10,000 Muslims and also resemble (in format if not size) the massive annual convention of ISNA.

To a non-Muslim observer, perhaps the most striking aspect of these gatherings is the complete absence of any acknowledged tie to the United States. While immigrant organizations typically find ways to demonstrate loyalty to their adopted country, ICNA and MAS do not. No one pledges allegiance to the flag, and indeed there are no flags on display. (This is also true of the typical Islamic school.) When attending an ICNA convention over a Fourth of July weekend, I heard not a word about the significance of that date in American history. Convention-goers are routinely urged to mobilize and vote to overturn the Patriot Act and protect their civil rights, but they are almost never urged to consider the obligations that their fellow Americans typically understand as a condition of citizenship.

This lack of any overt display of loyalty to America may in part reflect the disdain expressed by non-Muslim elites toward patriotism and the nation-state, which tend to be viewed as outdated, unnecessary, or even dangerous. And with the elimination of the draft and our reliance on a professional military, the signal sent to earlier immigrant groups about the importance of military service as a way to demonstrate their commitment to America is now far weaker.

Yet the absence of acknowledged obligations to America is also directly attributable to Islamist ideology. For instance, the leaders of these organizations have never explicitly renounced the caliphate — the dream of a restored sovereign Islamic regime ruled by an individual understood to be Allah's vice-regent. Failure to reject this notion obviously engenders confusion among many Muslim Americans, especially youth. Similarly, the routine invocation of the *ummah* — the worldwide community of Muslims that transcends all barriers of ethnicity, race, and nationality — fosters ambivalence, and reinforces the already pervasive inclination to avoid military service or to oppose *any* use of American force in Muslim countries.

Equally striking, though, is the fact that the vast majority of people attending such gatherings do so for non-ideological reasons. The substantive sessions are typically a backdrop against which entire families — parents, children, grandparents — catch up with old friends and associates, often in the hope of finding suitable marriage partners for the young. Normally discreet Muslims refer to these get-togethers as "meat markets," and it is easy to see why, as adolescent girls dressed in stylish *hijab* — sometimes coordinated with tight designer jeans and painted toenails — glide around checking out the boys, who of course return the compliment.

Generations cross paths at the conferences' bazaars, where scores of merchants and non-profits sell *halal* foodstuffs, ethnic clothing, *sharia*-compliant mortgages and investments, educational materials for children, satellite TV subscriptions, religious videos, and books. Others feature information about Islamic charities operating here and overseas, advocacy and political groups, and, on occasion, a recruiting officer from the FBI or the Department of Homeland Security.

Despite such fellowship and commerce, the conventions' formal purpose is to hold plenary sessions, panels, and workshops where "scholars" hold forth on topics ranging from Qur'anic notions of *jihad* to getting fathers more involved in parenting. The term "scholar" gets used indiscriminately to describe anyone presuming to address such gatherings. The speaker might be a high-school teacher talking about American youth culture, a political activist denouncing the Patriot Act, or an imam with a Ph.D. from Harvard examining what the Qur'an says about marriage. In traditional Islam, "scholar" is an honorific, reflecting a deeply ingrained respect for religious learning. Among Islamists, it represents a challenge to such authority, and a willingness to hear Islam interpreted by individuals with no recognized religious training.

In any case, the same individuals speak at all these events, and their presentations are invariably tedious and pedantic, especially when addressing religious topics. Tacitly acknowledging the problem, organizers routinely call upon a few reliable African-American Muslims, who combine Islamic themes with a personal, evangelical style that is especially appealing to young Muslims raised here. Unfortunately, these speakers also tend to express their alienation from America.

It is ironic that these two organizations, ICNA and MAS — founded to advance the Islamist movement by transcending the inertia and insularity of mosques — have become mired in the consuming task of staging all-too-predictable events. As one insider articulates the resulting problem: "We don't have leaders, we have managers. We have speakers."

But this deep organizational stasis has not always been evident to outside observers, in part because of the many surface changes that have taken place in recent years. As noted above, Muslim leaders struggled during the 1970s and '80s to adapt their Islamist ideology to American life by urging Muslims to get along with their neighbors and co-workers while at the same time utterly rejecting American values and encouraging efforts to convert non-Muslims. The result was "Islamic fortresses," whose inadequacies became evident to all but the most obdurate in the wake of 9/11. Since then, the leaders have adapted

further, urging Muslims to secure their rights as American citizens through full civic and political engagement. Yet these leaders have not reconciled these adaptations with the Islamist ideology that they continue to uphold, or that they at least have not renounced.

How these leaders and groups manage this posture is difficult to fathom. Deception and dissembling should not be ruled out, but these do not provide a satisfactory explanation. More likely factors are habit and filiofetism. For many Muslims, even those who are not Islamists, figures such as Qutb and al-Banna are simply part of their heritage. Among the more initiated, these two figures are also revered as martyrs. A further factor is the sheer opportunism of the leaders involved, which typifies the Muslim Brotherhood wherever it has been closely examined. The result, according to one former Muslim leader, is that his colleagues "refuse to deal with their baggage."

OVERSEAS INFLUENCE

The place of Islamist ideology in the contemporary life of American Muslims is thus more complex than their critics suggest. But what about the critics' other common theme — the influence of foreign Muslims on their American co-religionists? As noted earlier, there has been considerable contact between ICNA and MAS and their Islamist colleagues in Pakistan, Egypt, and elsewhere. But these ties have likely diminished over time. Even critical analysts of the Muslim Brotherhood downplay the influence of Egyptian leaders on affiliates in Europe and America, emphasizing that the latter respond mostly to local political dynamics.

Even more scrutinized is the influence of the Saudis, who have spent millions on initiatives in the United States, such as the distribution of Qur'ans and other books, salaries to imams, contributions to build mosques and schools, and generous funding for Middle East studies and other departments at American universities. In Los Angeles, the Saudis built and have maintained the lavish King Fahd mosque. In Northern Virginia, the Islamic Saudi Academy — funded and operated by the Saudi government — has dominated Islamic education in the nation's capital for years. And the Saudis have contributed financially to Muslim Brotherhood initiatives throughout the world, including in the United States.

Yet all this money has not earned the Saudis as much support and goodwill as their critics tend to believe. On the contrary, Muslim leaders have frequently criticized, privately and on occasion publicly, heavy-handed efforts by the Saudis to manipulate them. At least one major organization, the Muslim Public Affairs Council, has long had a policy of refusing to accept any overseas support; its founder, Maher Hathout, has specifically bemoaned the Saudis' influence on American mosques.

The biggest rift arose in 1990 and '91 over the Saudi-backed deployment of U.S. troops in the Persian Gulf region in Operation Desert Storm. The Saudis leaned heavily on all the major Muslim-American organizations to denounce Saddam Hussein's invasion and annexation of Kuwait. This effort was not very successful: In fact, all but one of those organizations refused to back the Saudis. This response was attributable primarily to the leaders' ties to the Muslim Brotherhood, whose affiliates for the most part supported Saddam (who had positioned himself as the champion of the Palestinians and the Palestine Liberation Organization). Only the Kuwaiti and Iraqi affiliates of the Brotherhood supported the U.S. invasion, for obvious reasons. Hardly gratifying from the American perspective, this story nevertheless underscores the fact that the interests of Muslims here do not always converge with those of their overseas benefactors — even the Saudis.

The Saudis did score one success, however, and it was revealing. The only Muslim organization to support Desert Storm was the American Muslim Society, a group of African-Americans headed by Wallace D. Mohammed, son of Nation of Islam founder Elijah Mohammed. Having long since rejected his father's racist, anti-American cult, W. D. Mohammed was drawn to the Saudi position for two reasons. First, he was dependent on the Saudis both for validation as a genuine Sunni Muslim and for financial support. Second, he was a staunch patriot willing to back an American-led effort abroad. This episode highlights the fact that Saudi influence on Muslim Americans is hardly uniform: Though not widely noted, that influence has been greater on African-American Muslims than on those of immigrant origins. W. D. Mohammed is a benign example, but for some other African-Americans, Islam — especially Saudi-backed Salafism — reinforces an already profound sense of alienation. As former MAS leader Souheil Ghannouchi has written: "Immigrant leaders preached a version of Islam that made many African American Muslims feel like foreigners in their own country."

Clearly, overseas influences on Muslims in America are limited and conditioned by domestic social and political dynamics. A particularly salient example of the latter surfaced at an ISNA convention a little more than two years after 9/11. At one morning session, an ISNA leader took the podium and delivered an unscheduled talk about the *Noble Qur'an*, a handsome, hardbound edition in numerous translations underwritten and distributed worldwide by the Saudis for free. Yet the speaker was there to criticize the *Noble Qur'an*, not to praise it. He pointed out that its annotations included offensive characterizations of Christians

and Jews, which the Saudis had not removed despite ISNA's repeated protests over several years. He stated that many "good Muslims" who bear no malice toward Christians and Jews were not taking such offenses seriously enough. He then told his listeners: "If you see copies of this edition of the Qur'an, buy it and destroy it. It is a weapon of mass destruction."

The reception to these comments was mixed. Among the thousand or so Muslims in the room, there was a good deal of fidgeting and murmuring beneath the polite surface. In conversations later that day, I heard considerable discomfort with such criticism of the Saudis. A few weeks later, I caught up with the speaker and remarked that I had never heard such a blunt public rebuke of the Saudis by a Muslim-American leader. I then asked if he had ever made such comments outside the confines of his organization. His immediate, reflexive response was: "Of course not, I'm creating a constituency here!"

IDENTITY POLITICS

As we have seen, one of the major challenges facing Muslim leaders eager to create constituencies is overcoming the sources of division among the array of groups that comprise their community. Before 9/11, one way of bridging these divides was to appeal to the Palestinian cause. This strategy worked at times, but the issue was generally too fraught with disagreement to promote genuine cohesion. After 9/11 and the resulting scrutiny under which Muslims have come since the attacks, civil rights has emerged as the leaders' most powerful tool for mobilizing and unifying their co-religionists. The challenges inherent in both approaches become evident when considering the most visible, and most notorious, Muslim-American organization — the Council on American Islamic Relations, or CAIR.

CAIR was established in 1994 by two Palestinians — Omar Ahmad and Nihad Awad — who had come to America as university students. Before conceiving of CAIR, Ahmad and Awad were active in the Islamic Association for Palestine (IAP), founded in 1981 by the Muslim Brotherhood to promote the Palestinian cause. Until its demise in 2004, the IAP was closely tied to Hamas, raising funds for the terrorist group and publishing its materials in America.

The idea for CAIR emerged from an infamous meeting convened in Philadelphia in 1993 by another Brotherhood affiliate, the Palestine Committee. The early 1990s were tumultuous years for the Brotherhood and Palestinian Islamists: Their support for Saddam Hussein in the 1991 Gulf War had alienated their Saudi backers. The implosion of the Soviet Union cost them another sponsor. And the Oslo Accords between Israel and the Palestine Liberation Organization, signed in September 1993, not only threatened Hamas's declared goal of eliminating the state of Israel, but also legitimated its secular rival.

Meeting in Philadelphia a few weeks after the signing of the Oslo Accords, Ahmad, Awad, and their colleagues conceived of an organization that would engage the wider community of Muslims in America — not just Palestinians — to work against the accords, by raising funds for the Palestinian struggle and encouraging Muslims to get more involved in American politics. They had in mind a broad campaign to influence American media, public opinion, and eventually policy. A year later, the Council on American Islamic Relations — a direct outgrowth of the Palestinian Muslim Brotherhood and Hamas — was open for business in Washington, D.C.

It is astonishing, given this history, that the mainstream American media should routinely describe CAIR as "a Muslim civil-rights organization." It is one thing for CAIR's leaders to ritualistically deny and obfuscate the organization's origins; it is quite another for America's academic, political, and media elites to systematically ignore them.

There are, however, two notable exceptions. The first is the FBI. After a long and difficult legal battle, the Bush administration successfully prosecuted the Holy Land Foundation, a Texas-based Hamas fundraising front to which Ahmad and Awad were clearly connected. CAIR was an unindicted co-conspirator in the case; as a result, the FBI eventually suspended formal contact with the group.

The second exception is the investigative journalists mentioned earlier. These indefatigable critics rush into the vacuum left by reticent elites, but they don't quite fill it. Habituated to recycling the same old facts, such critics fail to step back to examine the larger picture. If they did, they would see that CAIR has adapted in many ways to American political culture, and that this process of Americanization has made CAIR a much more formidable organization than any of the other prominent Muslim-American groups. Indeed, while Gallup reports that barely 12% of Muslims regard CAIR as representing their interests, that figure is higher than the one reported for any other Muslim-American organization.

Since 9/11, CAIR has emerged as the pre-eminent advocate for Muslim Americans. Like other nationwide advocacy groups in America, its efforts and ethic are dominated by its Washington headquarters, where a full-time professional staff works under the direction of political entrepreneurs adept at identifying causes capable of generating contributions from widely dispersed

supporters. In other words, CAIR is a "checkbox organization": Members are not connected to it through any enduring ties of friendship or social solidarity, but rather through their commitments to its specified goals. And as those commitments inevitably ebb and flow, members routinely join up and drift away. To keep ahead of "the churn," holding on to existing members and attracting new ones, headquarters must continually demonstrate its effectiveness through lawsuits, administrative rule changes, studies, congressional testimony — any accomplishments that can be communicated to members through newsletters, e-mails, and the media.

For their substantial start-up costs, advocacy groups rely on wealthy sponsors, often foundations. Since few foundations have been willing to risk their tax-exempt status on pro-Muslim advocacy, CAIR partly relied on the Holy Land Foundation. Subsequent support has come from various Saudi and Persian Gulf sources, almost certainly rendering CAIR more reliant on overseas funding than any other major Muslim-American organization.

From the outset, CAIR made its name denouncing bias against Muslims. Its breakthrough came in 1995, when it publicized harassment and hate crimes against Muslims in the wake of the Oklahoma City bombing. CAIR also picked fights over apparent offenses to the prophet Mohammad by Simon & Schuster and *U.S. News*. The organization's most visible early victory came against Nike in 1998, when it orchestrated a global protest against a line of athletic shoes whose logo could be mistaken for the Arabic script for "Allah." More generally, CAIR has urged Muslim immigrants to become citizens, and has encouraged Muslim Americans to register and vote, pressure their elected officials, and demand their rights. Toward this end, the organization literally waves the flag: Unlike ICNA and MAS, it displays Old Glory at its events, and its *U.S. Congress Handbook* devotes several pages to proper flag etiquette. That publication also prints the full text of the Pledge of Allegiance, the Declaration of Independence, the U.S. Constitution, and all four stanzas of *The Star-Spangled Banner*.

CAIR has thus overcome many of the limitations, both organizational and ideological, of ISNA, ICNA, and MAS. Unlike these organizations, CAIR is not rooted in face-to-face immigrant networks. Nor are its members involved in *usras* or similarly intense small groups. CAIR does not get involved in the religious development of its members, among whom are a diverse array of young, educated second-generation Muslim Americans. In these ways, CAIR transcends the ethnic boundaries defining other groups and constitutes the first genuinely Muslim-American organization.

Nor does CAIR get bogged down in planning annual conventions. Not reliant on social networks requiring constant renewal, CAIR has not been drawn into hosting "meat markets" for families, bazaars for merchants, or panels for scholars. The organization does hold an annual banquet in Washington with the usual after-dinner fundraising appeal, but this is a far cry from the large gatherings that are a year-round preoccupation for other groups.

Still, as often happens in advocacy organizations, CAIR's members eventually sought one another out and organized local affiliates. And CAIR National has welcomed these regional chapters, granting them considerable autonomy as local franchises with their own boards, staffs, and web sites. This laissez-faire response to grassroots spontaneity has afforded CAIR much dynamism and visibility, especially in the crucial period after 9/11. But it has also led to new challenges.

Regional affiliates like CAIR-Chicago have in recent years hired lawyers to litigate civil-rights complaints, which CAIR National has not typically done. College students flooding in as interns and volunteers at local chapters have included substantial numbers of women, some of whom wear *hijab* while others do not. This is one of many signs that the regional chapters have been less rigid than CAIR National, where wearing *hijab* has been enforced. Indeed, some regional leaders can be heard criticizing the influence of Islamists at Washington headquarters, especially with regard to the Palestinian question.

Such local initiatives have exacerbated longstanding tensions within CAIR, between those members focused on the needs of Muslims here in America and those focused on developments overseas, especially building support for the Palestinians and Hamas. In theory, CAIR was founded to mobilize the former to benefit the latter. These tensions have roiled CAIR National for some time, and in 2007 they came to a head in a protracted internal battle that has been largely ignored by the organization's many critics. That battle resulted in the defeat of the overseas contingent, led by Omar Ahmad, who effectively withdrew from any further involvement in the organization he had helped create.

CAIR has thus emerged, at both the national and regional levels, as the most Americanized of all the mainstream Muslim organizations. Yet this is hardly good news, because the style of politics now practiced by CAIR makes it more difficult than ever to deal with the organization's Islamist "baggage."

CAIR's strident brand of identity politics may seem less frightening than fifth-column activism on behalf of Hamas, but it remains highly problematic. In a style as relentless as that of its critics, CAIR denounces the indignities visited on Muslims by

government bureaucrats and Islamophobes across America. Such grievances are not without merit, but CAIR infuses them with the hyperbole that pervades advocacy politics in contemporary America. And this only deepens the self-absorption of educated young Muslims who refuse to acknowledge that their organizations and leaders bear any responsibility for the suspicions that other Americans continue to harbor toward them, their leaders, and their faith. Instead, these young Muslim Americans, unlike their immigrant parents, lay full and unapologetic claim to their rights as citizens, while admitting no corresponding duties — other than the familiar "duty" to dissent and demand more rights. This is perhaps the most significant and complicated challenge posed to the nation by contemporary American Islam.

CONSTRUCTIVE PRESSURE

How should we respond to this challenge? We must begin by recognizing that the legal and political values and institutions that helped Americans to avoid overreacting after 9/11 have subsequently hindered us from facing up to the more subtle threat from Islamism. No longer should mainstream American institutions routinely and uncritically engage with Muslim leaders and organizations that have not — at some point, in some way — demonstrated a willingness to address questions about their history, and about the compatibility of their views with American values and political principles.

This means, however, that non-Muslims must pose such questions in reasonable and constructive ways. We must move beyond the inquisitorial stance of critics engaged in mere political archeology. The repeated unearthing of the same damning facts only encourages Muslims, goaded by the strident advocacy of groups such as CAIR, to wrap themselves in resonant but evasive rights talk.

The fundamental problem is not disloyalty among Muslim Americans, but their reluctance to confront the implications of the Islamism that has been part of their milieu and that their leaders continue to invoke, however ritualistically or unreflectively. Thus, the primary goal should be to exert constructive pressure, in different ways and to different degrees, on Muslim Americans — leaders and ordinary citizens alike — to "deal with their baggage." An exemplary step in this direction is the FBI's policy shift away from contact and cooperation with CAIR. So was the Bush Justice Department's prosecution of the Holy Land Foundation. Today, however, the Obama administration is pursuing a more accommodating policy toward Muslim-American organizations. This is regrettable, but in truth there is only so much the government can or should do on this front. The most appropriate and effective source of pressure will be non-governmental actors, especially universities, think tanks, and the media.

If any such substantive engagement with Muslims is to be undertaken, then non-Muslim Americans will need to be much better informed. We must overcome the populist paranoia, fueled by the evasiveness of our elites, that demeans a free people. And rather than obsess over the presumed influence of overseas ties on Muslims in America, we need to be cognizant of how American Muslims have adapted to some of the most dysfunctional aspects of our own politics.

Essential to any improved understanding will also be a greater appreciation of America's history — not its mythology — as a nation of immigrants. There are, for instance, relevant parallels between Islam as an assertive, triumphalist, immigrant faith and Catholicism in the last century. Still more relevant are the parallels with German-Americans during World War I, and then, immediately after the war, with anarchist terrorists and the resulting Red Scare. Perhaps the most striking parallel of all emerges from later in the 20th century, when radical socialists and communists clung to utopian illusions of a workers' state, even as they progressed up the social and economic ladder in America — much as successful Muslims today continue to invoke the notion of the *ummah*.

The lessons of this history are many and complicated. But surely one is that, ordinarily, questions of loyalty have been worked out over time, as immigrants and their offspring assimilate and adapt to American society. Another is that these tensions have rarely been acted upon or seen as mortal threats.

But we are not living in ordinary times, and today's threats are more immediate. We do not have the luxury of time to allow Muslims to sort out their loyalty to America. We — and they — must face the challenge now.

Peter Skerry teaches political science at Boston College and is a senior fellow at the Kenan Institute for Ethics at Duke University and at the Brookings Institution.



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Why Europe Is Conflicted Over Immigration

Analysis | SEPTEMBER 9, 2015 | 09:00 GMT | [Print](#) | [Text Size](#)



Summary

The refugee crisis in Europe is doing more than just driving wedges between EU member states — it is also changing national demographics across the Continent. Populations in all European countries are already aging and many will soon begin to shrink, bringing fiscal hardships to economies. Though immigration can help foster economic growth, it can also open the door for political and social conflict. And as Europe deals with its third major wave of migration in 15 years, those very challenges are prompting European nations to consider reforming their immigration policies.

Analysis

As fertility rates drop and life expectancy grows, demographic change poses a major threat to the post-war economic model that predominates in Europe, which assumes a large workforce that can pay enough taxes to support the young and the old. Many governments reacted to the falling birth rate by offering increasingly generous benefits for families having children. But these policies have made a limited impact. Even in Sweden, where generous parental benefits did lead to modest improvements in fertility rates, childbirths have been below the replacement level for more than two decades.

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Immigration, however, can mitigate the process of demographic change. The logic is simple: If a country cannot produce enough workers domestically, it can always import them. In principle, new workers fill labor shortages and raise domestic demand, causing firms to expand and hire new workers. Highly skilled immigrants contribute to specializing in the economy, while low-skilled immigrants often take jobs that the locals will not. In addition, more workers means a larger tax base, which improves the fiscal situation of receiving countries and helps governments cover the cost of supporting older locals. However, the reality is more complicated.

Demographic Change

The current refugee crisis in Europe has often been presented as a fight between generous countries (such as Germany, which agreed to take a large number of asylum seekers) and selfish nations (most notably the United Kingdom, which only reluctantly decided to accept more people). But the actual demographic situation in each nation helps elucidate their behavior.

According to EU projections, Germany will lose some 10 million people between 2020 and 2060 because of demographic change. The country's population will also become much older: during the same period the old-age dependency ratio (the percentage of people aged 65 and over compared with people between 15 and 64) will go from 36 percent to 59 percent, one of the highest in Europe. As a result, Germany's workforce is projected to decline 25 percent by 2060. This will create fiscal challenges for Berlin, including higher spending on pensions and healthcare.

Demographic change will be milder in the United Kingdom, which by mid-century will be the most populated country in Europe (Britain's population has been projected to reach 80 million by 2060, from 67 million in 2020). On average, the British population will be older than it is today, but the old-age dependency ratio will only be at 43 percent in 2060 from 30 percent in 2020, one of the lowest in Europe. Unlike Germany, the British workforce will increase by 10 percent between 2020 and 2060. At 1.9 children per woman, the United Kingdom has one of the highest fertility rates in the European Union.

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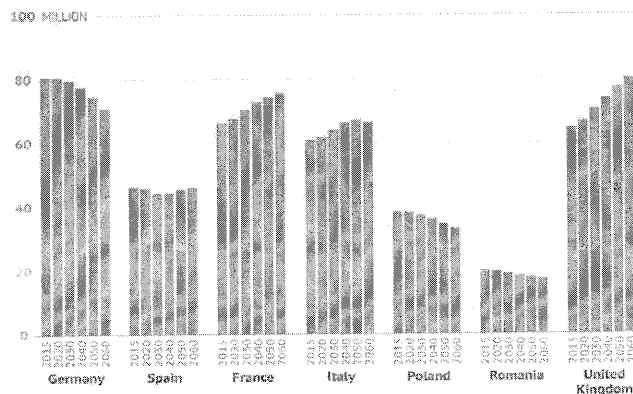
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PROJECTED POPULATION, 2015-2060

According to European Union projections, the dynamics in fertility, life expectancy and migration will lead to significant changes in the age structure and the size of the EU population in the next four decades.



Source: Eurostat

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These statistics partially explain the differing reactions in Berlin and London to the refugee crisis. Germany is far more in need of imported labor than the United Kingdom. Most asylum seekers arriving in Germany are men and women of working age with their children, who will hopefully join the labor force in the next decade. And while the newcomers will not entirely reverse

the ageing and shrinking of Germany's population, they will assuage it somewhat.

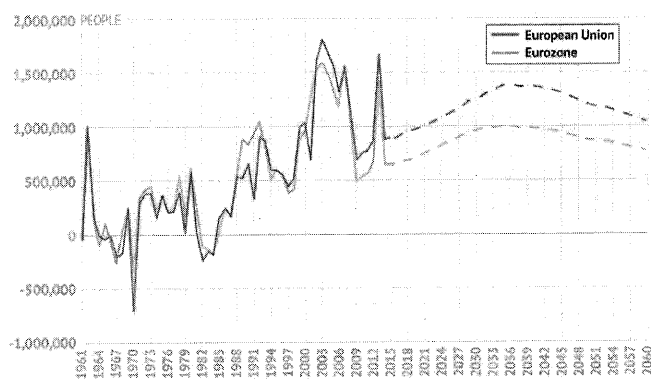
However, these examples still do not offer the full picture of the situation. The problem with immigration is that what makes sense from an economic point of view is not necessarily acceptable from a political point of view. In Europe, demographic needs are not the only, or even the most important, drivers of government policy.

The Politics of Demographics

Over the past 15 years, Europe has experienced three notable migration periods. The first took place between 2004 and 2007, when the European Union expanded to the east and workers from densely populated countries such as Poland and Romania could move to Western Europe more easily. The second big wave began in 2009, when the crisis in the European periphery forced workers to move to the Continent's economic core in search of jobs. The third and current wave involves hundreds of thousands of people from the Middle East and other unstable areas trying to request asylum in Europe.

NET MIGRATION FLOWS 1961-2060

According to EU projections, net migration inflows will remain strong but will not be enough to prevent the European Union's total population from reaching its peak by mid-century and start declining later in the century.



Sources: Commission services; Eurostat; EUROPOP 2013

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Each immigration wave has stirred political conflict. When countries from the former Communist bloc joined the European Union in the mid-2000s, several governments temporarily restricted workers from the new member states from entering. In those countries without immigration restrictions, political backlash followed. This occurred in the United Kingdom, where an immigration spike, most notably from Poland, helped give rise to the anti-immigration UKIP party.

While the second, periphery-to-core migration wave was not particularly disruptive for the receiving countries, it has hurt the European periphery. In countries such as Portugal, Spain or Greece, emigration offers some relief to the unemployment crisis, as there are fewer people competing for jobs. But it also creates the serious threat of a brain drain as people get their education for free in universities in the European periphery and then go to work for companies in core countries such as France and Germany. Even as countries in the European periphery see some modest growth, most of them will still have trouble drawing talent back from the core.

The current migration crisis is substantially different, as most of the new migrants are looking for asylum in Europe. They do not hold European passports, initially making it harder for them to find a job. Many are Muslim, which makes them a target for far-right and nationalist groups that see them as a threat to European culture. Recent attacks on migrant shelters in eastern Germany and the electoral growth of anti-immigration parties, such

as the Sweden Democrats, exemplify the kind of animosity many immigrants face in Europe. These migrants are also throwing into question the entire EU immigration system, as member states are struggling to come up with a comprehensive solution to the crisis.

Domestic political conditions also affect the behavior of countries, especially ones that could use extra workers. Poland will hold elections in October; with the incumbent conservative government already losing votes to the nationalist opposition, Warsaw is reluctant to accept a mandatory quota of immigrants during the electoral campaign. Moreover, recent statements by Polish officials suggest their country would only accept Christian asylum seekers.

Hungary's government is under similar pressure from the nationalist right to adopt an anti-immigration stance. And the Baltic states, where immigration-friendly policies would make sense given abysmal fertility and high emigration, believe they are simply too small to deal with a spike in asylum requests.

Tough Reforms Ahead

The migration crisis will require legal and political reforms in Europe. Many asylum seekers and refugees face long waits before they are allowed to work. Germany is one of the few European states trying to solve this issue. Only two years ago, a refugee was not allowed to work during the first 12 months in Germany. Recent reforms have reduced the waiting time to three months.

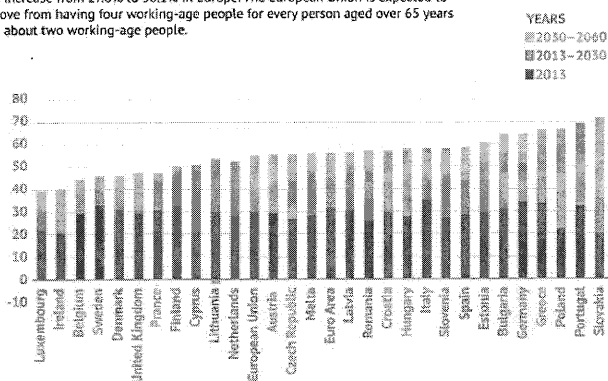
But this only applies to those men and women who are able to get their asylum requests approved. There are hundreds of thousands of migrants in Europe whose applications have been refused, but who have not been deported. Many European countries lack the resources to deal with illegal immigrants, who end up working unofficially at the cash-in-hand jobs of the gray economy. Integration is also problematic; language barriers may prevent skilled immigrants from practicing their trade, and their children may struggle in school.

Moreover, every country faces unique demographic challenges; not all are equally willing to accept new immigrants. Low fertility rates and strong economies in countries such as Germany lead to more open immigration policies and the introduction of legislative reforms. But other nations, such as France and Finland, have relatively high fertility rates but stagnating economies and high unemployment, making immigration a politically sensitive issue and delaying reforms.

There are also countries, such as Greece and Portugal, which have extremely low fertility rates, high unemployment and weak economies. Governments in these countries may decide not to accept extra immigrants into their fragile economies, particularly when locals do not have jobs. Greece's situation also illustrates how a rise in immigration, combined with an economic crisis, can open the door for far-right groups to emerge, as is the case with the neo-Nazi Golden Dawn party.

OLD-AGE DEPENDENCY

The ratio of people aged 65 or above relative to those aged 15-64 is projected to increase from 27.8% to 50.1% in Europe. The European Union is expected to move from having four working-age people for every person aged over 65 years to about two working-age people.



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Meanwhile, many Central and Eastern European countries could actually benefit from immigrant labor to help bolster their populations. Nations such as Poland, Romania and Bulgaria will progressively lose population in the next four decades because of low fertility rates and high emigration rates. The region from the Baltic Sea to the Black Sea faces a future where entire, largely rural, areas will be abandoned while young people emigrate and others move to urban centers looking for jobs. But elements within these relatively homogeneous societies may resist reforms to accept more immigrants. And even if Central and Eastern European governments can successfully open their borders to more immigrants, the region will struggle to compete with Western European countries that offer better salaries and education opportunities.

Each European country will react to these challenges in different ways. Evidence shows that immigration mitigates, but does not reverse, demographic change. Europe's population will peak by mid-century and then start to decline, even if immigration rates grow. Among immigrant families, which tend to have more children than their domestic peers, fertility rates are falling regardless. Though countries can institute policies to adapt to new demographics, there is little they can do to actually prevent change from happening.

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Abstract

In the name of humanity, the benefactors are asked to close their eyes to the brutishness of so many of their beneficiaries. *** At his State of the Union address Tuesday night, Mr. Obama is expected to make the case for opening our doors to Syrian refugees.

Full Text

Among the hard lessons of our wars in Iraq and Afghanistan, surely one of them is that it's foolish to expect that backward and often barbaric societies can be transformed into functioning liberal democracies. So why do liberals seem so surprised that so many people from these societies behave in barbaric ways after they've shoved their way into the West?

As I write, 516 criminal complaints have been filed in Germany against men of mainly North African or Arab origin who went on a New Year's Eve sexual-assault rampage in the city of Cologne.

"Twenty or 30 men, foreign men, surrounded us and we couldn't even move anymore," a woman identified as Michelle told the BBC. "They just grabbed our arms and tried to tear us apart and pushed our clothes away and tried to get between our legs."

Similar events also took place in Hamburg, Stuttgart and Berlin. In Sweden, a scandal erupted after it emerged that police had suppressed a report of mass groping by Middle East migrants at a festival last summer. In September, Soeren Kern of the Gatestone Institute chronicled some 30 cases of rape and sexual assault perpetrated by migrants against German and migrant women alike.

"In Bavaria, women and girls housed at a refugee shelter. . . are subject to rape and forced prostitution on a daily basis," Mr. Kern writes, citing reports from women's rights groups. "The price for sex with female asylum seekers is 10 euros."

For anyone even minimally acquainted with Mideast mores, none of this is news. Mob sexual assaults in Egypt became notorious after the 2011 attack on reporter Lara Logan, but they have become a staple of Egyptian life. "Suddenly I was in the middle, surrounded by hundreds of men in a circle that was getting smaller and smaller around me," one Egyptian woman

wrote of a 2013 attack in Cairo's Tahrir Square. "They were touching and groping me everywhere."

The World Economic Forum publishes a Global Gender Gap Report , which ranks the status of women in 142 countries. Bottom of the list: Yemen, Pakistan, Chad, Syria, Mali and Iran, all Muslim-majority countries. A 2013 Pew survey of Muslim views on women's rights found that only 22% of Egyptians and 14% of Iraqis thought that women should have a right to divorce their husbands, while fully 92% of Moroccans and 87% of Palestinians thought a wife must always obey her husband.

Put bluntly, there is a pronounced tendency among Middle Eastern men to view women either as chattel or as whores. This is not a pleasant reality to acknowledge, but it's an even more dangerous thing to ignore. So why is it ignored?

Mr. Kern writes that police have remained silent about incidents of rape "because they do not want to give legitimacy to critics of mass migration." That fits the pattern in Sweden, as it does with the Rotherham child sex-ring case , involving some 1,400 English girls abused over 16 years by men of Pakistani descent. In that case, police and social services ignored evidence of the abuse for fear of "giving oxygen to racist perspectives," according to the Independent Inquiry into the case.

Or, as Denis MacShane, Rotherham's former Labour MP and self-declared "Guardian-reading liberal leftie" put it, it was a matter of "not wanting to rock the multicultural community boat."

That's a telling admission. Multiculturalism is a liberal fetish that is also the antithesis of liberalism, classical or modern--a simultaneous belief in individual autonomy and cultural equality, irrespective of whether different cultures believe in individual rights or not.

Typically liberals have elided this incoherence by pretending, as President Obama often does , that Western cultures are no better than non-Western cultures in respecting human rights, or by demanding radical liberalism inside the West while supinely accepting violent anti-liberalism outside it.

But the events in Cologne make a nonsense of this. What was outside the West is now inside. In the spirit of Christian charity, Angela Merkel and other European leaders have imported a culture of Muslim misogyny. In the name of humanity, the benefactors are asked to close their eyes to the brutishness of so many of their beneficiaries.

At his State of the Union address Tuesday night, Mr. Obama is expected to make the case for opening our doors to Syrian refugees. As the son of a displaced person who arrived with her mother in the United States after World War II with seven dollars, I'm sympathetic to immigrants, particularly the lowliest among them. Whether their papers are in order doesn't matter to me. It's their intentions that count.

No amount of vetting is going to find all the bad apples in the new wave of Middle Eastern refugees. So here's my modest proposal, for Mr. Obama and Ms. Merkel. Let's open our doors wide to women, young children and the elderly. And let's close it shut to the men. They have a mess to clean up in their own countries. And much to prove in the horrifying wake of Cologne.

Write bstephens@wsj.com.

Credit: By Bret Stephens

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held in contempt. Massive as it is, our present infatuation may be susceptible to such a change. The freedom of the spirit is such that, under the guidance of a dialectic and the impulse of a powerful rhetoric, men might turn irrevocably against what now obsesses them and decide that the salvation of happiness requires taking a different course. It seems fantastic, but perhaps not more fantastic than things which have happened. Only a change of this magnitude seems enough to stop the present onrush toward destruction. Only a great conversion, in the sense of turning around, may save us from unprecedented disaster.

With any other conclusion, we have to admit that man has lost control of his destiny. With any other event, we may have to witness the truth of Poe's line, "The play is the tragedy man."

From Richard M.
Weaver, Visions of Order:
The Cultural Crisis of Our
time (Baton Rouge:
Louisiana State University
Press, 1964)

SEVEN

GNOSTICS OF EDUCATION

MORE than any other nation the United States has chosen to look upon its schools at all levels as means of education rather than mere instruction.¹ The difference is an important one, since education means not merely the imparting of information to the mind but the shaping of the mind and of the personality. Instruction may be limited to the transmission of facts and principles it is desirable to know as a body of knowledge, but education is unavoidably a training for a way of life. Education comprises instruction, of course, but it goes beyond instruction to a point that makes it intimately related with the preservation of a culture. Under normal conditions the points of view that an educator instills are the points of view of the culture, and actually nothing else is possible as a settled thing because an education and a culture working at cross purposes can only produce a conflict which has to be resolved. A conflict of this kind of serious proportions has developed in our country with the ascension to influence of the "progressive" theory of education.

¹ The theme of this chapter was suggested by Eric Voegelin's *The New Science of Politics* (Chicago, 1952).

There are by now many hopeful signs that the battle has been essentially decided and that the danger carried by progressivism is drawing to an end. The threat of Russian technological rivalry, symbolized especially by the sputniks, and other more healthful pressures may before long produce far-reaching changes in the dominant American educational philosophy. What I propose to discuss in this chapter may therefore be long be history. But since it is the kind of history from which one may learn a great deal about philosophical dead ends and educational follies, the story needs telling in perspective, and the moral needs to be drawn.

It is not too much to say that in the past fifty years public education in the United States has been in the hands of revolutionaries. To grasp the nature of their attempted revolution, we need only realize that in the past every educational system has reflected to a great extent the social and political constitution of the society which supported it. This was assumed to be a natural and proper thing, since the young were to be trained to take places in the world that existed around them. They were "indoctrinated" with this world because its laws and relations were those by which they were expected to order their lives. In the period just mentioned, however, we have witnessed something never before seen in the form of a systematic attempt to undermine a society's traditions and beliefs through the educational establishment which is usually employed to maintain them. There has been an extraordinary occurrence, a virtual educational *coup d'état* carried out by a specially inclined minority. This minority has been in essence a cabal, with objectives radically different from those of the state which employed them. An amazing feature of the situation has been how little they have cared to conceal these objectives. On more than one occasion they have issued a virtual call to arms to use publicly created facilities for the purpose of actualizing a concept of society not espoused by the people. The result has been an educational system not only intrinsically bad but increasingly at war with the aims of the community which authorizes it, as we are now forced to recognize.

Although the history of how this situation came about is not the principal inquiry here, a little background may make the facts seem less incredible.

Public education was an outgrowth of the reasonable idea that a people cannot remain self-governing and free if they are untaught. It grew slowly during the nineteenth century until the coming of

industrialism created demands for certain practical branches of it. In this growth few saw anything alarming, except perhaps a tendency to look upon universal literacy as a panacea. At one point in the development, however, there occurred a sinister change. This came about when state bureaucracies were created to set the terms and supervise the working of the expanding public school system. State legislators felt that they had to turn the actual administration of affairs over to a body of "experts." In course of time these state departments of education became virtually autonomous in their power to define the goals, methods, and materials of public instruction. The final step came when they were able to require all prospective public school teachers through the high school level to take a set number of courses in a subject called "Education," wherein the philosophical premises and aims of the new educators were taught. This is where the doctrinal revolution referred to above really took place. Here was an educational system within the educational system, committed to a body of methodology whose goals were defined by a philosophical sect.

I have said that the new education, for which the name "progressive" has been pre-empted by its advocates, is in marked conflict with our basic traditions and culture. It is not something based upon American experience or European experience or any perceptive view of the history of man. It is rather something dreamed up by romantic enthusiasts, political fanatics, and unreflective acolytes of positive science. These are all people "looking to the future," and the future, as with all who try to protect themselves with this phrase, is their subjective feeling about the way things ought to go. We are told by them that we are "living in a world of change"; but the "catch" is that they are in charge of the change. They are the prophets of the new future, which is going to look very unlike the past.

There is no difficulty at all in specifying reasons for the above charge. I list below some of the chief assumptions and tenets of progressive education. The conflict between them and the principal teachings of the Judeo-Christian-classical heritage of the West will be immediately apparent.

1. There is no such thing as a body of knowledge which reflects the structure of reality and which everyone therefore needs to learn. Knowledge is viewed as an instrumentality which is true or false according to the way it is applied to concrete situations

or the way it serves the needs of the individual. Since these educators have embraced the notion that the essence of the world is change, there is no final knowledge about anything. The truths of yesterday are the falsehoods of today and the truths of today will be the falsehoods of tomorrow.

2. This being so, the object of education is not to teach knowledge, but to "teach students." As they translate this into practice, it means that everything should be adapted to the child as child, to the youth as youth, and to the particular group according to its limitations. There are no ideals or standards of performance which these are bound to measure themselves by or to respect.
3. As a corollary of the above principle, the child should be encouraged to follow his own desires in deciding what he should study, and what aspects of what subjects, and at what times.
4. The teacher must not think of himself as being in authority, because authority is evil. The teacher is there as a "leader," but the duty of the leader is only to synchronize and cooperate with the work of the group.
5. The student should never be made afraid of anything connected with the school. Marks and competitions are bad because they instill feelings of superiority and inferiority, which are "undemocratic."
6. The mind is not to be exalted over the senses: democracy requires that sensory and "activist" learning be valued on a par with intellectual learning. The mentally slow or retarded are not to be made to feel that they are lacking; it is better to impugn the whole tradition of intellectual education than to injure the feelings of the less bright and the lazy.
7. Consequently there should be less education through symbols like language and figures and more through using the hands on concrete objects. It is more important to make maps than to learn them, said John Dewey, the grand pundit of the revolutionary movement.
8. The general aim is to train the student so that he will adjust himself not simply to the existing society, as is sometimes inferred from their words, but to society conceived as social democracy.

A few other propositions equally startling can be deduced from the writings of the new school of educationists, but these should be

enough to indicate what a complete reversal the progressivist theory represents. However, just in case the meaning of this is too revolutionary to reach the consciousness all at once, let me rephrase two or three of the central ideas. Knowledge, which has been the traditional reason for instituting schools, does not exist in any absolute or binding sense. The mind, which has always been regarded as a distinguishing possession of the human race, is now viewed as a tyrant which has been denying the rights of the body as a whole. It is to be "democratized" or reduced to an equality with the rest. Discipline, that great shaper of mind and body, is to be discarded because it carries elements of fear and compulsion. The student is to be prepared not to save his soul, or to inherit the wisdom and usages of past civilizations, or even to get ahead in life, but to become a member of a utopia resting on a false view of both nature and man.

This set of propositions practically inverts our traditional idea of education, which venerates mind, recognizes the moral and practical value of discipline, and regards competition as the indispensable spur to outstanding achievement. Yet these are the very propositions which have been systematically taught by educationists for about fifty years and which have strongly affected education on all but the university levels (and even there in some areas). In fact they have been more than taught; they have been enforced as dogmas in the schools and departments of education, and more than one prospective teacher has been advised that he must accept them or be rejected by the profession.

Where should one look to find the real sources of so profound a revolt against the long-accepted premises of education? Since we are dealing here with a change of great depth, it seems best not to spend time on intermediate causes, but to look for some major parallel in history and see whether this will not point to the ultimate cause. Progressive education is a wholesale apostasy, involving abandonment of fundamental and long-held beliefs about man and the world. If we are to account for it, we shall have to seek further than the pressures of industrialism and other modern-day phenomena. The analysis will concern basic attitudes toward existence, so that if we search for the root of the progressivist outlook, we shall perforce be dealing with questions of faith and of interpretation of historical experience.

There is one apostasy of a nature and a magnitude to warrant comparison with this one, and it affords a great deal of illumination, even though it happened at a remote time and even though its con-

tent cannot be precisely delineated. It was a subversive force in much the same way as our progressivism in education, and although it was finally put down, it lasted long enough to produce a large amount of confusion and to cause the thoughtful to search out its fundamental errors. This was the Gnosticism of the first and second centuries A.D.

Gnosticism may be described as an attempt to reinterpret annalistic Christianity in terms suited to the "enlightenment" of the contemporary era. It was a highly speculative system, which differed from what has become canonical Christianity in two important features: its attitude toward creation, and its doctrine of the nature of man.

According to the Gnostics, creation was not the work of an omnipotent and benevolent creator, but rather of a Demiurge of limited power, who necessarily left it finite and incomplete. Evil was therefore represented by them as congenital with creation. The important consequence of this doctrine was that it taught a dualism of good and evil, in which spirit, represented by man, was good and in which the world at least partly represented evil. Man was therefore superior to the created universe and—although this cannot be set forth in very exact terms—was somehow charged with its improvement. The opponents of Gnosticism, both Christian and neo-Platonic, attacked the Gnostics for the presumptuousness of this attitude toward creation. For example, Tertullian, in his *Five Books Against Marcion*, scored that famous Gnostic for his position on this matter. He wrote: "You, however, are a disciple above his master, and a servant above his lord; you have a higher level of discernment than his; you destroy what he requires. . . . You are an enemy to the sky, and yet you are glad to catch its freshness in your houses. You disparage the earth, although the elemental parent of your flesh, as if it were your undoubted enemy, and yet you abstract from it all its fatness for your food."² In much the same vein Plotinus in the *Enneads* criticizes the "human audacity" of the Gnostics. "Two people inhabit the one stately house; one of them declaims against its plan and against its architect, but none the less maintains his residence in it. The other makes no complaint, asserts the entire competence of the architect and waits cheerfully for the day when he may leave it, having no further need of a house."³ Thus the Gnostics were con-

² *The Five Books of Tertullian Against Marcion*, trans. Peter Holmes (Edinburgh, 1868), 26.

³ Plotinus, *Enneads* (London: Faber and Faber, n.d.), 151.

sistently seen as setting themselves above creation and holding that the material universe, for which they were not responsible, was the real source of evil.

With regard to man himself, the Gnostics taught a doctrine of perfectionism. Man did not require salvation, for he was already in a state of "Messianic blessedness." Since he was in this state, it was not necessary for him to submit to external authority. Gnosticism therefore tended strongly toward antinomianism. This view of the natural blessedness of man, coupled with the feeling of his lack of responsibility for evil, made the Gnostics antiauthoritarian. When they were asked by the Christian Fathers where they got their doctrines, they said that they got them from themselves. As a matter of fact, they taught that every individual has a "hidden Deep," from which there well up thoughts, notions, and impulses. A modern student of the Gnostic movement has noted that this resembles in a number of ways the "Subliminal Self" of modern psychology.⁴ We could go on to remark that all this has a parallel in the attempts of our "progressive" educationists to base everything upon psychology.

The decision of the Fathers to reject Gnostic teachings was crucial for the future of Christianity. For the world of the Gnostics was "a fanciful world, 'moulded to the heart's desire,' in which the religious imagination was not tied down to religious facts."⁵ Furthermore, such sociology and science as Gnosticism presumed to incorporate were not elements of strength; these consisted of the fashionable doctrines of the day and would have proved an increasing liability with the passage of time. The Fathers were not seduced by the "modernism" of their age. The decision which they made was not only wise for their time but wise for any time in which this kind of choice has to be made. What they did was repudiate theorizing and adhere to annalistic and historical religion. Thus they retained on their side the powerful support of historicity with its facts and traditions. These were of course the fruit of experience, not of conjecture and speculation. The word of a prophet is a deed, it has been said, and they adhered to the word. Debate might range far, but there were always the records, the experiences, and the traditions to return to.

Today we are in a strikingly comparable situation, as enthusiasts

⁴ F. C. Burkitt, *Church and Gnosis* (Cambridge, 1932), 43-44.

⁵ *Ibid.*, 63-64.

and fanciful thinkers call upon us to abandon what we know through the annals of our education and erect a brave new world out of sanguine speculation. Just as the very authority and power of Christianity depended upon rejecting these overtures, so the authority and viability of education today depend upon our rejecting the often plausible appeals of the progressives to give up what we know historically about man and commit ourselves to their utopia.

In sum, it is the contention here that the progressive educationists of our time, while not Gnostics in the sense of historical descent, are Gnostics in their thinking. It is a further contention that their Gnosticism exhibits the same kind of delusion, fantasy, unreality, and unacceptable metaphysics which the Church Fathers, speaking out of tradition and true insight, challenged and put an end to. Finally, it is my own conviction that the doctrines of the new educationists are at least as menacing to the survival of our culture as were the Gnostic heresies of the first and second centuries to the great religious and cultural tradition which has streamed down to our time. For the essence of Gnosticism is a kind of irresponsibility—an irresponsibility to the past and to the structure of reality in the present. Its teachings cannot serve as the foundations of a culture because the fact that its advocates are out of line with what is, inevitably reveals itself. Where they are allowed to provide foundations, they imperil the whole structure.

The following are a number of specific ways in which our educationists of the new order parallel the Gnostics of antiquity.

Let us note before taking them up that education at any level will reflect the primary assumptions that we make about reality, and for this reason no education is innocent of an attitude toward the existing world. In the way that it explains the interrelationships of phenomena and our relationships toward them, education will reveal beliefs about creation. Even if it denies that the world is something created by a creator, it thereby invokes a theory and prepares ground for an attitude. Of great significance here is the Gnostic account of creation. For the Gnostics, let us remember, creation was the work of a Demiurge who, for lack of omnipotence, had to leave his production finite and incomplete. This doctrine had the effect of introducing a principle of evil (in the sense of incompleteness or a less than perfect realization) with creation itself and of leaving man in opposition to this. Man was good, but creation contained both good and evil, or a world of light and a world of

darkness, and the rectification had to come somehow through man himself. On this last point Gnostic theory is somewhat cloudy and confused, but the ideas of a divinized man and a partly evil creation emerge with enough clearness to be considered focal doctrines.

The new educationists do not deal with anything as "remote and academic" (favorite words of condemnation with them) as theories of creation. But they are under the same necessity which requires our ideas to reflect anterior suppositions, and we can gather from their utterances what these suppositions are. For them the universe is not a work of divine omnipotence. All we know about it, they say in effect, is that it is here and that it leaves unsatisfied many of man's wants. This is the reason for holding it bad or incomplete. The completing of it will be brought about through the natural process of evolution plus the efforts that man makes through his science. It is in this reliance upon science and scientism that modern education shows its tendency to hitch itself to a cultural fashion, as Gnosticism showed its disposition to adjust Christianity to a contemporary sophistical world view. Eliseo Vivas has pointed out that "Dewey and his disciples would substitute an education for 'modern man' which instills in the pupil an idolatry toward scientific method and contempt for the achievements of the past, thus fitting him to yield uncritically to the thorough mechanization of his life."⁶

How widely this attitude has been spread through our channels of education can be seen by the frequency with which men now speak of the "conquest of nature." If nature is something ordained by a creator, one does not speak of "conquering" it. The creation of a benevolent creator is something good, and conquest implies enmity and aggression. If by the same token the world is good and is ordained for man, there are certainly suggestions of Pyrrhic victory in the idea of "triumphing" over nature. The man of the new education, however, feels it his duty to be an invader of nature, breaking her "resistance" as in war.

We have just seen how both Tertullian and Plotinus attacked the attitude of scorning that which has been created while continuing to enjoy its benefits. We find further that St. Irenaeus, in his writings against the Gnostics, insists that some mysteries be left unsolved. This expresses the deep feeling, found also in the book of Genesis and in Aristotle, that there are some things it is better for man not to know than to know. Modern man, however, has reached

⁶ Eliseo Vivas, *The Moral Life and the Ethical Life* (Chicago, 1950), 135.

the critical point at which he feels no qualms about demanding that nature give up all her secrets. There no longer exists any doubt in his mind as to whether he is competent to order and dispose of creation. A kind of moral self-modesty which was once present has been lost by his acceptance of a gnostic theory of creation.

A contemporary incident related in the annals of atomic science serves to illustrate this well. Among the observers of the first atomic bomb at Los Alamos in 1945 was William L. Laurence, science editor of the *New York Times*. This correspondent wrote a full account of the terrifying event and closed it, as one would expect a representative modern to do, on a note of jubilation. He told how the group of observers danced with joy following the great flash and boom. "They clapped their hands as they leaped from the ground—earth-bound man symbolizing the birth of a new force that for the first time gives man means to free himself from the gravitational pull of the earth that holds him down." Later, his report goes on to say, one of those present remarked: "The sun can't hold a candle to it." There are two assumptions worthy of note in this passage by the learned science editor. One is that man is the *victim* of the gravitational force that keeps him from flying off into space, and now at last this victim has the chance to do something about his situation. He is going to end this oppression by nature. The other is that man has now improved upon the sun. The original creator did the best he could when he produced this great luminary, but at last man has surpassed him and has made something exceeding it.

At once we recognize how closely this conforms with the Gnostic view that defect lies not in the nature of man, but in the finiteness of creation, which must be overcome by man. The concept of an original disposition for man's good is now made to appear quite archaic. Man is now in the saddle and can ride anywhere.

The connection between this attitude toward creation or nature and the philosophy underlying the kind of school which the Deweyite educators propose is not difficult to discern. The school is of course to be secular because a religious attitude toward the *dominée* of the world is ruled out. Questions of first and final cause are regarded as not within the scope of education, which means that education is confined to intermediate causes. Intermediate causes are of course the subject matter of science, and hence this attitude has the effect of orienting all education toward science. Furthermore,

since industrialism is the offspring of applied science, such education fits one ideally for the industrial order. Still further, industrialism is constantly making war upon nature, disfiguring and violating her, and the products of our educational plants can be relied to bring the right attitude toward this work.

Of equally evil consequence is the Gnostic attitude toward man, which is, obviously, related to the foregoing. The Gnostic belief was that man is not sinful, but divine. The real evil in the universe cannot be imputed to him; his impulses are good, and there is no ground for restraining him from anything which he wants to do. The mere supposal of such a ground would mean invoking an arbiter which Gnostic thinking does not recognize. By divinizing man, Gnostic thinking says that what he wants to do, he should do. Restraints upon human nature now become blasphemous; whereas in the older thinking it was action of human nature which was blasphemous when it contravened law and ethics. Thus the whole system of ethics becomes man-centered, and there is no sanction above man to which anything can be appealed. What man wants is considered right, and it is what, with the aid of his science, he is supposedly going to get.

I suggest that this radical view of man's nature would never have gained acceptance among so many in this country had not the way been prepared for it by an influential phase of American literature. The New England Transcendentalists of a century ago are a link between ancient Gnosticism and the new gnostic educators. Ralph Waldo Emerson, the leading exponent of Transcendentalism, taught forthrightly that man is divine and that his instincts are oracular. From the "Divinity School Address" through "Self Reliance" and to "The Over Soul" he developed the theme that man has a divine self-sufficiency and that he does not need to look beyond himself. He instilled in the many thousands who read him as "the American philosopher" belief not only that man bears no responsibility for evil but even that evil is illusory. This was Emerson's rebellion against the Calvinism of his New England forbears, who had taught and acted out of a contrary belief—that man is responsible for the evil which most certainly exists in the world and that he is consequently involved in a curse for which every individual must suffer. As Calvinism with its stern morality and its rigorous intellectualism began to lose ground, its place was taken largely by the expansive optimism which Emerson devised—an optimism which, with its de-

votion to romantic illusions, was destined to take the sinew out of New England thought and culture.

I mention the Transcendentalists because they, as the most articulate group of radicals in nineteenth-century America, must bear the blame for undermining the previous realism of American thinking. Their influence has been very pervasive, and the progressivist educators have made use of that influence to put forward their heresies as expressive of the American mind and the American political spirit.⁷

We can now safely say that in progressive educational theory we have a gnostic version of the image of man. It is a picture which leaves out of account his original sin, his tendency to love evil and to wreak it, and his daily sinning through egotism. It leaves out of account the dark recesses of his psyche, which even so "modern" a study as psychology has had to restore. The man of the gnostics is the child of his own good nature, confusing his sentiments with the structure of the world, and inclined, when he meets obstacles that do not yield, to blame other men rather than to recognize the limitations of man.

The modern gnostics further resemble the ancient ones in their attitude toward authority. If the ancient type tended toward anti-nomianism, the modern type works toward a theoretical undermining of responsibility. Because human nature is so good that it is not constraining, laws and traditions are not to be respected. The Gnostics opposed the authority of the Church and the authority of the state under the impulse of their speculative picture of the universe. Again one might mark a parallel with Transcendentalism, for the individual and social protest of Emerson and Thoreau went theoretically to the point of anarchism. Both institutions and traditions were unceasingly attacked by them in the name of the liberty of the individual to follow his naturally good impulses.

The opposition of the present-day gnostics goes about the same

7 A related fact which cannot be overlooked is that a public school system supported by tax money was a New England conception. Tracing back to a statute enacted in Massachusetts in 1647, this system spread through the other New England colonies and states and later over the country as a whole, although it was resisted by most of the Southern states until after the Civil War. Thus at the very time that these latter-day gnostics were coming to dominate New England thinking, the New England school system was being initiated by one state after another, including finally the Southern states. That it would serve as a pipeline for the gnostic philosophy of the leaders of New England opinion was virtually inevitable.

length, although for special reasons they do not direct their attack against the state. Many of them seem to carry concealed a Marxist hope that the state may be utilized to gain their ends, after which it will "with away," or perhaps it will serve as a final target in the attack upon "authoritarianism." As matters stand now, authoritarianism is the principle they chiefly decry. Because all men are equally good, no one is entitled by superior goodness to stand in authority. There are no higher degrees of virtue which authorize some individuals to lay down rules for others. Everybody "cooperates," and what the generality expresses a desire for is what should be done. They overlook the contradiction in this, which is that we always have majorities and dissenters, with the ensuing problem of effecting a resolution. Their position is, however, that no external moral absolute exists by which degrees of rightness and wrongness may be determined. Where no conception of a moral absolute exists, authority has no real basis.

Such are the views implied in the gnostics' dogmatic optimism about the nature of man. As we saw in the historical survey, the ancient Gnostics denied the need of salvation because they considered man to be already in a state of blessedness. Today this translates itself into the doctrine that human beings do not stand in need of correction, to say nothing of conversion. Obviously, if you regard man as already divine, you do not need a discipline for improving him ethically. It has been the general and indeed immemorial practice of the human race to set up some ideal type—"One Perfect Man"—and to judge the moral and intellectual worth of every human being by him. Sometimes the type was presented through religion, sometimes through mythology, and sometimes through the speculations of thinkers. In Christian lands Christ of course serves as the great exemplar and standard. But what the modern educator does is take empirical man, arrive at a type through averaging, and then posit this as what man "ought" to be. What should be merely descriptive thus becomes prescriptive. If you believe that man is already in a "saved" condition, you of course base your ideal on what he generally has been. Then extremes, even of goodness, become "deviants," and need to be pulled back toward the average. The saint is but an eccentric. Such acceptance of man in his average condition must keep down the standard of development and achievement, and the result is a complacency which refuses to believe that man needs to surpass himself.

It is now possible to trace the effects of this system of radical thought upon the education which the progressivists intend to give our children. Not every phase, of course, of the new gnosticism shows a full and equal effect upon educational theory. But that the main tenets of its philosophy exert a strong influence upon the ideals and programs with which we are now confronted becomes clear enough.

First we may turn to the objects of learning. Traditional education has always been based on the assumption that there is a world of data, a fixed reality, which is worth knowing and even worth reverencing. The content of education therefore reflected the structure of an antecedent reality. This, in fact, was education, and everything required for its communication to learners was ancillary. Clearly this presumes a certain respect for the world as creation, a belief in it and a trust in its providence, rather than a view (as if out of ancient Gnosticism) positing its essential incompleteness or badness. The world is there a priori; the learner has the duty of familiarizing himself with its nature and its sets of relations.

Now all of this has been reversed. The main concern of the modern educationists is not knowledge of an existent reality, but rather the mastery of a methodology. The aim of the methodology is to enable the learner "to grow through experience." These are key terms requiring some examination. The purpose of education is alleged to be growth, and growth is conceived as a natural unfolding of the individual. It is not growth toward something or away from something, because there are no ideal standards in mind. Sometimes the word "richness" is brought in to indicate the direction of "growth," but it is necessarily and probably deliberately vague. The concealed premise of the doctrine is that the individual is naturally good and that any kind of development of him will therefore be desirable. There is no regulative body of knowledge to impose a pattern; the individual needs only to increase the divinity that is in him by the process of growth. As for experience, it need not be qualified; all experience is good and is more rewarding than knowledge in the abstract. When Dewey declares that it is more important to make maps than to learn them, he exalts activity over thinking. While few will deny that something is gained through the practical handling of a problem, if the principle of learning solely by doing were applied exclusively, it would cut the learner off from the great body of traditional knowledge and wis-

dom of the race. This he cannot hope to get by experience alone. A number of progressive educators have shown by the trend of their utterances that they are quite willing to effect such a severance. This willingness is further evidenced by their attitude toward the use of symbols. On this subject Dewey has written in *The School and Society*: "The relegation of the merely symbolic and formal to a secondary position is not a mere accident but is part of the larger social evolution."⁸ Here as elsewhere one is forced to recognize that these revolutionaries are prepared to state their proposals if not their basic premises in unabashed terms. Their audaciousness, however, should not be allowed to disarm us. What Dewey is insisting upon is nothing less than a denigration of the intellect. For thousands of years education through concepts and the symbols expressing them has been recognized as the education of the mind to which all other education is subsidiary. Through his ability to symbolize and to make use of signs such as letters and figures, man has created practically all that goes by the name of culture. Ernst Cassirer points out that symbol making and using is the most specifically human activity. That culture and civilization depend on an elaborate network of symbols and that the more the human being "advances" the more complex these symbolic media become should be obvious. Now their use is to be de-emphasized in the name of "the larger social evolution," which is a cant phrase standing for the political aims of the progressivists.

It is a strange thing in this day of "progress" and almost universal literacy to have to plead for the rights of the mind, and especially against educators. But as Vivas has shown, the Deweyite school is actually a group of fanatical partisans who are determined to spread their special theory of human nature in opposition to all that history and the humanities have taught us.

The Gnostic belief that man is divine and already in a state of salvation displays itself very clearly in the new theory of "child-centered" education. The upshot of this is not merely to divinize man, which is bad enough, but to divinize the child. The progressivists worship the child as child and make concessions to him where traditional education makes demands upon him. One is compelled to infer from their statements not that the child is the probationer, but that the world of learning is. This is stated by Dewey writing in *Schools of Tomorrow*:

8 John Dewey, *The School and Society* (Chicago, 1943), 27.

Are we to believe, with the strict disciplinarians, that education is the process of making a little savage into a man, that there are many virtues as well as facts that have to be taught to all children so that they may as nearly as possible approach the adult standard? Or are we to believe, with Rousseau, that education is the process of making up the discrepancy between the child at his birth and the man as he will need to be, "that childhood has its own way of seeing, thinking and feeling," and that the method of training these ways to what the man will need is to let the child test them upon the world about him?⁹

To commence the reply, why should we believe with the romanticist Rousseau, rather than with the "strict disciplinarians" it is the experience of most parents and teachers that the child is not a little angel, but in some degree a little savage, and that he needs to be educated out of this condition. There is nothing divine about his imperfections. As for "the man as he will need to be," how do we prepare anyone to become this except by initiating him, with due allowance for his limitations, into the demands and standards of the adult world? Finally, Dewey seems to be overlooking the fact that the real desire of every youngster is "to be a man" and not a perfect little angel of a child.

In *The School and Society* Dewey cites with approval the view of the educator Friedrich Froebel that "the primary root of all educative activity is in the instinctive, impulsive attitudes of children, and not in the presentation and application of external material, whether through the ideas of others or through the senses. . . ."¹⁰ Again like the Gnostics of old, these two see something sacred in instinctive attitudes and in the content of immature consciousness. These are to be venerated above that objectified body of learning which has been produced by systematic study and handed down by our cultural institutions. In brief, learning is to be foregone in favor of the child's spontaneous desires and unreflective thoughts.

Conspicuously absent from all of this is the discipline of the negative. It is invariably assumed that the child can be depended on to develop serious interests without pressure from outside. If this were true, we would have to concede that the child is in a state of grace. The inescapable fact is, however, that the child exhibits no sustained interests or his interests are in trivial or objectionable things. There is no more widely attested fact than that interest usually develops under pressure, and a major part of education con-

⁹ John Dewey, *Schools of Tomorrow* (New York, 1915), 134.
¹⁰ *Ibid.*, 117.

sists of our being made to take an interest in things that ought to interest us or will require our interest as we attain adulthood.¹¹ Effective education often demands the rigorous suppressing of a present, desultory interest so that we can focus on things that have a real, enduring, and sanctioned interest. Indeed, this is identical with the act of concentration. When we concentrate, we rule out the lesser, the peripheral, the seductive interest so that we can get on with the problem we are obliged to solve. I believe it could be demonstrated that progressive techniques of education have done a good deal to lessen the powers of concentration of the present generation of students who have been exposed to them.

This belief in the natural goodness of the child and the rightness of spontaneous expression leads to the progressivists' assault upon virtually all forms of authority and discipline in the classroom. They proceed on the assumptions that fear is never a good thing and that authority must produce fear. There are two important exceptions to be taken to such assumptions. The first is that although authority does sometimes induce fear, it also provides protection, support, and confirmation. It may hold together the organization on which we depend for the exercise of opportunities. Second, not all fear is bad. There are fears that are normal and salutary. We need to fear constantly a variety of dangers, some of which arise from our own nature: we need to fear sloth, carelessness, indifference, and the temptations of appetite. The possibility of ignominy keeps a healthful fear hanging over us, and it is authority which maintains this fear by enforcing the appropriate penalties if we succumb to indolence or to positive evil doing.

Accordingly the gnostics of education feel that they can bring their dream world nearer to reality by introducing "democracy in the classroom." Under this weird conception the teacher is not to be viewed as one in authority commissioned to instruct, but as a kind of moderator whose function is merely to conduct a meeting.

¹¹ A striking illustration of this truth came to my attention some years ago. A young engineer, an ordinary member of his profession, with an indifference toward the fine arts, obtained a job with a radio broadcasting station. This station put half an hour of classical music on the air every day, and this young man had the duty of controlling volume. Naturally he had to listen very carefully in order to maintain this at a uniform level. This very circumstance of having to listen carefully to classical music in discharge of his duty caused him to hear in it things he had been unaware of, with the result that he became a devotee. If this accidental outside pressure had not forced him to give careful attention to these programs, he probably never would have been recruited into the ranks of music appreciators.

Especially resented is the idea that the teacher has any advantage of knowledge or wisdom which entitles him to stand above his students. This would be a recognition of inequality, and equality must reign, *ruat caelum!* The resultant undermining of the authority and prestige of the teacher in public schools is a long story, and the story is now being told by a number of teachers who have experienced it.¹² It is important to show the theoretical objections to this "democratic" maneuver.

Not only is the teacher supposed to be apologetic about his superior knowledge, he is expected to give up one of the most valuable of pedagogical devices, which is the dramatic confrontation of master and pupil. Our traditional means of education has a most important resource in this situation. That one is admitted to be master and the other learner is a circumstance of good effect because it works to tone up the performance of both—the teacher stays on his toes trying to justify by superior knowledge and skill the office that is vested in him; the learner tries to earn the good opinion of the teacher by matching his performance as nearly as he can. In this way a vital tension is set up, and the powerful force of emulation is brought into play. The teacher is going to give the best that he has, and he is going to ask the ordinary mortal sitting there in row three to rise above his ordinary mortality and to excel. A healthful rivalry thus creates standards of criticism.

How the progressivists expect to compensate for this with a kind of relaxed, "democratic," shoulder-rubbing camaraderie in which the teacher is just "one of the boys" is another mystery of the assault upon criteria; for the teacher requires the magisterial stance in order to get the most from his pupils. The old New Englanders, although they developed a number of democratic forms, knew where democracy was in place and where not. The ministers of their churches they called "teachers," and the teacher in the school was a kind of minister in the classroom. There was no sentimental blurring of the roles of instructor and learner. I suspect the fact that New England had thus established a firm intellectual tradition enabled the gnostic thinkers, when they came into ascendancy there, to exert much more influence than their doctrines otherwise would have secured for them.

In review, we see in this startling revolution the substitution of

¹² See for example Joan Dunn, *Retreat from Learning: Why Teachers Can't Teach* (New York, 1955).

fantasy for historicity. Not only the traditional educator but also the "man in the street" when he is apprised of these facts knows that the progressive educators are not dealing in truth. The reason is that they have set themselves up as Messianic prophets, whose prophecy is of a special political world; therefore they are not primarily educators. An educator is a man inspired with deference toward the world's knowledge and prepared to communicate some phase of it to oncoming generations. One does not have to strip off many wrappings to see that the progressive educators are, by contrast, political ideologues. They are determined to destroy the organic society which we have inherited by postulating an equalitarian natural man as the grand end of all endeavor. Appreciating this fact enables us to understand their attack upon discipline and authority, their opposition to systems of grading and promotion, and their resistance to formal intellectual learning. Almost any question about their assumptions and their methods, if pushed far enough, will bring the defense that these are vindicated by their contribution to democracy. Their writings are filled with references to democracy as a "way of life." This in turn has led to strange cant about "education for democratic living."

There are several things to be said about this piece of sentimental affectation. For one thing, as we have pointed out elsewhere, democracy is not a way of life but a form of government. Government is not the substance of a people's life, although modern collectivism would persuade us to think so. Government in all free societies is a regulative machinery, whose task it is to provide protection and to preserve enough order for people to do what they can do for themselves as individual members of society. This identification of democracy with life is a rhetorical way of sneaking in the totalitarian concept.

For another, democracy is not the only conceivable form of government, although it has virtually become dogma to say so. It was not so regarded by Aristotle, who made aim rather than form the criterion of true government. The most that can be said is that democracy seems to be the best of the available choices for us today, and it is well for the student to be taught in what ways democracy is practical for us. But training for a form of government is neither the sole nor the primary object of education. Man may, by one classification, be a political animal, but political activity is not his highest expression. He is also a contemplative animal, and a creature

with aesthetic and cultural yearnings. His very restlessness is a sign that he is a spiritual being with intimations about his origin and destiny. The matters with which education should deal include all these and not merely his political orientation and allegiance. Liberal education has flourished under and contributed to many forms of government, although there may be grave doubt as to whether it is compatible with the current concept of mass democracy. Insistence upon a political theory as the principle by which all educational policies are to be adjudicated is totalitarian radicalism.

Sentimentalism about the nature of the human being and this political fanaticism have thus combined to produce a concept of education treacherous to our regime. It represents the most overweening attempt of gnostic thinking to replace the natural structure of our society with their dream world, which is to substitute a subjective wishfulness for an historical reality.

From the beginning I have spoken of the progressive movement in education as an apostasy out of conviction that this classifies it accurately. An apostate is properly defined as one who, after making profession of a belief, falls away from or abandons it. So with the progressive educators. They profess before society a belief in education, and they are in fact supported by society for this profession. In reality, they are attackers and saboteurs of education. This truth I have tried to show by two lines of proof: namely, that the apostates do not have faith in the existence of knowledge, and that their real aim is the educationally illicit one of conditioning the young for political purposes. The fact that they do not believe in knowledge makes them manipulators or trainers rather than teachers, and this is the light in which we should understand their instrumentalist philosophy. The world for which the progressivists are conditioning their students is not the world espoused by general society, but by a rather small minority of radical doctrinaires and social faddists. They are doing things which the great majority of plain, uncorrupted individuals, from a standpoint in history and common sense, would repudiate if they could see their tendency.

This subversion has gone so far that gnostics of education until very recently constituted the greatest single threat to our culture. In the discredit that they have cast upon the higher faculties, in the way they have cut the young off from knowledge of the excellencies achieved in the past, and in the way they have turned attention toward transient externals and away from the central prob-

lem of man, they have no equal as an agency of subversion. Their schemes are exactly fitted, if indeed they are not designed, to produce citizens for the secular communist state, which is the millennial dream of the modern gnostic. To put an end to this adventure into fantasy and to prevent the cruel awakening which would follow, we should do all we can, educationally and politically, to hasten the decline of their influence.

THE STUDENT AND THE UNIVERSITY

of the unity of man and the unity of the sciences. It is childishness to say, as some do, that everyone must be allowed to develop freely, that it is authoritarian to impose a point of view on the student. In that case, why have a university? If the response is "to provide an atmosphere for learning," we come back to our original questions at the second remove. Which atmosphere? Choices and reflection on the reasons for those choices are unavoidable. The university has to stand for something. The practical effects of unwillingness to think positively about the contents of a liberal education are, on the one hand, to ensure that all the vulgarities of the world outside the university will flourish within it, and, on the other, to impose a much harsher and more illiberal necessity on the student—the one given by the imperial and imperious demands of the specialized disciplines unfiltered by unifying thought.

The university now offers no distinctive visage to the young person. He finds a democracy of the disciplines—which are there either because they are autochthonous or because they wandered in recently to perform some job that was demanded of the university. This democracy is really an anarchy, because there are no recognized rules for citizenship and no legitimate titles to rule. In short there is no vision, nor is there a set of competing visions, of what an educated human being is. The question has disappeared, for to pose it would be a threat to the peace. There is no organization of the sciences, no tree of knowledge. Out of chaos emerges dispiritiveness, because it is impossible to make a reasonable choice. Better to give up on liberal education and get on with a speciality in which there is at least a prescribed curriculum and a prospective career. On the way the student can pick up in elective courses a little of whatever is thought to make one cultured. The student gets no intimation that great mysteries might be revealed to him, that new and higher motives of action might be discovered within him, that a different and more human way of life can be harmoniously constructed by what he is going to learn.

Simply, the university is not distinctive. Equality for us seems to culminate in the unwillingness and incapacity to make claims of superiority, particularly in the domains in which such claims have always been made—art, religion and philosophy. When Weber found that he could not choose between certain high opposites—reason vs. revelation, Buddha vs. Jesus—he did not conclude that all things are equally good, that the distinction between high and low disappears. As a matter of fact he

Liberal Education

What image does a first-rank college or university present today to a teen-ager leaving home for the first time, off to the adventure of a liberal education? He has four years of freedom to discover himself—a space between the intellectual wasteland he has left behind and the inevitable dreary professional training that awaits him after the baccalaureate. In this short time he must learn that there is a great world beyond the little one he knows, experience the exhilaration of it and digest enough of it to sustain himself in the intellectual deserts he is destined to traverse. He must do this, that is, if he is to have any hope of a higher life. These are the charmed years when he can, if he so chooses, become anything he wishes and when he has the opportunity to survey his alternatives, not merely those current in his time or provided by careers, but those available to him as a human being. The importance of these years for an American cannot be overestimated. They are civilization's only chance to get to him.

In looking at him we are forced to reflect on what he should learn if he is to be called educated; we must speculate on what the human potential to be fulfilled is. In the specialties we can avoid such speculation, and the avoidance of them is one of specialization's charms. But here it is a simple duty. What are we to teach this person? The answer may not be evident, but to attempt to answer the question is already to philosophize and to begin to educate. Such a concern in itself poses the question

intended to revitalize the consideration of these great alternatives in showing the gravity and danger involved in choosing among them; they were to be heightened in contrast to the trivial considerations of modern life that threatened to overgrow and render indistinguishable the profound problems the confrontation with which makes the bow of the soul taut. The serious intellectual life was for him the battleground of the great decisions, all of which are spiritual or "value" choices. One can no longer present this or that particular view of the educated or civilized man as authoritative; therefore one must say that education consists in knowing, really knowing, the small number of such views in their integrity. This distinction between profound and superficial—which takes the place of good and bad, true and false—provided a focus for serious study, but it hardly held out against the naturally relaxed democratic tendency to say, "Oh, what's the use?" The first university disruptions at Berkeley were explicitly directed against the multiversity smorgasbord and, I must confess, momentarily and partially engaged my sympathies. It may have even been the case that there was some small element of longing for an education in the motivation of those students. But nothing was done to guide or inform their energy, and the result was merely to add multi-life-styles to multidisciplines, the diversity of perversity to the diversity of specialization. What we see so often happening in general happened here too; the insistent demand for greater community ended in greater isolation. Old agreements, old habits, old traditions were not so easily replaced.

Thus, when a student arrives at the university, he finds a bewildering variety of departments and a bewildering variety of courses. And there is no official guidance, no university-wide agreement, about what he *should* study. Nor does he usually find readily available examples, either among students or professors, of a unified use of the university's resources. It is easiest simply to make a career choice and go about getting prepared for that career. The programs designed for those having made such a choice render their students immune to charms that might lead them out of the conventionally respectable. The sirens sing *sotto voce* these days, and the young already have enough wax in their ears to pass them by without danger. These specialties can provide enough courses to take up most of their time for four years in preparation for the inevitable graduate study. With the few remaining courses they can do what they please, taking a bit of this and a bit of that. No public career these days—not doctor nor

lawyer nor politician nor journalist nor businessman nor entertainer—has much to do with humane learning. An education, other than purely professional or technical, can even seem to be an impediment. That is why a countervailing atmosphere in the university would be necessary for the students to gain a taste for intellectual pleasures and learn that they are viable.

The real problem is those students who come hoping to find out what career they want to have, or are simply looking for an adventure with themselves. There are plenty of things for them to do—courses and disciplines enough to spend many a lifetime on. Each department or great division of the university makes a pitch for itself, and each offers a course of study that will make the student an initiate. But how to choose among them? How do they relate to one another? The fact is they do not address one another. They are competing and contradictory, without being aware of it. The problem of the whole is urgently indicated by the very existence of the specialties, but it is never systematically posed. The net effect of the student's encounter with the college catalogue is bewilderment and very often demoralization. It is just a matter of chance whether he finds one or two professors who can give him an insight into one of the great visions of education that have been the distinguishing part of every civilized nation. Most professors are specialists, concerned only with their own fields, interested in the advancement of those fields in their own terms, or in their own personal advancement in a world where all the rewards are on the side of professional distinction. They have been entirely emancipated from the old structure of the university, which at least helped to indicate that they are incomplete, only parts of an unexamined and undiscovered whole. So the student must navigate among a collection of carnival barkers, each trying to lure him into a particular sideshow. This undecided student is an embarrassment to most universities, because he seems to be saying, "I am a whole human being. Help me to form myself in my wholeness and let me develop my real potential," and he is the one to whom they have nothing to say.

Cornell was, as in so many other things, in advance of its time on this issue. The six-year Ph.D. program, richly supported by the Ford Foundation, was directed specifically to high school students who had already made "a firm career choice" and was intended to rush them through to the start of those careers. A sop was given to desolate human-

ists in the form of money to fund seminars that these young careerists could take on their way through the College of Arts and Sciences. For the rest, the educators could devote their energies to arranging and packaging the program without having to provide it with any substance. That kept them busy enough to avoid thinking about the nothingness of their endeavor. This has been the preferred mode of not looking the Beast in the Jungle in the face—structure, not content. The Cornell plan for dealing with the problem of liberal education was to suppress the students' longing for liberal education by encouraging their professionalism and their avarice, providing money and all the prestige the university had available to make careerism the centerpiece of the university.

The Cornell plan dared not state the radical truth, a well-kept secret: the colleges do not have enough to teach their students, not enough to justify keeping them four years, probably not even three years. If the focus is careers, there is hardly one specialty, outside the hardest of the hard natural sciences, which requires more than two years of preparatory training prior to graduate studies. The rest is just wasted time, or a period of ripening until the students are old enough for graduate studies. For many graduate careers, even less is really necessary. It is amazing how many undergraduates are poking around for courses to take, without any plan or question to ask, just filling up their college years. In fact, with rare exceptions, the courses are parts of specialties and not designed for general cultivation, or to investigate questions important for human beings as such. The so-called knowledge explosion and increasing specialization have not filled up the college years but emptied them. Those years are impediments; one wants to get beyond them. And in general the persons one finds in the professions need not have gone to college, if one is to judge by their tastes, their fund of learning or their interests. They might as well have spent their college years in the Peace Corps or the like. These great universities—which can split the atom, find cures for the most terrible diseases, conduct surveys of whole populations and produce massive dictionaries of lost languages—cannot generate a modest program of general education for undergraduate students. This is a parable for our times.

There are attempts to fill the vacuum painlessly with various kinds of fancy packaging of what is already there—study abroad options, individualized majors, etc. Then there are Black Studies and Women's or

Gender Studies, along with Learn Another Culture. Peace Studies are on their way to a similar prevalence. All this is designed to show that the university is with it and has something in addition to its traditional specialties. The latest item is computer literacy, the full cheapness of which is evident only to those who think a bit about what literacy might mean. It would make some sense to promote literacy literacy, inasmuch as most high school graduates nowadays have difficulty reading and writing. And some institutions are quietly undertaking this worthwhile task. But they do not trumpet the fact, because this is merely a high school function that our current sad state of educational affairs has thrust upon them, about which they are not inclined to boast.

Now that the distractions of the sixties are over, and undergraduate education has become more important again (because the graduate departments, aside from the professional schools, are in trouble due to the shortage of academic jobs), university officials have had somehow to deal with the undeniable fact that the students who enter are uncivilized, and that the universities have some responsibility for civilizing them. If one were to give a base interpretation of the schools' motives, one could allege that their concern stems from shame and self-interest. It is becoming all too evident that liberal education—which is what the small band of prestigious institutions are supposed to provide, in contrast to the big state schools, which are thought simply to prepare specialists to meet the practical demands of a complex society—has no content, that a certain kind of fraud is being perpetrated. For a time the great moral consciousness alleged to have been fostered in students by the great universities, especially their vocation as gladiators who fight war and racism, seemed to fulfill the demands of the collective university conscience. They were doing something other than offering preliminary training for doctors and lawyers. Concern and compassion were thought to be the indefinable X that pervaded all the parts of the Arts and Sciences campus. But when that evanescent mist dissipated during the seventies, and the faculties found themselves face to face with ill-educated young people with no intellectual tastes—unaware that there even are such things, obsessed with getting on with their careers before having looked at life—and the universities offered no counterpoise, no alternative goals, a reaction set in.

Liberal education—since it has for so long been ill-defined, has none of the crisp clarity or institutionalized prestige of the professions, but

nevertheless perseveres and has money and respectability connected with it—has always been a battleground for those who are somewhat eccentric in relation to the specialties. It is in something like the condition of churches as opposed to, say, hospitals. Nobody is quite certain of what the religious institutions are supposed to do anymore, but they do have some kind of role either responding to a real human need or as the vestige of what was once a need, and they invite the exploitation of quacks, adventurers, cranks and fanatics. But they also solicit the warmest and most valiant efforts of persons of peculiar gravity and depth. In liberal education, too, the worst and the best fight it out, fakers vs. authentic, sophists vs. philosophers, for the favor of public opinion and for control over the study of man in our times. The most conspicuous participants in the struggle are administrators who are formally responsible for presenting some kind of public image of the education their colleges offer, persons with a political agenda or vulgarizers of what the specialties know, and real teachers of the humane disciplines who actually see their relation to the whole and urgently wish to preserve the awareness of it in their students' consciousness.

So, just as in the sixties universities were devoted to removing requirements, in the eighties they are busy with attempts to put them back in, a much more difficult task. The word of the day is "core." It is generally agreed that "we went a bit far in the sixties," and that a little fine-tuning has now become clearly necessary.

There are two typical responses to the problem. The easiest and most administratively satisfying solution is to make use of what is already there in the autonomous departments and simply force the students to cover the fields, i.e., take one or more courses in each of the general divisions of the university: natural science, social science and the humanities. The reigning ideology here is *breadth*, as was *openness* in the age of laxity. The courses are almost always the already existing introductory courses, which are of least interest to the major professors and merely assume the worth and reality of that which is to be studied. It is general education, in the sense in which a jack-of-all-trades is a generalist. He knows a bit of everything and is inferior to the specialist in each area. Students may wish to sample a variety of fields, and it may be good to encourage them to look around and see if there is something that attracts them in one of which they have no experience. But this is not a liberal education and does not

satisfy any longing they have for one. It just teaches that there is no high-level generalism, and that what they are doing is preliminary to the real stuff and part of the childhood they are leaving behind. Thus they desire to get it over with and get on with what their professors do seriously. Without recognition of important questions of common concern, there cannot be serious liberal education, and attempts to establish it will be but failed gestures.

It is a more or less precise awareness of the inadequacy of this approach to core curricula that motivates the second approach, which consists of what one might call composite courses. These are constructions developed especially for general-education purposes and usually require collaboration of professors drawn from several departments. These courses have titles like "Man in Nature," "War and Moral Responsibility," "The Arts and Creativity," "Culture and the Individual." Everything, of course, depends upon who plans them and who teaches them. They have the clear advantage of requiring some reflection on the general needs of students and force specialized professors to broaden their perspectives, at least for a moment. The dangers are trendiness, mere popularization and lack of substantive rigor. In general, the natural scientists do not collaborate in such endeavors, and hence these courses tend to be unbalanced. In short, they do not point beyond themselves and do not provide the student with independent means to pursue permanent questions independently, as, for example, the study of Aristotle or Kant as wholes once did. They tend to be bits of this and that. Liberal education should give the student the sense that learning must and can be both synoptic and precise. For this, a very small, detailed problem can be the best way, if it is framed so as to open out on the whole. Unless the course has the specific intention to lead to the permanent questions, to make the student aware of them and give him some competence in the important works that treat of them, it tends to be a pleasant diversion and a dead end—because it has nothing to do with any program of further study he can imagine. If such programs engage the best energies of the best people in the university, they can be beneficial and provide some of the missing intellectual excitement for both professors and students. But they rarely do, and they are too cut off from the top, from what the various faculties see as their real business. Where the power is determined the life of the whole body. And the intellectual problems unresolved at the top cannot be resolved administra-

tively below. The problem is the lack of any unity of the sciences and the loss of the will or the means even to discuss the issue. The illness above is the cause of the illness below, to which all the good-willed efforts of honest liberal educationists can at best be palliatives.

Of course, the only serious solution is the one that is almost universally rejected: the good old Great Books approach, in which a liberal education means reading certain generally recognized classic texts, just reading them, letting them dictate what the questions are and the method of approaching them—not forcing them into categories we make up, not treating them as historical products, but trying to read them as their authors wished them to be read. I am perfectly well aware of, and actually agree with, the objections to the Great Books cult. It is amateurish; it encourages an autodidact's self-assurance without competence; one cannot read all of the Great Books carefully; if one only reads Great Books, one can never know what a great, as opposed to an ordinary, book is; there is no way of determining who is to decide what a Great Book or what the canon is; books are made the ends and not the means; the whole movement has a certain coarse evangelistic tone that is the opposite of good taste; it engenders a spurious intimacy with greatness; and so forth. But one thing is certain: wherever the Great Books make up a central part of the curriculum, the students are excited and satisfied, feel they are doing something that is independent and fulfilling, getting something from the university they cannot get elsewhere. The very fact of this special experience, which leads nowhere beyond itself, provides them with a new alternative and a respect for study itself. The advantage they get is an awareness of the classic—particularly important for our innocents; an acquaintance with what big questions were when there were still big questions; models, at the very least, of how to go about answering them; and, perhaps most important of all, a fund of shared experiences and thoughts on which to ground their friendships with one another. Programs based upon judicious use of great texts provide the royal road to students' hearts. Their gratitude at learning of Achilles or the categorical imperative is boundless. Alexandre Koyré, the late historian of science, told me that his appreciation for America was great when—in the first course he taught at the University of Chicago, in 1940 at the beginning of his exile—a student spoke in his paper of Mr. Aristotle, unaware that he was not a contemporary. Koyré said that only an American could have

the naive profundity to take Aristotle as living thought, unthinkable for most scholars. A good program of liberal education feeds the student's love of truth and passion to live a good life. It is the easiest thing in the world to devise courses of study, adapted to the particular conditions of each university, which thrill those who take them. The difficulty is in getting them accepted by the faculty.

None of the three great parts of the contemporary university is enthusiastic about the Great Books approach to education. The natural scientists are benevolent toward other fields and toward liberal education, if it does not steal away their students and does not take too much time from their preparatory studies. But they themselves are interested primarily in the solution of the questions now important in their disciplines and are not particularly concerned with discussions of their foundations, inasmuch as they are so evidently successful. They are indifferent to Newton's conception of time or his disputes with Leibniz about calculus; Aristotle's teleology is an absurdity beneath consideration. Scientific progress, they believe, no longer depends on the kind of comprehensive reflection given to the nature of science by men like Bacon, Descartes, Hume, Kant and Marx. This is merely historical study, and for a long time now, even the greatest scientists have given up thinking about Galileo and Newton. Progress is undoubted. The difficulties about the truth of science raised by positivism, and those about the goodness of science raised by Rousseau and Nietzsche, have not really penetrated to the center of scientific consciousness. Hence, no Great Books, but incremental progress, is the theme for them.

Social scientists are in general hostile, because the classic texts tend to deal with the human things the social sciences deal with, and they are very proud of having freed themselves from the shackles of such earlier thought to become truly scientific. And, unlike the natural scientists, they are insecure enough about their achievement to feel threatened by the works of earlier thinkers, perhaps a bit afraid that students will be seduced and fall back into the bad old ways. Moreover, with the possible exception of Weber and Freud, there are no social science books that can be said to be classic. This may be interpreted favorably to the social sciences by comparing them to the natural sciences, which can be said to be a living organism developing by the addition of little cells, a veritable body of knowledge proving itself to be such by the very fact of this almost uncon-

scious growth, with thousands of parts oblivious to the whole, nevertheless contributing to it. This is in opposition to a work of imagination or of philosophy, where a single creator makes and surveys an artificial whole. But whether one interprets the absence of the classic in the social sciences in ways flattering or unflattering to them, the fact causes social scientists discomfort. I remember the professor who taught the introductory graduate courses in social science methodology, a famous historian, responding scornfully and angrily to a question I naively put to him about Thucydides with "Thucydides was a fool!"

More difficult to explain is the tepid reaction of humanists to Great Books education, inasmuch as these books now belong almost exclusively to what are called the humanities. One would think that high esteem for the classic would reinforce the spiritual power of the humanities, at a time when their temporal power is at its lowest. And it is true that the most active proponents of liberal education and the study of classic texts are indeed usually humanists. But there is division among them. Some humanities disciplines are just crusty specialties that, although they depend on the status of classic books for their existence, are not really interested in them in their natural state—much philology, for example, is concerned with the languages but not what is said in them—and will and can do nothing to support their own infrastructure. Some humanities disciplines are eager to join the real sciences and transcend their roots in the now overcome mythic past. Some humanists make the legitimate complaints about lack of competence in the teaching and learning of Great Books, although their criticism is frequently undermined by the fact that they are only defending recent scholarly interpretation of the classics rather than a vital, authentic understanding. In their reaction there is a strong element of specialist's jealousy and narrowness. Finally, a large part of the story is just the general debilitation of the humanities, which is both symptom and cause of our present condition.

To repeat, the crisis of liberal education is a reflection of a crisis at the peaks of learning, an incoherence and incompatibility among the first principles with which we interpret the world, an intellectual crisis of the greatest magnitude, which constitutes the crisis of our civilization. But perhaps it would be true to say that the crisis consists not so much in this incoherence but in our incapacity to discuss or even recognize it. Liberal education flourished when it prepared the way for the discussion of a

unified view of nature and man's place in it, which the best minds debated on the highest level. It decayed when what lay beyond it were only specialties, the premises of which do not lead to any such vision. The highest is the partial intellect; there is no synopsis.

The Decomposition of the University

This became all too clear in the aftermath of the guns at Cornell, and I had a chance to learn something about the articulation of the university as it decomposed. In general, no discipline—only individuals—reacted very well to the assault on academic freedom and integrity. But various disciplines reacted in characteristic ways. The professional schools—engineering, home economics, industrial-labor relations and agriculture—simply went home and closed the shutters. (Some professors in the law school did indeed express indignation, and a group of them finally spoke out publicly for the dismissal of the president.) These faculties were supposed, in general, to be conservative, but they just did not want trouble and did not feel it was their fight. The complaints of the black students were not about them; and whatever changes in thought were to take place, they would be untouched. In spite of the common complaints about the great variety of disciplines unbalancing the university and causing it to lose its focus, everyone knows that the arts and sciences faculty is where the action is, that the other schools are ancillary to it, that it is the center of learning and prestige. This much of the old order has been preserved. The challenge at Cornell was issued to the College of Arts and Sciences, as was the case everywhere throughout the sixties. The problem thus had to be faced by the natural sciences, the social sciences and the humanities. They were asked to change their content and their standards, to eliminate elitism, racism and sexism as "perceived" by students. But the community of scholars proved to be no community. There was no solidarity in defense of the pursuit of truth.

The natural scientists were above the battle, an island unto themselves, and did not feel threatened. I believe that only one natural scientist at Cornell spoke out against the presence of guns or the bullying of professors. The university's most famous professor, a Nobel prizewinning physicist, became a leading spokesman in defense of the president without

once consulting those professors whose lives had been threatened or posing the question of what was at stake. He deplored the violence but took no action or uttered any word indicating where a line should be drawn. As far as I know, none of the natural scientists was in cahoots with the thugs, as were some social scientists and humanists. It was the absolute independence of their work from the rest of the university's activity, and their trust that theirs is the important work, that made them indifferent. They did not share a common good with the rest of us. Walking to the meeting where the faculty capitulated to the students—a truly disgraceful event, a microcosm of cowardly acquiescence to the establishment of tyranny—in the company of a friend who had had to suffer the humiliation of leaving his home and hiding out with his family after receiving explicit threats, I heard a professor of biology loudly asking, perhaps for our benefit, "Do these social scientists really believe there is any danger?" My friend looked at me sadly and said, "With colleagues like that, you don't need enemies."

Because the student movements were so untheoretical, the natural sciences were not a target, as they had once been in high-grade fascism and communism. There were no Lenins thundering against positivism, relativity or genetics, no Goebbels alert to the falseness of Jewish science. There had been the beginnings of an offensive against the scientists' collaboration with the military-industrial complex, as well as their role in producing the technology that abets capitalism and pollutes the environment. But none of this went to the heart of the serious scientists' research. They were able to avoid the fury by distancing themselves from certain unpopular applications of their knowledge, by insulting the government which supported them, and by declaring themselves for peace and social justice. Here too the great Cornell physicist has, predictably, distinguished himself by making a habit of apologizing for physics' hand in producing thermonuclear weapons. But these scientists were not asked to change one thing in their studies, their classes or their laboratories. So they opted out.

This behavior was not merely selfishness and self-protectiveness, every man for himself, although there was a good deal of that, accompanied with the usual distasteful moralizing rhetoric. The atmosphere of crisis caused a not entirely conscious reassessment of natural science's relation to the university. Crises in the intellectual world as well as in the

political one tend to bring to the surface tensions and changes in interest that it is easier not to face as long as things are calm. To break old alliances and form new ones is always a painful business, as, for example, when liberals broke with Stalinists at the beginning of the Cold War. The scientists found themselves confronted with the fact that they had no real connection with the rest of the university, and that to cast their lot with it was costly. One cannot imagine that biologists would have been so callous if chemistry had somehow become a target for cultural revolution, and young Red Guards monitored its teachings and terrorized its practitioners. Chemists are biologists' blood relations, and their knowledge is absolutely indispensable for the progress of biology. But it is not now conceivable that a physicist qua physicist could learn anything important, or anything at all, from a professor of comparative literature or of sociology. The natural scientist's connection with the rest of humane learning is not familial but abstract, a little like our connection with humanity as a whole. There may be a formulaic invocation of rights applicable to all, but nothing that moves with the burning immediacy of shared convictions and interests. "I can live without you" is the silent thought that steals into one's mind when such relations become painful.

The reality of separateness has existed since Kant, the last philosopher who was a significant natural scientist, and Goethe, the last great literary figure who could believe that his contributions to science might be greater than his contributions to literature. And, it should be remembered, it was not that they were philosopher and poet who happened to dabble in science, but that their writings were mirrors of nature and that their science was guided and informed by meditation on being, freedom and beauty. They represented the last gasp of the old unity of the questions before natural science became the Switzerland of learning, safely neutral to the battles taking place on the darkling plain. Henry Adams—whose life bridged the last epoch when gentlemen, such as Jefferson, thought science both attainable and useful for them, and the one where scientists speak an incomprehensible language that teaches nothing about life but is necessary to life as information—takes note of this change in his quirky way. When he was young he had studied natural science and had given it up; when as an old man he looked again in that direction, he found that he was in a new world. The old university traditions and ideals had concealed the fact that the ancient bonds had decayed and the

marriage was washed up. The great scientists of the nineteenth century and twentieth century were in general cultivated men who had some experience of, and real admiration for, the other parts of learning. The increasing specialization of the natural sciences and the natural scientists gradually caused the protective fog to lift. Since the sixties the scientists have had less and less to say to, and to do with, their colleagues in the social sciences and humanities. The university has lost whatever polis-like character it had and has become like the ship on which the passengers are just accidental fellow travelers soon to disembark and go their separate ways. The relations between natural science, social science and humanities are purely administrative and have no substantial intellectual content. They only meet on the level of the first two years of undergraduate education, and there the natural scientists are largely concerned with protecting their interest in the young who will be coming their way.

A perfect illustration of this situation appeared a few years ago in a *New York Times* account of the visit of a professor of music to Rockefeller University. The life scientists working there brought bag lunches to the musicologist's lecture. The project was inspired by C. P. Snow's silly conceits about "the two cultures," the rift between which he proposed to heal by getting humanists to learn the second law of thermodynamics and physicists to read Shakespeare. This enterprise would, of course, be something other than an exercise in spiritual uplift only if the physicist learned something important for his physics from Shakespeare, and if the humanist similarly profited from the second law of thermodynamics. In fact, nothing of the sort ensues. For the scientist the humanities are recreation (often deeply respected by him, for he sees that more is needed than what he offers, but is puzzled about where to find it), and for the humanist the natural sciences are at best indifferent, at worst alien and hostile.

The *Times* quoted Joshua Lederberg, the president of Rockefeller University, from which philosophy had recently been banished, as saying after the lecture that C. P. Snow was on the right track but "counted wrong"—there are not two but many cultures, one example of which is that of the Beatles. This represents the ultimate trivialization of a trivial idea that was just a rest station on a downward slope. Lederberg saw in the humanities not the human knowledge that complements the study of nature but merely another expression of what was going on in the world. In the end, it is all more or less sophisticated show business. With a kind

of wink at his audience Lederberg lets us know that in this sea of democratic relativism natural science stands out like Gibraltar. All the rest is a matter of taste.

This disposition affected the natural scientists' behavior at Cornell and everywhere else. In the attempt to use the admission of students and appointment of faculty as means for this or that social goal, which has lowered university standards and obscured the university's purpose, they cooperated with the new agenda, in their own way. They adopted the rhetoric of anti-elitism, antisexism and antiracism, and quietly resisted doing anything about the issues in their own domain. They passed the buck to the social scientists and the humanists, who proved more accommodating and could be more easily bullied. Natural scientists too are Americans, in general favorably disposed to the mood of the times. But they are also pretty sure of what they are doing. They cannot deceive themselves that they are teaching science when they are not. They have powerful operational measures of competence. And inwardly they believe, at least in my experience, that the only real knowledge is scientific knowledge. In the dilemma that faced them—mathematicians wanted, for example, to see more blacks and women hired but could not find nearly enough competent ones—they in effect said that the humanists and social scientists should hire them. Believing that there are no real standards outside of the natural sciences, they assumed that adjustments could easily be made. With the profoundest irresponsibility, scientists went along with various aspects of affirmative action, assuming, for example, that any minority students admitted without proper qualifications would be taken care of by other departments if they did not do well in science. The scientists did not anticipate large-scale failure of such students, with the really terrible consequences that would entail. They took it for granted that these students would succeed somewhere else in the university. And they were right. The humanities and social sciences were debauched and grade inflation took off, while the natural sciences remain largely the preserve of white males. Thus the true elitists of the university have been able to stay on the good side of the forces of history without having to suffer any of the consequences.

To find hysterical supporters of the revolution one had, not surprisingly, to go to the humanities. Passion and commitment, as opposed to coolness, reason and objectivity, found their home there. The drama

included a proclamation from a group of humanities teachers threatening to take over a building if the university did not capitulate forthwith. A student told me that one of his humanities professors, himself a Jew, had said to him that Jews deserved to be put in concentration camps because of what they had done to blacks. Finally these men and women were in action instead of idling away their time in libraries and classrooms. But they worked to their own undoing, for it is the humanities that have suffered most as a result of the sixties. The lack of student interest, the near disappearance of language study, the vanishing of jobs for Ph.D.s, the lack of public sympathy, came from the overturning of the old order, where their place was assured. They have gotten what they deserved, but we have unfortunately all lost.

The reasons for this behavior on the part of many humanists are obvious and constitute the theme of this book. Cornell was in the forefront of certain trends in the humanities as well as in politics. It had for several years been a laundering operation for radical Left French ideas in comparative literature. From Sartre, through Goldmann, to Foucault and Derrida, each successive wave washed over the Cornell shores. These ideas were intended to give new life to old books. A technique of reading, a framework for interpretation—Marx, Freud, structuralism, and on and on—could incorporate these tired old books and make them a part of revolutionary consciousness. At last there was an active, progressive role for the humanists, who had been only antiquarians, eunuchs guarding a harem of aging and now unattractive courtesans. Moreover, the almost universal historicism prevailing in the humanities prepared the soul for devotion to the emergent. Added to this was the expectation that in such changes culture would take primacy over science. The intellectual anti-university ideology of which I have spoken found its expression in these conditions, as the university could be thought to be the stage of history. Lucien Goldmann told me a few months before his death that he was privileged to have lived to see his nine-year-old son throw a rock through a store window in the Paris of '68. His studies of Racine and Pascal culminated in this. *Humanitas redivivas!* Students took to the action but not to the books. They could work on the future without the assistance of the past or its teachers. The avant-garde's fond expectation that the revolution would introduce an age of creativity, that art rather than antiquarianism would flower, that imagination would finally have its innings against reason, did not find immediate fulfillment.

The professors of humanities are in an impossible situation and do not believe in themselves or what they do. Like it or not, they are essentially involved with interpreting and transmitting old books, preserving what we call tradition, in a democratic order where tradition is not privileged. They are partisans of the leisured and beautiful in a place where evident utility is the only passport. Their realm is the always and the contemplative, in a setting that demands only the here and now and the active. The justice in which they believe is egalitarian, and they are the agents of the rare, the refined and the superior. By definition they are out of it, and their democratic inclinations and guilt push them to be with it. After all, what do Shakespeare and Milton have to do with solving our problems? Particularly when one looks into them and finds that they are the repositories of the elitist, sexist, nationalist prejudice we are trying to overcome.

Not only did the thing in itself require a conviction and dedication not often really present in the professors, the clientele was disappearing. The students just were not persuaded that what was being offered them was important. The loneliness and sense of worthlessness were crushing, so these humanists jumped on the fastest, most streamlined express to the future. This meant, of course, that all the tendencies hostile to the humanities were radicalized, and the humanities, without reservations, were pitched off the train. Natural and social science found their seats by demonstrating a usefulness of one kind or another. This the humanities were unable to do.

The apolitical character of the humanities, the habitual deformation or suppression of the political content in the classic literature, which should be part of a political education, left a void in the soul that could be filled with any politics, particularly the most vulgar, extreme and current. The humanities, unlike the natural sciences, had nothing to lose, or so it was thought, and, unlike the social sciences, they had no knowledge of the intractableness of the political matter. Humanists ran like lemmings into the sea, thinking they would refresh and revitalize themselves in it. They drowned.

This left the social sciences as the battleground, both the point of attack and the only place where any kind of stand was made. They were the newest part of the university, the part that could least boast of great past achievement or contribution to the store of human wisdom, the part the very legitimacy of which was questionable and where genius had

participated most modestly. But the social sciences were principally concerned with the human things, were supposed to be in possession of the facts about social life and had a certain scientific conscience and integrity about reporting them. The social sciences were of interest to everyone who had a program, who might care about prosperity, peace or war, equality, racial or sexual discrimination. This interest could be to get the facts—or to make the facts fit their agenda and influence the public.

The temptations to alter the facts in these disciplines are enormous. Reward, punishment, money, praise, blame, sense of guilt and desire to do good, all swirl around them, dizzying their practitioners. Everyone wants the story told by social science to fit their wishes and their needs. Hobbes said that if the fact that two and two makes four were to become a matter of political relevance, there would be a faction to deny it. Social science has had more than its share of ideologues and charlatans. But it has also produced scholars of great probity whose works have made it harder for dishonest policy to triumph.

Thus it was in social science that the radicals first struck. A group of black activists disrupted the class of an economics teacher, then proceeded to the chairman's office and held him and his secretary (who suffered from heart disease) hostage for thirteen hours. The charge, of course, was that the teacher was racist in using a Western standard for judgment of the efficiency of African economic performance. The students were praised for calling the problem to the attention of the authorities, the chairman refused to proffer charges against them, and the teacher disappeared miraculously from campus, never to be seen again.

This kind of problem-solving was typical, but some professors in the social sciences did not like it. Historians were being asked to rewrite the history of the world, and of the United States in particular, to show that nations were always conspiratorial systems of domination and exploitation. Psychologists were being pestered to prove the psychological damage done by inequality and the existence of nuclear weapons, and to show that American statesmen were paranoid about the Soviet Union. Political scientists were urged to interpret the North Vietnamese as nationalists and to remove the stigma of totalitarianism from the Soviet Union. Every conceivable radical view concerning domestic or foreign policy demanded support from the social sciences. In particular, the crimes of elitism, sexism and racism were to be exorcised from social science, which was to

be used as a tool to fight them and a fourth cardinal sin, anticommunism. Nobody of course would dare to admit to any of these sins, and serious discussion of the underlying issue, equality itself, had long been banished from the scene. As in the Middle Ages, when everyone except for a few intrepid and foolish souls professed Christianity and the only discussion concerned what constituted orthodoxy, the major student activity in social science was to identify heretics. These were scholars who seriously studied sexual differentiation or who raised questions about the educational value of busing or who considered the possibility of limited nuclear war. It became almost impossible to question the radical orthodoxy without risking vilification, classroom disruption, loss of the confidence and respect necessary for teaching, and the hostility of colleagues. Racist and sexist were, and are, very ugly labels—the equivalents of atheist or communist in other days with other prevailing prejudices—which can be pinned on persons promiscuously and which, once attached, are almost impossible to cast off. Nothing could be said with impunity. Such an atmosphere made detached, dispassionate study impossible.

This suited many social scientists, but a new, tougher strain emerged out of the struggle. Some saw that their objectivity was threatened, and without respect and protection for scholarly inquiry any one of them might be put at risk. The pressure revived an old liberalism and awareness of the importance of academic freedom. Pride and self-respect, unwillingness to give way before menace and insult, asserted themselves. These social scientists knew that all parties in a democracy are jeopardized when passion can sweep the facts before it. Most of all, an instinctive disgust at loudspeakers blaring propaganda was roused in them. Such social scientists were not necessarily all of the same personal political persuasion. Their fellow feeling consisted in mutual respect for the motives of colleagues with whom they did not always agree but from whose disagreement they might profit, and in attachment to the institutions that protected their research. At Cornell one found social scientists of left, right and center—on the admittedly narrow spectrum that prevails in the American university—joining together to protest the outrage against academic freedom and against their colleagues that took place there and continues in more or less subtle forms everywhere. It is not an accident that the challenge to the university was mounted in its most political part, and that there it was best understood. The political perspective is the one

in which the moral unity of learning naturally comes into focus and the goodness of science is tested.

I unfortunately cannot assert that this crisis has caused social science to broaden its concerns or has induced the other disciplines to reflect on their own situations. But it was inspiring to be momentarily with a band of scholars who were really willing to make a sacrifice for their love of truth and their studies, to discover that the pieties could be more than pieties, to sense community founded on conviction. The other disciplines have, in general, not put their professed attachment to free inquiry to the test. Their immunity is a large part of the story behind the fractured structure of our universities.

The Disciplines

How are they today, the big three that rule the academic roost and determine what is knowledge? Natural science is doing just fine. Living alone, but happily, running along like a well-wound clock, successful and useful as ever. There have been great things lately, physicists with their black holes and biologists with their genetic code. Its objects and methods are agreed upon. It offers exciting lives to persons of very high intelligence and provides immeasurable benefits to mankind at large. Our way of life is utterly dependent on the natural scientists, and they have more than fulfilled their every promise. Only at the margins are there questions that might threaten their theoretical equanimity—doubts about whether America produces synoptic scientific geniuses, doubts about the use of the results of science, such as nuclear weapons, doubts that lead to biology's need for "ethicists" in its experiments and its applications when, as scientists, they know that there are no such knowers as ethicists. In general, however, all is well.

But where natural science ends, trouble begins. It ends at man, the one being outside of its purview, or to be exact, it ends at that part or aspect of man that is not body, whatever that may be. Scientists as scientists can be grasped only under that aspect, as is the case with politicians, artists and prophets. All that is human, all that is of concern to us, lies outside of natural science. That should be a problem for natural science, but it is not. It is certainly a problem for us that we do not know

what this thing is, that we cannot even agree on a name for this irreducible bit of man that is not body. Somehow this fugitive thing or aspect is the cause of science and society and culture and politics and economics and poetry and music. We know what these latter are. But can we really, if we do not know their cause, know what its status is, whether it even exists?

The difficulty is reflected in the fact that for the study of this one theme, man, or this *je ne sais quoi* pertaining to man, and his activities and products, there are two great divisions of the university—humanities and social science—while for bodies there is only natural science. This would all be very well if the division of labor were founded on an agreement about the subject matter and reflected a natural articulation within it, as do the divisions between physics, chemistry and biology, leading to mutual respect and cooperation. It could be believed and is sometimes actually said, mostly in commencement speeches, that social science treats man's social life, and humanities his creative life—the great works of art, etc. And, although there is something to this kind of distinction, it really will not do. This fact comes to light in a variety of ways. While both social science and humanities are more or less willingly awed by natural science, they have a mutual contempt for one another, the former looking down on the latter as unscientific, the latter regarding the former as philistine. They do not cooperate. And most important, they occupy much of the same ground. Many of the classic books now part of the humanities talk about the same things as do social scientists but use different methods and draw different conclusions; and each of the social sciences in one way or another attempts to explain the activities of the various kinds of artists in ways that are contrary to the way they are treated in the humanities. The difference comes down to the fact that social science really wants to be predictive, meaning that man is predictable, while the humanities say that he is not. The divisions between the two camps resemble truce lines rather than scientific distinctions. They disguise old and unresolved struggles about the being of man.

The social sciences and the humanities represent the two responses to the crisis caused by the definitive ejection of man—or of the residue of man extracted from, or superfluous to, body—from nature, and hence from the purview of natural science or natural philosophy, toward the end of the eighteenth century. One route led toward valiant efforts to assimilate man to the new natural sciences, to make the science of man the next

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The Multiculturalist Misunderstanding

Kwame Anthony Appiah
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On Toleration

by Michael Walzer
Yale University Press, 126 pp., \$16.50

We Are All Multiculturalists Now

by Nathan Glazer
Harvard University Press, 179 pp., \$19.95

1.

Have you noticed that “culture”—the word—has been getting a heavy workout recently? Anthropologists, of course, have used it zealously for over a century; though the term’s active life in literature and politics began long before that. But some current ways in which the concept of culture has been put to use would have surprised even mid-century readers; especially the idea that everything from anorexia to zydeco is illuminated by being displayed as the product of some group’s culture. It’s got to the point that when you hear the word “culture,” you reach for your dictionary.

Culture’s main competitor in its kudzu-like progression is “diversity,” a favorite now of corporate and educational CEOs, politicians, and pundits. And “cultural diversity” brings the two together. Is it not, indeed, one of the most pious of the pieties of our age that the United States is a society of enormous cultural diversity? And isn’t Nathan Glazer right to say, in his new book *We Are All Multiculturalists Now*, that “multiculturalism is just the latest in [a] sequence of terms describing how American society, particularly American education, should respond to its diversity”?

Well, yes, and yes, of course. American diversity is easily granted and so is the need of a response to that diversity. But what isn't so clear is that it is our *cultural* diversity that deserves attention.

Let's begin with a place where the idea of somebody's culture really does explain something. When Jews from the shtetl and Italians from the villaggio arrived at Ellis Island, they brought with them a rich mixture we call culture. That is, they brought a language and stories and songs and sayings; they transplanted a religion with specific rituals, beliefs, and traditions, a cuisine of a certain hearty peasant quality and distinctive modes of dress; and they came with particular ideas about family life. It was often reasonable for their new neighbors to ask what these first-generation immigrants were doing, and why; and a sensible answer would frequently have been, "It's an Italian thing, a Jewish thing," or, simply, "It's their culture."

It is striking how much of this form of difference has disappeared. Nearly a decade ago the Harvard sociologist Mary Waters argued persuasively in *Ethnic Options*¹ that the rich immigrant gumbo had become thin gruel. There are still seders and nuptial masses, still gefilte fish and spaghetti, but how much does an Italian name tell you, these days, about church attendance, or knowledge of Italian, or tastes in food or spouses? Even Jews, whose status as a small non-Christian group in an overwhelmingly Christian society might have been expected to keep their "difference" in focus, are getting harder to identify as a cultural group. (At the seder I go to every Passover, nearly half of those in attendance are gentiles.)

One way—the old way—of describing what has happened would be to say that the families that arrived during the turn-of-the-century wave of immigration

have assimilated, become American. But, from another perspective, we might say that they became white. When the Italians and the Jews of Eastern Europe arrived, they were thought of as racially different both from African-Americans and from the white Protestant majority. Now hardly anybody thinks of their descendants this way. They are Americans: but unless their ancestors include people from Africa or Asia, they are also white.

Being white is not a matter of sharing a rich and distinctive culture with other whites in the way that immigrant Jews from Cracow shared a culture. True, whites in America almost all speak English, but so does almost everyone else. They are Catholic and Jewish and Protestant, and (despite frequent political references to a Judeo-Christian tradition) these are not the same. Many of the characteristics the Scotch-Irish of Appalachia share they also share with most Americans of all colors; and much of what distinguishes them from most Americans distinguishes them from other groups of whites as well. There's Appalachian cuisine and folklore; but nobody, except perhaps a few oddballs in the Aryan Nation, thinks there's a white cuisine, or a white folklore that is the distinguishing heritage of all white Americans. It's a cultural fact that many Americans are white; but this is not so because they share a culture different from everybody else's.

The contrast between blacks and whites seems very evident. African-Americans have been citizens since the Fourteenth Amendment, but they show no signs of becoming white. If African-Americans did become white, as the Italians and the Jews did, there wouldn't be any point to whiteness anymore. And there is a point to whiteness. Nathan Glazer reminds us that when those earlier European immigrants were Americanizing—becoming more like the white Americans who were already here—black Americans were being educated separately in most of the United States and hardly anyone talked about their becoming like white Americans.

Many forces combined to keep things this way. Racist ideology can be fairly self-perpetuating, but it sometimes suited industrial capital, for one thing, to play white against black unions, as Henry Ford did so successfully. And, for another, everywhere in the South poor whites could reassure themselves that, while they might be having a hard time, at least they weren't niggers. With whiteness, as with American Express, membership has its privileges.

White people rarely think of anything in their culture as white: normal, no doubt, middle-class, maybe, and even, sometimes, American; but not white.

Black Americans, by contrast, do think of much in their lives in racial terms: they may speak black English (which some respectfully call Ebonics), go to black churches, dance and listen to black music. (And this isn't just how black people think; other people think that way about them.)

These black forms were not inherited from the Old World, the way the ethnic culture of immigrants was: they are decisively inventions of the New World, as American as apple pie. The first generations of slaves naturally came from Africa with the same range of cultural baggage as the later European immigrants: languages, religions, music, narratives, cuisines, notions of kinship, and all the rest of it. Some brought technologies—rice cultivation, for example, from Senegambia—that were crucial to the developing economies of the South. But the traditions from which they came were multifarious, the languages mutually incomprehensible, the gods distinct, the stories different; and American slavery was designed to take full advantage of these divisions. Black people created a culture in the slave quarters from pieces of Africa, pieces of Europe, pieces of North American Indian tradition, and a fair amount of heroic innovation. Africans became blacks here, just as the European immigrants became whites.

Yet to contrast black and white stories is to neglect much that they have in common. There are, indeed, forms of English speech that are black, even if there are also large regional and class variations in black, as in white, speech. But these are all forms of English we are talking about. Indeed, despite the vast waves of immigration of the last few decades, something like 97 percent of adult Americans, whatever their color, speak English “like a native”; and, with the occasional adjustment for an accent here and there, those 97 percent can all understand one another. Leave out recent immigrants and the number gets close to 100 percent.

Not only blacks and whites but Asians and Native Americans share the English language. Even Hispanics, the one American ethnic group defined by language, prove no exception. People talk a great deal nowadays about the Hispanization of America, and you can indeed hear Spanish spoken in stores and on street corners in places you wouldn't have heard it thirty years ago. But as Geoffrey Nunberg, who teaches linguistics at Stanford, pointed out recently, the “Census figure for residents over five who speak no English is only 1.9 million—proportionately only a quarter as high as it was in 1890, at the peak of the last great wave of immigration.”² He cites a Florida poll that shows 98

percent of Hispanics want their children to speak English well; and, he adds, a “recent RAND Corporation study shows that more than 90 percent of first-generation Hispanics born in California have native fluency in English, and that only 50 percent of the second generation still speak Spanish.”³ If being American means understanding English, then US-born Hispanics overwhelmingly (and increasingly) pass the test. Rates of English fluency run equally high among the children of immigrants from Asia.

Language is only one of many things most Americans share. This is also, for example, a country where almost every citizen knows something about baseball and basketball. Americans also share a familiarity with the consumer culture. They shop American style and know a good deal about the same consumer goods: Coca-Cola, Nike, Levi-Strauss, Ford, Nissan, GE. They have seen Hollywood movies and know the names of some stars; and even the few who watch little or no television can probably tell you the names of some of its personalities.

Even the supposedly persisting differences of religion turn out to be shallower than you might think. American Judaism is, as is often observed, extraordinarily American. Catholics in this country are a nuisance for Rome just because they are...well, so Protestant. Unlike Catholics in many other countries, for example, even the most devout tend to celebrate the separation of Church and State. They also claim individual freedom of conscience—so they don’t automatically take the Church’s line on contraception or divorce.

Above all, most Americans who claim a religion (which means most Americans) regard it as essentially private, something for which they desire neither help nor hindrance from the government. Even Christian Coalition parents who want prayer in the schools generally just want their own children sustained in their faith; they don’t claim the public schools should set about converting the children of others. In these key respects—the sovereignty of the individual conscience within the confession, and the privacy of religious belief—American religion, whatever its formal sectarian designation, is decidedly Protestant. Many of the religious traditions from Asia that have increased in significance in the present wave of immigration are also quickly Americanizing: much of American Islam, for example, is as happy with the separation of Church and state as most Muslims elsewhere are resistant to it.

Coming, as I do, from Ghana, I find the broad cultural homogeneity of America more striking than its much-vaunted variety. Take language. When I

was a child, we lived in a household where there were always at least three mother tongues in daily use: we spoke English (Ghana's official language and my mother's) and Twi (my father's first language); and our cook and steward, who came from further north, also spoke the language of Navrongo, where they were born. (The watchman spoke Hausa.) Ghana, with a population smaller than that of New York State, has several dozen languages in active daily use and no one language that is spoken at home—or even fluently understood—by a majority of the population.

So why, in this society, which has less diversity of culture than most others, are we so preoccupied with diversity and so inclined to conceive of it as cultural?

Let me offer a name—not an explanation, just a piece of terminology for our much-vaunted diversity: let me say that we are creatures of diverse social identities. The cozy truism that we are a diverse society reflects the fact that many people now insist that they are profoundly shaped by the groups to which they belong, that their social identity—their membership in these groups—is central to who they are. Moreover, they go on to pursue what the Canadian philosopher Charles Taylor calls a “politics of recognition”: they ask the rest of us to acknowledge publicly their “authentic” identities.⁴

The identities that demand recognition are extremely multifarious. Some groups have the names of the earlier ethnic cultures: Italian, Jewish, Polish. Some correspond to the old races—black, Asian, Indian; or to religions—Baptist, Catholic, Jewish. Some are basically regional—Southern, Western, Puerto Rican. Yet others are new groups modeled on the old ethnicities—Hispanic, Asian-American—or are social categories—woman, gay, bisexual, disabled, deaf—that are none of these.

Nowadays, we are not the slightest bit surprised when someone remarks upon a feature of the “culture” of groups like these. Gay culture, Deaf culture, Chicano culture, Jewish culture: see how these phrases trip off the tongue. But if you ask what distinctively marks off gay people or deaf people or Jews from others, it is not obviously the fact that to each identity there corresponds a distinct culture. “Hispanic” sounds like the name of a cultural group defined by sharing the cultural trait of speaking Spanish; but half the second-generation Hispanics in California don't speak Spanish fluently and in the next generation the proportion will fall even further. “Hispanic” is, of course, a category that's as made-in-the-USA as “black” and “white,” a product of immigration, an artifact of the US Census. Whatever “culture” Guatemalan peasants and Cuban

professionals have in common, the loss of Spanish confirms that “Hispanic,” as a category, is thinning out culturally in the way that “white” ethnicity has already done.

You may wonder, in fact, whether there isn’t a connection between the thinning of the cultural content of identities and the rising stridency of their claims. Those European immigrants who lived in their rich ethnic cultures were busy demanding the linguistic Americanization of their children, making sure they learned America’s official culture. One suspects that they didn’t need to insist on the public recognition of their culture, because—whether or not they were happy with it—they simply took it for granted. Their middle-class descendants, whose domestic lives are conducted in English and extend eclectically from *Seinfeld* to Chinese takeout, are discomfited by a sense that their identities are shallow by comparison with those of their grandparents; and some of them fear that unless the rest of us acknowledge the importance of their difference, there soon won’t be anything worth acknowledging.

Something similar has happened with African-Americans. When there were still legal barriers to full citizenship, before the judicial decisions from *Brown* to *Loving* and the civil rights legislation of the Sixties, the public recognition of a unique black culture was not exactly the most important item on blacks’ political agenda. Black people wanted recognition by state and society of what they had in common with white people: their humanity and those famous “inalienable rights.” In part as a result of these legal changes, middle-class African-Americans, who have always been quite close in language and religion to white Protestants, are now in many cultural and economic respects even closer. And just at this moment, many of them have been attracted to an Afrocentrism that demands the recognition in public life of the cultural distinctness of African-Americans.

I am not denying—who could?—that there are significant differences between the average experiences of blacks and whites in the United States. We all know of the concentration of the poorest blacks in inner cities with terrible schools and no jobs; the persistence of discrimination in housing, employment, and the legal system; the tendency of whites to flee neighborhoods whose black populations rise beyond a “tipping point.” Many poor urban blacks (like many poor rural whites) are doing badly in an economy that is supposed to be doing well. All this should go without saying. But the fact is that the black middle class is also larger and doing better than it ever has; and it is largely people from that class, not the poor, who have led the fight for the recognition of a

distinctive African-American cultural heritage, at a moment when cultural differences are diminishing.

The contemporary appeal of cultural “roots” in a nation of immigrants is not hard to understand. When as a child you gathered around the table at Passover or Easter with three or four generations of your family, and the smell of the traditional herbs wafted out of the kitchen; when you answered the priest or the rebbe in the old tongue; when you read your Torah portion or took your first communion, you may also at the same time have felt irritation with your cousin, envy of your sister, love for your grandmother, pride in the respect of your parents. The lives of immigrants were often centered on the struggle against poverty. But their emotional satisfactions were substantial, and they were shared with the same small cast of characters; those who experienced them knew they were surrounded by others who ate and worshipped in other ways. Because of this, these family memories, which inevitably shape our senses of who we are, were tied not just to families but to the ethnic labels that differentiated “us” from “them.”

For many middle-class Americans, families have changed: grandparents have moved into retirement communities, cousins no longer live down the street, parents have separated. In sum, many of the social preconditions of that extended intergenerational family life have gone, and, for many Americans, the will to live that way has gone too. Given the connection between the old family life and the old cultural identities, it is not surprising that the loss of the former has produced a nostalgia for the latter.

2.

So much needs to be said to prepare us to think about how we should respond to diversity, both through our educational system—which is the subject of Nathan Glazer’s book—and through our politics—which is the focus of Michael Walzer’s. For, as we shall see, distinguishing diversity of identity from cultural diversity clarifies the questions raised in these two important books.

Mr. Glazer begins with a straightforward account of how, in a few short years, teachers in public elementary, middle, and secondary schools have come to take for granted something called “multicultural education.” As he tells us, this development is essentially a product of the late 1980s;⁵ and given its novelty, we might expect him to offer a definition of the neologism “multicultural.”

That word is now used, after all, to cover an extraordinary range of educational practices, from the anodyne insistence that American students should be taught something of the history of all the world's continents to the kooky suggestion that they should learn that the Africans who built the pyramids did so by telekinesis. But because the word has become a term of ritual abuse for some conservatives and a banner for many on the left, there is not much hope of agreement on its core meaning. Instead, Mr. Glazer suggests helpfully that what multiculturalism's enthusiasts share is an approach to education and to public culture that seeks to sustain hitherto derogated identities. Mr. Glazer rightly sees that the "primary demand of multiculturalism is respect, and this respect is to strengthen tolerance and good relations among the individuals in the various groups whose character and achievements are to be displayed...."

We Are All Multiculturalists Now explores in detail some of the disputes that have arisen as multiculturalism has spread. It offers an insider's account of the debate over New York State's attempts at curriculum reform in the early Nineties, a process in which Mr. Glazer was intimately involved. It includes a reasonable discussion of what the guiding principles of curriculum reform should be, and it reflects temperately on the debate about national history standards.

So, for example, he points out that "teach the truth" is not much help as a maxim in curricular disputes because it is the slogan of all sides.

Truth is a more difficult ground for the social studies today than it once was. In academic field after field, truths are constantly challenged.... Furthermore, no one really insists that truth is the only criterion for judgment on curriculum in the social studies. We have, after all, other key objectives: objectives related to citizenship, the creation of national unity, the discouragement of group antagonism.

So much should be uncontroversial; but it has been often enough ignored to be worth restating with all of Mr. Glazer's accumulated authority.

Similarly, though I think Mr. Glazer underrates the significance of Nubia and Kush as sites of cultural innovation and creativity, he is surely correct to see the pride of place they now have in the National History Standards as a reflection, in part, of the political urge to get Africa "into the story." But he is right, too, to point out that this is not the only explanation for the large amount of unfamiliar material in the World History Standards. For "historical

specialists...understandably want students to know more about areas of the world they consider important and that have been neglected.” In insisting that there is not always some dark multicultural conspiracy at work, he maintains a balance that one has grown not to expect in our multi-culture wars.

There is, beneath the author’s apparent acquiescence in the rush toward multiculturalism, an underlying rue. Indeed, from time to time this rueful tone becomes the theme: “I hope my own sense of regret that we have had to come to this will not escape the reader,” he says in the first chapter. Mr. Glazer’s deep ambivalence flows from his conviction that the source of multiculturalism in education is the rejection of an assimilationist ideal; a renunciation that itself flows from America’s failure to accept its black citizens on equal terms. There has been a “fundamental refusal of other Americans to accept blacks, despite their eagerness, as suitable candidates for assimilation,” Glazer writes. “One result of this refusal has been to undermine assimilation as an ideal for all Americans.”

Glazer here admits that he was profoundly mistaken when he argued more than twenty years ago that, as a result of “the powerful antidiscrimination legislation of 1964 and 1965,” blacks, like other American minorities, would soon become more integrated residentially, and therefore educationally and, finally, socially, as the barriers to inclusion were lifted.⁶ Since this did not happen—Glazer revisits the extensive evidence on so-called de facto segregation in Douglas Massey and Nancy Denton’s *American Apartheid*—we might expect him to urge more active government-led attempts at drawing Americans together across the racial divide.⁷ But he is skeptical that government intervention can work here, because the “forces that will produce the changes we are looking for are individual and voluntaristic, rather than governmental and authoritative.” All that is left, if government intervention in housing and the economy is not going to work, is education: and, in education, multiculturalism is the only game in town.

Nathan Glazer’s account of multiculturalism’s roots is ingenious, but there are, as I’ve suggested, other sources of multiculturalism that have been equally difficult for many people to acknowledge. In particular, the fading of cultural difference creates a politics of nostalgia. The new talk of “identity” offers the promise of forms of recognition and of solidarity that could make up for the loss of the rich, old kitchen comforts of ethnicity.

W

Whether or not Mr. Glazer is right about the centrality of the connection between multiculturalism and the persistent black-white racial divide, I think that by accepting the conflation of culture and identity he concedes more to the multiculturalists than he needs to. He is thus obliged to say that because blacks are culturally distinct from other Americans, we can teach respect for them by a respectful teaching of “their” culture.

Yet surely we don’t have to teach black literature to show African-American students that we respect them or to teach non-black students a proper respect for their African-American peers.⁸ For that purpose *The Tempest*, imaginatively taught, can do just as well as, if not better than, *The Color Purple* (and a good deal better than *The Color Purple* taught in the wrong way). More than a century ago, W.E.B. Du Bois learned Shakespeare in a Massachusetts school-room where black and white children sat together, and he drew the right conclusion: “I sit with Shakespeare,” the Bard of Great Barrington wrote, “and he winces not.”² The “primary demand of multiculturalism”—to teach children mutual tolerance and respect—does not mean, as many contemporary advocates of multiculturalism assume, that the curriculum must be radically changed by the addition of a large number of new subjects.

Nevertheless, contemporary multiculturalists are right in thinking that a decent education will teach children about the various social identities around them. First, because each child has to negotiate the creation of his or her own individual identity, using these collective identities as one (but only one) of the resources; second, so that all can be prepared to deal with one another respectfully in a common civic life. Much of current multicultural education seems to me to have these reasonable aims: let us call this weak version “liberal multiculturalism.”

But there is another side of multiculturalism that wants to force children to live within separate spheres defined by the common culture of their race, religion, or ethnicity. We might as well call this more resolute position “illiberal multiculturalism.” Because both these projects—one of opening young people to the variety of social identities in the world, the other of closing them off into identities already ascribed to them—have been defended in the name of multiculturalism, we need to distinguish them. Once they are distinguished, we can claim the good one, and repudiate the bad one, and declare a victory for multiculturalism.

M

Michael Walzer's approach to the management of social diversity, in his elegant little book *On Toleration*, uses terms that are much less familiar than those of Glazer's book, simply because, unlike Glazer, he does not take much notice of "official" multiculturalism. "My subject is toleration—or, perhaps better, the peaceful coexistence of groups of people with different histories, cultures, and identities, which is what toleration makes possible," he writes. But where Mr. Glazer (despite his talk of culture) is concerned with contemporary American identity politics, Mr. Walzer (despite this reference to identity) really is preoccupied with problems that arise from the coexistence of communities with distinct beliefs, values, or practices; problems, in short, of cultural diversity.

Mr. Walzer asks us to think about problems of coexistence comparatively, exploring how five different "regimes of toleration" have operated. His models range widely: there is the largely obsolete multinational empire, like the British Raj or the Ottoman Empire; the relative anarchy of international society; the consociational structure adopted with greatest success by the Swiss; and the nation-state, like France, where everybody but the dominant group is treated as a minority. But his final case is what he calls the immigrant society; it is, so to speak, the nation-state without the majority. And it is, of course, a model for our situation in the United States.

[T]he members of the different groups have left their territorial base, their homeland, behind them; they have come individually or in families, one by one, to a new land and then dispersed across it.... They cluster for comfort only in relatively small numbers, always intermixed with other, similar groups in cities, states, and regions. Hence no sort of territorial autonomy is possible.¹⁰

In the nation-state, such as France, the only publicly celebrated identity is that of the dominant culture: tolerance and full civil rights may be extended to minority groups but the national history is the history of the majority. In the immigrant society, by contrast, there is no group whose culture is the official culture, whose language has special pride of place. Even when the Irish controlled Boston's City Hall, they didn't try to force Irish history on the public schools or impose Catholicism on the Brahmins. The only nation that might have had a claim to be our official ancestor is England; and more English history has, indeed, been taught in the United States than that of any other nation. But it has been made explicit, at least throughout this century, that this is because the United States inherits British legal and political institutions, not because the majority of the population is "really" English. The reason we

speak English here isn't that our public culture is a celebration of the persistence of Englishness; indeed, part of the standard revolutionary narrative is that "we" kicked the English out.

Naturally, there must be some sort of official culture. Government has to go on in a small number of languages and is most easily conducted in one. For people to identify with the nation, they need some kind of public history, some national meanings, what Rousseau called a "civil religion." If the diverse groups in the immigrant society are to get along, if there is to be the civil peace whose achievement is the purpose of toleration, it is, as Walzer says, "a legitimate form of... education to tell stories about the history of diversity and to celebrate its great occasions."

Walzer's discussion of these models is, like his remark about education and civil religion which I have just quoted, both sensible and humane. Consider, for example, what he has to say about the American liberal tradition, which constitutes the political core of our official culture.

Liberalism is also a substantive political culture that has its origins, at least, in Protestant and English history. The recognition that American schools in fact reflect this history, and can hardly be neutral with regard to it, has led some non-Protestant and non-English groups to call for a multicultural education—which presumably requires not the subtraction of the liberal story from the curriculum but the addition of other stories.

It is commonly and rightly said that the point of multiculturalism is to teach children about each other's culture, to bring the pluralism of the immigrant society into its classrooms.... Multiculturalism aims to recognize [children] as the hyphenated Americans they are and to lead them to understand and admire their own diversity. There is no reason to think that this understanding or admiration stands in any tension with the requirements of liberal citizenship....

This is the liberal multiculturalism I identified earlier; and Walzer goes on immediately to identify what I called illiberal multiculturalism, which sets out to force on each child its "proper" identity.

About this illiberal education, which aims to capture a child for a particular identity, Walzer's position is more permissive than Mr. Glazer's or my own. He argues that the success of the Catholic parochial schools suggests we can allow some children an education that propagates a particular religious identity

so long as most are in classrooms whose ethos is more consistent with the official impartiality among identities of the immigrant society. He even entertains (extremely skeptically) the possibility that we might be able to sustain our liberal society if all children got “their ‘own’ version” of a Catholic parochial (or Afrocentric) education, so long as life outside the school—“the everyday experience of mass communication, work, and political activity”—provided the necessary basis of mutual knowledge and respect.

Mr. Walzer’s concern with cultural difference as a source of conflict leads him to explore divisions over religion, over language, over “family arrangements, gender roles, and sexual behavior.” In such cases the way conflict arises is clear enough: differences over what God wills, over whose language will be spoken in government offices, over whether girls should be subjected to genital mutilation, are of enough practical or symbolic significance that it is natural that those who disagree about them should contend with one another. But in the case of some of the most dreadful intergroup conflicts of recent times—in Bosnia, for example, or in Rwanda and Burundi—there is reason to doubt it was cultural differences that led to the slaughter. To an outsider, few groups in the world looked as culturally homogeneous as the various peoples—Serb, Croat, Muslim—of Bosnia. (The resurgence of Islam in Bosnia is a result of the conflict, not a cause of it.) Hutus and Tutsis speak the same language, have long lived side by side, and (racial ideology notwithstanding) it is often extremely hard, even for Hutus and Tutsis, to tell them apart. Different identities can appear to require at least as much toleration as different cultures.

Indeed, much of the home-grown social friction that preoccupies our press and television is generated among educated middle-class people in colleges and in the professional workplace, people who are, as I have suggested, by all objective standards culturally quite similar. I am thinking of the sort of edginess which shows up in college classrooms when the white kid from Shaker Heights says blandly, “I don’t know why we can’t just all be human,” and the colored kid from Andover snaps back, “That just means you want us all to be white.” It is an edginess that attends our most engaged identities: in relations between men and women. It is the same edginess that recurs in the workplaces of the professional classes, described in such books as Ellis Cose’s *The Rage of a Privileged Class* and Jill Nelson’s *Volunteer Slavery*.¹¹

This edginess is surely a sign of our struggle to live up to the dream of the immigrant society, which is that people of many kinds should share the public sphere on equal terms. We are naturally impatient for harmony, but we should recall that this process has only recently begun. Even for Jews, Mr. Glazer's model assimilated ethnic group, equal participation in the life of elite universities was largely a development of the early Sixties. Only since the late Sixties have we tried seriously to make both the workplace and the university equally hospitable to non-white and to white people. Real attempts at gender equality in the public sphere began at about the same time, and claims of equal respect for different sexual preferences are, in many places, still highly contested. Before all this, we have to remember that—in the lifetimes of most American adults—blacks were largely invisible and unwelcome in the Ivy League; women were rare and patronized in the professions; and the homosexual was everywhere a figure of ridicule or contempt.

The university—the spawning ground for so much of our rhetoric about diversity—has always been an intimidating place. When most young Americans go to college they leave home for the first time, nervously testing their minds and their educations against people who have done as well as they did at high school; deciding what they are going to “do with their lives”; beginning to deal with adult sexual relationships. When universities were more officially homogeneous, some of the inevitable anxieties could be met by conforming to the norm. It was easier to share the Ivy League with people who thought the ideal American was a white guy in a tweed jacket with a wife and kids at home; especially if you were a white guy in a tweed jacket looking for a wife. When women and blacks arrived and, a little later, when gays “came out,” new terms had to be negotiated.

Well-intentioned attempts to make the university a place that everyone can feel they belong has led to a tendency, in students and their teachers, to ascribe too many of the inevitable anxieties of college to problems of race and gender and sexuality. I suspect this is true of the tensions of the professional world as well.

But if we explore these moments of tension we discover an interesting paradox. The growing salience of race and gender as social irritants, which may seem to reflect the call of collective identities, is a reflection, as much as anything else, of the individual's concern for dignity and respect. As our society slouches on toward a fuller realization of its ideal of social equality, everyone wants to be taken seriously—to be respected, not “dissed.” Because on many occasions

disrespect still flows from racism, sexism, and homophobia, we respond, in the name of all black people, all women, all gays, as the case may be, taking the high road of Kantian principle. But the truth is that what mostly irritates us in these moments is that we, as individuals, feel diminished.

And the trouble with appeal to cultural difference is that it obscures rather than illuminates this situation. It is not black culture that the racist disdains, but blacks. There is no conflict of visions between black and white cultures that is the source of racial discord. No amount of knowledge of the architectural achievements of Nubia or Kush guarantees respect for African-Americans. No African-American is entitled to greater concern because he is descended from a people who created jazz or produced Toni Morrison. Culture is not the problem, and it is not the solution.

So maybe we should conduct our discussions of education and citizenship, toleration and social peace, without the talk of cultures. Long ago, in the mists of prehistory, our ancestors learned it is sometimes good to let a field lie fallow.

Letters

'The Multiculturalist Misunderstanding' March 5, 1998

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- 1 Mary Waters, *Ethnic Options: Choosing Identities in America* (University of California Press, 1990). ↵
 - 2 Geoffrey Nunberg, "Lingo Jingo: English Only and the new nativism," *The American Prospect*, July-August 1997, No. 33, pp. 40-47. Quote from p. 42. ↵
 - 3 Nunberg, "Lingo Jingo," p. 43. ↵
 - 4 Charles Taylor, *Multiculturalism and "The Politics of Recognition"* (Princeton University Press, 1992). ↵
 - 5 "The Nexis data base of major newspapers shows no reference to multiculturalism as late as 1988, a mere 33 items in 1989, and only after that a rapid rise—more than 100 items in 1990, more than 600 in 1991, almost 900 in 1992, 1200 in 1993, and 1500 in 1994." (Glazer, p. 7.) It seems that when it comes to diversity, we all march to the beat of single drummer. ↵
 - 6 Nathan Glazer, *Affirmative Discrimination: Ethnic Inequality and Public Policy* (Basic Books, 1975). ↵
 - 7 Douglas S. Massey and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (Harvard University Press, 1993). ↵
 - 8 I am, of course, in favor of teaching some African history to all American children, but not for this reason. African history is interesting, shows aspects of human potential that are not equally visible in the history of other places, and is an important background to understanding such processes as the slave trade, which are of enormous importance for American history. ↵

From Roger Kimball,
The Fortunes of Permanence: Culture
and Anarchy in an Age of Amnesia

Institutionalizing Our Demise:

America vs. Multiculturalism
(South Bend, Indiana: St. Augustines Press
2012),

*Here individuals of all nations are melted into a new race
of men, whose labours and posterity will one day cause
great changes in the world.*

—J. H. St. John de Crèvecoeur, *Letters from an American Farmer*,
1782

*The one absolutely certain way of bringing this nation
to ruin . . . would be to permit it to become a tangle of
squabbling nationalities.*

—Theodore Roosevelt, *Autobiography*, 1913

A FEW YEARS AGO, on a trip to Maryland, I stopped at
Baltimore Harbor with my wife and five-year-old son
to see Fort McHenry, the site, in September 1814, of the
Battle of Baltimore, a decisive episode in the War of 1812.
It was a glorious spring day: the sky was an infinite azure
punctuated by a flotilla of stately white clouds.

Our first stop was a modern outbuilding adjacent to the
eighteenth-century fort. We crowded into a small theater
with about thirty fourth-graders and their teachers to watch
a short film. Among other things, we learned about the ori-
gins of the war, about how the British took and burned
Washington, about how at last a thousand U.S. troops under

George Armistead at Fort McHenry successfully defended
their bastion against the British naval onslaught, saving Bal-
timore and turning the tide of the war.

It was (as the Duke of Wellington said of Waterloo) “a
damn nice thing—the nearest run thing you ever saw.” The
British ships, anchored out of range of Armistead’s cannons,
pounded the fort with mortar and Congreve rocket fire over
the course of twenty-five hours. Sitting on a truce ship be-
hind the British fleet was a young American lawyer and
amateur poet named Francis Scott Key. He watched as the
battle raged, dappling the night sky with noisy coruscations.

Sometime before sunrise, the bombardment suddenly
stopped. Key was uncertain of the battle’s outcome until dawn
broke and he saw the American flag fluttering boldly above
Fort McHenry. (When he had taken command, Armistead
asked for an extra large flag so that “the British would have
no trouble seeing it from a distance.”) There would be no sur-
render. The Brits abandoned their plans to invade Baltimore.
The war would soon be over. As soon as he caught sight of
Old Glory, Francis Scott Key began scribbling what would
become “The Star-Spangled Banner” on the back of a letter.
He finished it in a hotel in Baltimore a day or two later. The
poem was an instant hit and was soon set to “The Anacre-
ontic Song,” an eighteenth-century English drinking tune. It
became the official national anthem in 1931.

The film ended and strains of the song began floating out
from the loudspeakers—softly at first, then louder and loud-
er. Everyone in the room scrambled to his feet.

O say, does that star-spangled banner yet wave
O’er the land of the free and the home of the brave?

The schoolchildren stood reverently, each with his right
hand over his heart. A floor-length curtain wheeled back,

flooding the room with light. There was Fort McHenry. And there, rising above it, was the American flag, waving gently in the breeze. With the possible exception of our son, who was busy attacking The Enemy with his toy F14, there wasn't a dry eye in the house.

Of course, that calculated piece of theater was in part an exercise in sentimentality. Is that a bad thing? Wallace Stevens may have been right that, in general, "sentimentality is a failure of feeling"—a sign of counterfeit emotion rather than the real thing. Nevertheless, there is a place for a bit of affirmative sentimentality in the moral economy of our society. Among other things, it provides emotional glue for our shared identity as Americans. These days, perhaps more than ever before, that identity needs glue. As we contemplate the prospects for America and its institutions in the twenty-first century, it is not only particular cultural and social institutions that deserve scrutiny. What we might call the institution of American identity—of who we are as a people—also requires our attention.

It is often said that the terrorist attacks of September 11 precipitated a new resolve throughout the nation. There is some truth to that. Certainly, the extraordinary bravery of the firefighters and other rescue personnel in New York and Washington, D.C., provided an invigorating spectacle—as did Todd "Let's roll" Beamer and his fellow passengers on United Airlines Flight 93. Having learned from their cell phones what had happened at the World Trade Center and the Pentagon, they rushed and overpowered the terrorists who had hijacked their plane. As a result, the plane crashed on a remote Pennsylvania farm instead of on Pennsylvania Avenue. Who knows how many lives their sacrifice saved?

The widespread sense of condign outrage—of horror leavened by anger and elevated by resolve—testified to a renewed sense of national purpose and identity after 9/11.

Attacked, many Americans suddenly (if temporarily) rediscovered the virtue of patriotism. At the beginning of his remarkable book *Who Are We? The Challenges to America's National Identity*, the late Samuel Huntington tells about a certain block on Charles Street in Boston. At one time, American flags flew in front of a U.S. Post Office and a liquor store. At some point, the Post Office stopped displaying the flag, so on September 11, 2001, the flag flew only in front of the liquor store. Within two weeks, seventeen American flags decorated that block of Charles Street, in addition to a huge flag suspended over the street close by. "With their country under attack," Huntington notes, "Charles Street denizens rediscovered their nation and identified themselves with it."

Was that rediscovery anything more than a momentary passion? Huntington reports that within a few months, the flags on Charles Street began to disappear. By the time the first anniversary rolled around in September 2002, only four were left flying. True, that is four times more than were there on September 10, 2001, but it is less than a quarter of the number that populated Charles Street at the end of September 2001.

There are similar anecdotes from around the country—an access of flag-waving followed by a relapse into indifference. Does it mean that the sudden upsurge of patriotism in the weeks following 9/11 was only, as it were, skin deep? Or perhaps it merely testifies to the fact that a sense of permanent emergency is difficult to maintain, especially in the absence of fresh attacks. Is our sense of ourselves as Americans patent only when challenged? "Does it," Huntington asks, "take an Osama bin Laden . . . to make us realize that we are Americans? If we do not experience recurring destructive attacks, will we return to the fragmentation and eroded Americanism before September 11?"

One hopes that the answer is No. I am writing around the tenth anniversary of 9/11. The behavior of those schoolchildren at Fort McHenry—behavior that was, I am happy to report, quietly encouraged by their teachers—suggests that the answer cannot simply be No. But I fear that for every schoolchild standing at attention for the National Anthem, there is a teacher or lawyer or judge or politician or ACLU employee militating against the hegemony of the dominant culture, the insupportable intrusion of white, Christian, “Eurocentric” values into the curriculum, the school pageant, the town green, etc., etc. The demonstration of national character and resolve following September 11 was extraordinary. It did not, however, purchase immunity from the virus of cultural dissolution. The usually perceptive commentator Max Boot, writing about the issue of gay marriage, remarked in passing that “no one who saw the response to 9/11 can think we are soft or decadent” or that “America is in cultural decline.” Alas, the display of national heroism and resolve following 9/11 has had little if any effect on the forces behind the fragmentation and “eroded Americanism” to which Huntington refers.

Those forces are not isolated phenomena; they are not even confined to America. They are part of a global crisis in national identity, coefficients of the sudden collapse of self-confidence in the West—a collapse that shows itself in everything from swiftly falling birthrates in “old Europe” to the attack on the whole idea of the sovereign nation state. It is hard to avoid thinking that a people that has lost the will to reproduce or govern itself is a people on the road to destruction.

ONLY A FEW YEARS AGO we were invited to contemplate the pleasant spectacle of the “end of history” and the establishment of Western-style liberal democracy the world over.

Things look rather different now as a variety of centrifugal forces threatens to undermine the sources of national identity and, with it, the sources of national strength and the security which that strength underwrites.

The threat shows itself in many ways, from culpable complicity to the corrosive imperatives of “multiculturalism” and political correctness. (I use scare quotes because what generally travels under the name of “multiculturalism” is really a form of mono-cultural animus directed against the dominant culture.) In essence, as Huntington notes, multiculturalism is “anti-European civilization. . . . It is basically an anti-Western ideology.” The multiculturalists claim to be fostering a progressive cultural cosmopolitanism distinguished by superior sensitivity to the downtrodden and dispossessed. In fact, they encourage an orgy of self-flagellating liberal guilt as impotent as it is insatiable. The “sensitivity” of the multiculturalist is an index not of moral refinement but of moral vacuousness. As the French essayist Pascal Bruckner observed, “An overblown conscience is an empty conscience.”

Compassion ceases if there is nothing but compassion, and revulsion turns to insensitivity. Our “soft pity,” as Stefan

Zweig calls it, is stimulated, because guilt is a convenient substitute for action where action is impossible. Without the power to do anything, sensitivity becomes our main aim, the aim is not so much to do anything, as to be judged. Salvation lies in the verdict that declares us to be wrong.

Multiculturalism is a moral intoxicant; its thrill centers around the emotion of superior virtue; its hangover subsists on a diet of nescience and blighted “good intentions.”

Wherever the imperatives of multiculturalism have touched the curriculum, they have left broad swaths of anti-Western attitudinizing competing for attention with quite astonishing

historical blindness. Courses on minorities, women's issues, and the Third World proliferate; the teaching of mainstream history slides into oblivion.

"The mood," Arthur Schlesinger wrote in *The Disuniting of America* (1992), his excellent book on the depredations of multiculturalism, "is one of divesting Americans of the sinful European inheritance and seeking redemptive infusions from non-Western cultures."

A profound ignorance of the milestones of American culture is the predictable result of this mood. The statistics have become proverbial. Huntington quotes one poll from the 1990s showing that while 90 percent of Ivy League students could identify Rosa Parks, only 25 percent could identify the author of the words "government of the people, by the people, for the people." (Yes, it's the Gettysburg Address.) In a 1999 survey, 40 percent of seniors at fifty-five top colleges could not say within half a century when the Civil War was fought. Another study found that more high school students knew who Harriet Tubman was than knew that Washington commanded the American army in the Revolution or that Abraham Lincoln wrote the Emancipation Proclamation. Doubtless you have your own favorite horror story.

But multiculturalism is not only an academic phenomenon. The attitudes it fosters have profound social as well as intellectual consequences. One consequence has been a sharp rise in the phenomenon of immigration without—or with only partial—assimilation: a dangerous demographic trend that threatens American identity in the most basic way.

These various agents of dissolution are also elements in a wider culture war: the contest to define how we live and what counts as the good in the good life. Anti-Americanism occupies such a prominent place on the agenda of the culture wars precisely because the traditional values of American identity—articulated by the Founders and grounded in

a commitment to individual liberty and public virtue—are deeply at odds with the radical, de-civilizing tenets of the "multiculturalist" enterprise.

To get a sense of what has happened to the institution of American identity, compare Robert Frost's performance at John F. Kennedy's inauguration in 1961 with Maya Angelou's performance thirty-two years later. As Huntington reminds us, Frost spoke of the "heroic deeds" of America's founding, an event, he said, that with God's "approval" ushered in "a new order of the ages." By contrast, Maya Angelou never mentioned the words "America" or "American." Instead, she identified twenty-seven ethnic or religious groups that had suffered repression because of America's "armed struggles for profit," "cynicism," and "brutishness."

Repellent though Maya Angelou's performance was, it did seem the appropriate rhetorical embroidery to welcome Bill Clinton, a president infatuated with the blandishments of multiculturalism and who sought a third "great revolution" to emancipate America from the legacy of European civilization and its Anglo-Protestant values. It has to be acknowledged that considerable progress toward that goal was made during his administration. And further progress has been made by Barack Obama, who pointedly downgraded claims to American exceptionalism—if America is exceptional, he said, it is merely in the same way that Greece or Britain, say, is exceptional—even as he presided over the downgrading of the country's credit rating.

A favorite weapon in the armory of multiculturalism is the lowly hyphen. When we speak of an African-American or Mexican-American or Asian-American these days, the aim is not descriptive but deconstructive. There is a polemical edge to it, a provocation. The hyphen does not mean "American, but hailing at some point in the past from someplace else." It means "only provisionally American: my allegiance is

divided at best." (I believe something similar can be said about the feminist fad for hyphenating the bride's maiden name with her husband's surname. It is a gesture of independence that is also a declaration of divided loyalty.) It is curious to what extent the passion for hyphenation is fostered more by the liberal elite than the populations it is supposedly meant to serve. How does it serve them? Presumably by enhancing their sense of "self-esteem." Frederick Douglass saw through this charade some one hundred and fifty years ago. "No one idea," he wrote, "has given rise to more oppression and persecution toward colored people of this country than that which makes Africa, not America, their home."

The indispensable Ward Connerly would agree. Connerly has campaigned vigorously against affirmative action across the country. This of course has made him a pariah among the politically correct elite. It has also resulted in some humorous exchanges, such as this telephone interview with a reporter from *The New York Times* in 1997.

REPORTER: What are you?

CONNERLY: I am an American.

REPORTER: No, no, no! What are you?

CONNERLY: Yes, yes, yes! I am an American.

REPORTER: That is not what I mean. I was told that you are African American. Are you ashamed to be African American?

CONNERLY: No, I am just proud to be an American.

Connerly went on to explain that his ancestry included Africans, French, Irish, and American Indians. It was too much for the poor reporter from our Paper of Record: "What does that make you?" he asked in uncomprehending exasperation. I suspect he was not edified by Connerly's cheerful response: "That makes me all-American."

The multicultural passion for hyphenation is not simply a fondness for syntactical novelty. It also bespeaks a commitment to the centrifugal force of anti-American tribalism. The division marked by the hyphen in African-American (say) denotes a political stand. It goes hand-in-hand with other items on the index of liberal desiderata—the redistributive impulse behind efforts at "affirmative action," for example. Affirmative action was undertaken in the name of equality. But, as always seems to happen, it soon fell prey to the Orwellian logic from which the principle that "All animals are equal" gives birth to the transformative codicil: "but some animals are more equal than others."

Affirmative action is Orwellian in a linguistic sense, too, since what announces itself as an initiative to promote equality winds up enforcing discrimination precisely on the grounds that it was meant to overcome. Thus we are treated to the delicious, if alarming, contradiction of college applications that declare their commitment to evaluate candidates "without regard to race, gender, religion, ethnicity, or national origin" on page 1 and then helpfully inform you on page 2 that it is to your advantage to mention if you belong to any of the following designated victim groups. Among other things, a commitment to multiculturalism seems to dull one's sense of contradiction.

The whole history of affirmative action is instinct with that irony. The original effort to redress legitimate grievances—grievances embodied, for instance, in the discriminatory practices of Jim Crow—have mutated into new forms of discrimination. In 1940, Franklin Roosevelt established the Fair Employment Practices Committee because blacks were openly barred from war factory jobs.

But what began as a Presidential Executive Order in 1961 directing government contractors to take "affirmative action" to assure that people be hired "without regard" for

sex, race, creed, color, etc., has resulted in the creation of vast bureaucracies dedicated to discovering, hiring, and advancing people chiefly on the basis of those qualities. White is black, freedom is slavery, "without regard" comes to mean "with regard for nothing else."

Had he lived to see the evolution of affirmative action, Tocqueville would have put such developments down as examples of how in democratic societies the passion for equality tends to trump the passion for liberty. The fact that the effort to enforce equality often results in egregious inequalities he would have understood to be part of the "tutelary despotism" that "extends its arms over society as a whole; it covers its surface with a network of small, complicated, painstaking, uniform rules through which the most original minds and the most vigorous souls cannot clear a way to surpass the crowd."

MULTICULTURALISM and "affirmative action" are allies in the assault on the institution of American identity. As such, they oppose the traditional understanding of what it means to be an American—an understanding hinted at in 1782 by the French-born American farmer J. Hector St. John de Crèvecoeur in his famous image of America as a country in which "individuals of all nations are melted into a new race of men." This crucible of American identity, this "melting pot," has two aspects. The negative aspect involves dissociating oneself from the cultural imperatives of one's country of origin. One sheds a previous identity before assuming a new one. One might preserve certain local habits and tastes, but they are essentially window-dressing. In essence one has left the past behind in order to become an American citizen.

The positive aspect of advancing the melting pot involves embracing the substance of American culture. The 1795 code for citizenship lays out some of the formal requirements.

I do solemnly swear (1) to support the Constitution of the United States; (2) to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the applicant was before a subject or citizen; (3) to support and defend the Constitution and the laws of the United States against all enemies, foreign and domestic; (4) to bear true faith and allegiance to the same; and (5) (A) to bear arms on behalf of the United States when required by law, or (B) to perform noncombatant service in the Armed Forces of the United States when required by law . . .

For over two hundred years, this oath had been required of those wishing to become citizens. In 2003, Huntington tells us, federal bureaucrats launched a campaign to rewrite and weaken it.

I shall say more about what constitutes the substance of American identity in a moment. For now, I want to underscore the fact that this project of Americanization has been an abiding concern since the time of the Founders. "We must see our people more Americanized," John Jay declared in the 1780s. Jefferson concurred. Teddy Roosevelt repeatedly championed the idea that American culture, the "crucible in which all the new types are melted into one," was "shaped from 1776 to 1789, and our nationality was definitely fixed in all its essentials by the men of Washington's day."

It is often said that America is a nation of immigrants. In fact, as Huntington points out, America was initially a country of *settlers*. Settlers precede immigrants and make their immigration possible. The culture of those mostly English-speaking, predominantly Anglo-Protestant settlers defined American culture. Their efforts came to fruition with the generation of Franklin, Washington, Jefferson, Hamilton, and Madison. The Founders are so denominated because

they founded, they inaugurated a state. Immigrants were those who came later, who came from elsewhere, and who became American by embracing the Anglophone culture of the original settlers. The English language, the rule of law, respect for individual rights, the industriousness and piety that flowed from the Protestant work ethic—these were central elements in the culture disseminated by the Founders. And these were among the qualities embraced by immigrants when they became Americans. "Throughout American history," Huntington notes, "people who were not white Anglo-Saxon Protestants have become Americans by adopting America's Anglo-Protestant culture and political values. This benefitted them and the country."

Justice Louis Brandeis outlined the pattern in 1919. Americanization, he said, means that the immigrant "adopts the clothes, the manners, and the customs generally prevailing here . . . substitutes for his mother tongue the English language" and comes "into complete harmony with our ideals and aspirations and cooperate[s] with us for their attainment." Until the 1960s, the Brandeis model mostly prevailed. Protestant, Catholic, and Jewish groups, understanding that assimilation was the best ticket to stability and social and economic success, eagerly aided in the task of integrating their charges into American society.

The story is very different today. In America, there is a dangerous new tide of immigration from Asia, a variety of Muslim countries, and Latin America, especially from Mexico. The tide is new not only chronologically but also in substance. First, there is the sheer matter of numbers. More than 2,200,000 legal immigrants came to the U.S. from Mexico in the 1990s alone.

The number of illegal Mexican immigrants is staggering. So is their birth rate. Altogether there are more than 8 million Mexicans in the U.S. Some parts of the Southwest are

well on their way to becoming what Victor Davis Hanson calls "Mexico," "the strange society that is emerging as the result of a demographic and cultural revolution like no other in our times." A professor at the University of New Mexico predicts that by 2080 parts of the Southwest United States and Northern Mexico will join to form a new country, "La Republica del Norte."

The problem is not only one of numbers, though. Earlier immigrants made—and were helped and goaded by the ambient culture to make—concerted efforts to assimilate. Important pockets of these new immigrants are not assimilating, not learning English, not becoming or thinking of themselves primarily as Americans. The effect of these developments on American identity is disastrous and potentially irreversible.

Such developments are abetted by the liberal political and educational elites of this country, whose dominant theme is the perfidy of traditional American values. Hence the passion for multiculturalism and the ideal of ethnic hyphenation that goes with it. This has done immense damage in schools and colleges as well as in the population at large. By removing the obligation to master English, multiculturalism condemns whole sub-populations to the status of permanent second-class citizens. By removing the obligation to adopt American values, it fosters what the German novelist Hermann Broch calls a "value vacuum," a sense of existential emptiness that breeds anomie and the pathologies of nihilism.

As if in revenge for this injustice, however, multiculturalism also weakens the social bonds of the community at large. The price of imperfect assimilation is imperfect loyalty. Take the movement for bilingualism. Whatever it intended in theory, in practice it means not mastering English. It has notoriously left its supposed beneficiaries essentially monolingual, often semi-lingual. The only "bi" involved is a passion for bifurcation, which is fed by the accumulated

resentments instilled by the anti-American multicultural or thodoxy. Every time you call directory assistance or some large corporation and are told "Press One for English" and "Para español oprime el numero dos" it is another small setback for American identity.

Meanwhile, many prominent academics and even businessmen come bearing the gospel of what John Fonte has dubbed "transnational progressivism"—an anti-patriotic stew of politically correct ideas and attitudes distinguished partly by its penchant for vague but virtuous-sounding abstractions, partly by its moral smugness. In *Sovereignty or Submission: Will Americans Rule Themselves or be Ruled by Others?* (2011), Fonte describes it as "the suicide of liberal democracy." It is a familiar litany. The philosopher Martha Nussbaum warns that "patriotic pride" is "morally dangerous" while Princeton's Amy Gutmann reveals that she finds it "repugnant" for American students to learn that they are "above all, citizens of the United States" instead of partisans of her preferred abstraction, "democratic humanism." New York University's Richard Sennett denounces "the evil of a shared national identity" and concludes that the erosion of national sovereignty is "basically a positive thing." Cecilia O'Leary of American University identifies American patriotism as a right-wing, militaristic, male, white, Anglo, and repressive force while Peter Spiro of Hofstra University says it "is increasingly difficult to use the word 'we' in the context of international affairs."

Of course, whenever the word "patriotism" comes up in left-wing circles, there is sure to be some allusion to Samuel Johnson's observation that "patriotism is the last refuge of scoundrels." Right on cue, George Lipsitz of the University of California sniffs that "in recent years refuge in patriotism has been the first resort of scoundrels of all sorts." Naturally, Dr. Johnson's explanation to Boswell that he did not mean to

disparage "a real and generous love of our country" but only that "pretended patriotism" that is a "cloak for self-interest" is left out of account.

The bottom line is that the traditional ideal of a distinctive American identity, forged out of many elements but unified around a core of beliefs, attitudes, and commitments is now up for grabs. One academic epitomized the established attitude among our liberal elites when she expressed the hope that the United States would "never again be culturally 'united,' if united means 'unified' in beliefs and practices."

Nor is this merely an academic crotchet. Many politicians—and many courts—have colluded in spreading the multicultural gospel. The nation's motto—*E pluribus unum*—was chosen by Franklin, Jefferson, and Adams to express the ideal of faction- and heritage-transcending unity. America forged one people out of many peoples. Former Vice President Al Gore interpreted the tag to mean "Out of one, many." This might have been inadvertence. It might have been simple ignorance. It might have been deliberate ideological provocation. Which is worst?

The combined effect of the multicultural enterprise has been to undermine the foundation of American national identity. Huntington speaks dramatically but not inaptly of "Deconstructing America." What he has in mind are not the linguistic tergiversations of a Jacques Derrida or Michel Foucault but the efforts—politically if not always intellectually allied efforts—to disestablish the dominant culture by fostering a variety of subversive attitudes, pieces of legislation, and judicial interventions. "The deconstructionists," Huntington writes,

promoted programs to enhance that status and influence of subnational racial, ethnic, and cultural groups. They encouraged immigrants to maintain their birth-country cultures,

granted them legal privileges denied to native-born Americans, and denounced the idea of Americanization as un-American. They pushed the rewriting of history syllabi and textbooks so as to refer to the "peoples" of the United States in place of the single people of the Constitution. They urged supplementing or substituting for national history the history of subnational groups. They downgraded the centrality of English in American life and pushed bilingual education and linguistic diversity. They advocated legal recognition of group rights and racial preferences over the individual rights central to the American Creed. They justified their actions by theories of multiculturalism and the idea that diversity rather than unity or community should be America's overriding value. The combined effect of these efforts was to promote the deconstruction of the American identity that had been gradually created over three centuries.

Taken together, Huntington concludes, "these efforts by a nation's leaders to deconstruct the nation they governed were, quite possibly, without precedent in human history."

The various movements to deconstruct American identity and replace it with a multicultural "rainbow" or supranational bureaucracy have made astonishing inroads in the last few decades and especially in the last several years. And, as Huntington reminds us, the attack on American identity has counterparts elsewhere in the West wherever the doctrine of multiculturalism has trumped the cause of national identity. The European Union—whose leaders are as dedicated to multicultural shibboleths as they are to rule by top-down, anti-democratic bureaucracy—is a case in point. But the United States, the most powerful national state, is also the most attractive target for deconstruction.

It is a curious development that Huntington traces. In many respects, it corroborates James Burnham's observa-

tion, in *Suicide of the West* (1964), that "liberalism permits Western civilization to be reconciled to dissolution." (I have more to say about Burnham below in "The Power of James Burnham.") For what we have witnessed with the triumph of multiculturalism is a kind of hypertrophy or perversion of liberalism, as its core doctrines are pursued to the point of caricature. "Freedom," "diversity," "equality," "tolerance," even "democracy"—how many definitive liberal virtues have been redacted into their opposites by the imperatives of political correctness? If "diversity" mandates bilingual education, then we must institute bilingual education, even if it results in the cultural disenfranchisement of those it was meant to benefit. The passion for equality demands "affirmative action," even though the process of affirmative action depends upon treating people unequally. The French philosopher Jean-François Revel put it well when he observed, in 1970, that "Democratic civilization is the first in history to blame itself because another power is trying to destroy it."

IF THERE IS a bright spot in the portrait that Huntington paints, it revolves around the fact that centrifugal forces of multiculturalism are espoused chiefly by the intellectual and bureaucratic elite. For many ordinary people, the developments that Huntington outlines represent a catastrophe, not progress. What prospects do ordinary people have against the combined forces of the courts, the educational establishment, the "mainstream" media, and much popular culture? It is hard to say—at least, it is hard to say anything cheerful. But Huntington does provide several rays of hope. There are many movements to "take back America," to resuscitate the core values that, traditionally, have defined us as Americans. Indeed, Huntington's book may be regarded as a manifesto on behalf of that battle. The home-schooling

movement is one example. Only a few years ago, it was a fringe phenomenon, allied almost exclusively to certain conservative evangelical sects. Today, home schoolers come from every religious and social background. In 1990-1991, 76,000 children were home-schooled. The estimate for 2011 is more than 2 million. That explosion is not only evidence of disenchantment with the intellectual failure of public schools: much more it betokens disenchantment with the moral tenor of public education.

WE STAND at a crossroads. The future of America hangs in the balance. Huntington outlines several possible courses that the country might take, from the loss of our core culture to an attempt to revive the "discarded and discredited racial and ethnic concepts" that, in part, defined pre-twentieth century America.

Huntington argues for a third alternative. If we are to preserve our identity as a nation we need to preserve the core values that defined that identity. This is a point that the political philosopher Patrick, Lord Devlin (whose work we will meet again below in Chapter 6) made in his book *The Enforcement of Morals* (1965):

[S]ociety means a community of ideas; without shared ideas on politics, morals, and ethics no society can exist. Each one of us has ideas about what is good and what is evil; they cannot be kept private from the society in which we live. If men and women try to create a society in which there is no fundamental agreement about good and evil they will fail; if having based it upon a common set of core values, they surrender those values, it will disintegrate. For society is not something that can be kept together physically; it is held by the invisible but fragile bonds of common beliefs and values. . . . A common morality is part of the bondage of a

good society, and that bondage is part of the price of society which mankind must pay.

What are those beliefs and values? They embrace several things, including religion. You wouldn't know it from watching CNN or reading *The New York Times*, but there is a huge religious revival taking place now, affecting just about every part of the globe except Western Europe, which slouches towards godlessness almost as fast as it slouches towards bankruptcy and demographic catastrophe (neither Spain nor Italy are producing enough children to replace their existing populations, while the Muslim birthrate in France continues to soar).

Things look different in America. For if America is a vigorously secular country—which it certainly is—it is also a deeply religious one. It always has been. Tocqueville was simply minuting the reality he saw around him when he noted that "On my arrival in the United States the religious aspect of the country was the first thing that struck my attention." As G. K. Chesterton put it a century after Tocqueville, America is "a nation with the soul of a church." Even today, America is a country where an astonishing 92 percent of the population says it believes in God and 80 to 85 percent of the population identifies itself as Christian. Hence Huntington's call for a return to America's core values is also a call to embrace the religious principles upon which the country was founded, "a recommitment to America as a deeply religious and primarily Christian country, encompassing several religious minorities adhering to Anglo-Protestant values, speaking English, maintaining its cultural heritage, and committed to the principles" of political liberty as articulated by the Founders.

Naturally, Huntington was sharply criticized for prescribing a return to "Anglo-Protestant values" as an antidote

for faltering American identity. For example, Michiko Kakutani, reviewing *Who Are We?* for *The New York Times*, dismissed it as a “portentous,” “crotchety,” “highly polemical book” that merely “recycl[ed] arguments from earlier thinkers” while imparting to them a “bellicose new spin.” Oh dear. Kakutani was particularly exercised by Huntington’s criticism of multiculturalism and his advocacy of Anglo-Protestant values. But she missed something important. For Huntington was careful to stress that what he offers is an “argument for the importance of Anglo-Protestant culture, not for the importance of Anglo-Protestant people”—that is, a culture and set of values that “for three and a half centuries have been embraced by Americans of all races, ethnicities, and religions and that have been the source of their liberty, unity, power, prosperity, and moral leadership.”

American identity was originally founded on four things: ethnicity, race, ideology, and culture. By the mid-twentieth century, ethnicity and race had sharply receded in importance. Indeed, one of America’s greatest achievements is having eliminated the racial and ethnic components that historically were central to its identity. Ideology—the package of Enlightened liberal values championed by the Founders—are crucial but too thin for the task of forging or preserving national identity by themselves. (“A nation defined only by political ideology,” Huntington notes, “is a fragile nation.”) Which is why Huntington, like virtually all of the Founders, explicitly grounded American identity in religion.

Opponents of religion in the public square never tire of reminding us that there is no mention of God in the Constitution. This is true. Neither is the word “virtue” mentioned. But both are presupposed. As the historian Gertrude Himmelfarb points out, virtue, grounded in religion, was presumed “to be rooted in the very nature of man and as such . . . reflected in the moeurs of the people and in the traditions and informal

institutions of society.” It is also worth pointing out that if the Constitution is silent on religion, the Declaration of Independence is voluble, speaking of “nature’s God,” the “Creator,” “the supreme judge of the world,” and “divine Providence.”

We are often told that the Founders were, almost to a man, Deists listing toward atheism. In *Washington’s God: Religion, Liberty and the Father of Our Country* (2006), Michael and Jana Novak did a great deal to disabuse us of that idea. And in *The Roads to Modernity: The British, French, and American Enlightenments* (2004), Himmelfarb showed how a distinctively American form of Enlightenment, deeply informed by the British Enlightenment and differing sharply from the anti-clerical rationalism of the French variety, nourished the Founders’ understanding of politics and what constitutes the good life for man. It was a form of Enlightenment that, Himmelfarb observes, regarded religion as an indispensable ally of reason, not an enemy. In America, Tocqueville observed, unlike in France, the “spirit of religion” and “the spirit of freedom” support rather than oppose each other. “Religion,” he wrote

sees in civil freedom a noble exercise of the faculties of man; in the political world, a field left by the Creator to the efforts of intelligence. . . . Freedom sees in religion the companion of its struggles and its triumphs, . . . the divine source of its rights. It considers religion as the safeguard of mores; and mores as the guarantee of laws.

Today, we are encouraged to interpret “freedom of religion” to mean “freedom from religion”—unless, of course, your religion is suitably exotic. (One recalls Chesterton’s observation that “Religious liberty might be supposed to mean that everybody is free to discuss religion. In practice it means that hardly anybody is allowed to mention it.”) The

ACLU is tortured by the thought of school children uttering the phrase "under God"; in June 2002, the Ninth Circuit Court of Appeals in California ruled that the phrase violated the principle of the separation of church and state. Yet until recently, Florida (among other states) allowed Muslim women to pose for a driver's license photograph with their faces veiled. The Founders would have been astounded—not to say alarmed—at this selective exclusion of religion from public life. They would have been even more astounded that it has been carried forward under the aegis of the First Amendment, perhaps the most wilfully misinterpreted text in America legal history.

Notwithstanding the ACLU and their allies, Himmelfarb is surely right that "The separation of church and state, however interpreted, did not signify the separation of church and society." Benjamin Rush, one of the signers of the Declaration of Independence, summed up the common attitude of the Founders toward religion when he insisted that "The only foundation for a useful education in a republic is to be laid in religion. Without it there can be no virtue, and without virtue there can be no liberty, and liberty is the object of all republican governments." George Washington concurred: "Reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principles."

Even Benjamin Franklin, one of the least religious of the Founders, wanted some mention of God in the Constitution and, according to Himmelfarb, proposed that the proceedings of the Constitutional Convention begin with a daily prayer. Militant secularists will quote Jefferson's brusque dismissal of religion in *Notes on the State of Virginia*: "It does me no injury for my neighbor to say there are twenty gods or no god. It neither picks my pocket nor breaks my leg." But they somehow never get around to quoting the passage that occurs a few pages later: "Can the liberties of a

nation be thought secure when we have removed their only firm basis, a conviction in the minds of people that these liberties are the gift of God?" As President, Himmelfarb notes, Jefferson was even more respectful of religion, and specifically Christianity, as the foundation of liberty and public virtue. On his way to church one Sunday, Jefferson was met by a friend.

"You going to church Mr. J. You do not believe a word in it."

"Sir [Jefferson replied], no nation has ever yet existed or been governed without religion. Nor can be. The Christian religion is the best religion that has been given to man and I as chief Magistrate of this nation am bound to give it the sanction of my example. Good morning Sir."

It is sometimes objected that, whatever lip-service the Founders gave to Christianity, their conception of religion was (the word "merely" implicitly supplied) pragmatic or utilitarian. Well, there was no doubt that the Founders thought religion was pragmatic, that is, socially useful, i.e., not merely a private affair with God. But why the implicit "merely"? As Himmelfarb argues, "this view of religion is not unworthy."

To look upon religion as the ultimate source of morality, and hence of a good society and a sound policy, is not demeaning to religion. On the contrary, it pays religion—and God—the great tribute of being essential to the welfare of mankind. And it does credit to man as well, who is deemed capable of subordinating his lower nature to his higher, of venerating and giving obeisance to something above himself.

NO NATION lasts forever. An external enemy may eventually overrun and subdue it; internal forces of dissolution

and decadence may someday undermine it, leaving it prey to more vigorous competitors. Sooner or later it succumbs. The United States is still the most powerful and productive nation the world has ever seen. Its astonishing military might, economic vitality, and political vigor are unprecedented. But someday, as Huntington reminds us, it too will fade or perish as Athens, Rome, and other great civilizations have faded or perished. Is the end, or the beginning of the end, at hand? No one's crystal ball is sufficiently clairvoyant to allow us to say. For decades—no, longer—we have been getting bulletins about the decline of the West, the rise and (especially) the fall of great powers, etc., etc.

So far, the West—or at least the United States—has disappointed its self-appointed undertakers. How do we stand now, near the beginning of the twenty-first century? It is worth remembering that besieged nations do not always succumb to the forces, external or internal, that threaten them. Sometimes, they muster the resolve to fight back successfully, to renew themselves. Today, America faces a host of new challenges. A rapidly arming and economically puissant China introduces new complexities to America's strategic calculations. Militant Islam and global terrorism continue their battle to spread Sharia law to the West. Those minatory forces will fail in proportion to our resolve to defeat them. The question is, Do we still possess that resolve? Inseparable from resolve is self-confidence, faith in the essential nobility of one's regime and one's way of life. To what extent do we still possess, still practice that faith?

America also faces numerous internal threats, from the rise of immigration without assimilation to the dissolute forces of cultural decadence and radical multiculturalism, to the destabilizing assaults of a protracted financial crisis. A stupefying mountain of debt threatens the economic future of America while the forces of multiculturalism preach the

dogma of bureaucratic cosmopolitanism. They encourage us to shed what is distinctively American in order to accommodate the quivering sensitivities of "humanity"—that imperious abstraction whose exigent mandates are updated regularly by such bodies as the United Nations, the World Court, and their allies in the professoriate and the liberal media. Huntington is right that "America cannot become the world and still be America." We face a choice between a multicultural future and an American future. Which will it be?

In *Washington's Crossing* (2004), his marvelous book on Washington's leadership in the Revolutionary War, David Hackett Fischer argues that America won the war against a much larger, better trained, and better equipped army partly because of the "moral strength of a just cause" and partly because of "religion": "Americans," he notes, "were a deeply spiritual people, with an abiding faith that sustained them in adversity." Americans are still a deeply spiritual people, though many of our intellectual, cultural, and political leaders would have us forget that fact. In 1973, the late Irving Kristol observed that

for well over a hundred and fifty years now, social critics have been warning us that bourgeois society was living off the accumulated moral capital of traditional religion and traditional moral philosophy, and that once this capital was depleted, bourgeois society would find its legitimacy ever more questionable. These critics were never, in their lifetime, either popular or persuasive. The educated classes of liberal-bourgeois society simply could not bring themselves to believe that religion was that important to a polity. They could live with religion or morality as a purely private affair, and they could not see why everyone else—after a proper secular education, of course—could not do likewise.

Today, Kristol wrote two decades later, "the delicate task" we face is not to reform "the secular rationalist orthodoxy."

Rather, it is to breathe new life into the older, now largely comatose, religious orthodoxies—while resisting the counter-culture as best we can, adapting to it and reshaping it where we cannot simply resist.

Now, in the second decade of the twenty-first century, we have a glorious opportunity—perhaps it is the last such opportunity—to start repaying some of the moral capital we have been so profligate with in recent decades. Some sages assure us that our fate is sealed, that inevitable forces have scripted the (unhappy) denouement of American civilization. I do not believe them. Those children I saw at Fort McHenry are—potentially—insurance against that gloomy prognostication. They, and thousands like them, are potent weapons against the dissolutions that threaten us. Will we have the wit to use those weapons effectively? Samuel Huntington urges us to foster "those qualities that have defined America since its founding," above all the Anglo-Protestant values that wed liberty to order. Many in the liberal, multi-cultural establishment have rejected Huntington's vision of American unity as nativist or worse. I believe that his critics are wrong. Benjamin Franklin got to the nub of the matter when, more than two hundred years ago, he observed that "We must all hang together or assuredly we shall all hang separately."

Pericles and the Foreseeable Future: 9/11 a Decade Later

History is strewn with the wrecks of nations which have gained a little progressiveness at the cost of a great deal of hard manliness.

—Walter Bagehot, 1872

MIDWAY THROUGH the long article on Afghanistan in the great eleventh edition of *The Encyclopædia Britannica*, one comes across this description of the inhabitants of that ancient mountain country:

The Afghans, inured to bloodshed from childhood, are familiar with death, and audacious in attack, but easily discouraged by failure; excessively turbulent and unsubmitive to law or discipline; apparently frank and affable in manner, especially when they hope to gain some object, but capable of the grossest brutality when that hope ceases. They are unscrupulous in perjury, treacherous, vain and insatiable, passionate in vindictiveness, which they will satisfy at the cost of their own lives and in the most cruel manner. Nowhere is crime committed on such trifling grounds, or with such general impunity, though when it is punished the punishment is atrocious. Among themselves the Afghans are quarrelsome, intriguing and distrustful; estrangements and affrays are of

NATIONAL REVIEW

The Pathology of the Professors

By Michael Auslin — November 30, 2015

It is being claimed a new civil rights era, a stand for social justice against oppression buried deep in some of America's most privileged bastions. Three weeks ago, the president of the University of Missouri system resigned over charges that he had not taken seriously enough allegations of systemic racism permeating his campuses. At Yale, both the university's president and the African-American dean of Yale College have capitulated to student demands for sensitivity training, expanded minority programs and courses, and have offered abject public apologies for "failing" Yale's black students over similar assertions of racial bias on campus, including an e-mail questioning the need to censor Halloween costumes. Meanwhile, the master of one of Yale's twelve residential colleges was confronted and verbally assaulted by a group of student protesters, who screamed profanity at him and refused to engage in any type of reasoned debate.

As demonstrations spread to other campuses, a group called the Black Justice League took over the Princeton president's office, resulting in a formal memorandum of agreement from the president over demands for "cultural competency training" and a diversity requirement, along with the removal of portraits of Woodrow Wilson from university buildings. At Dartmouth, Black Lives Matter protesters disrupted and harassed students studying in the library, while other demonstrations at Claremont-McKenna and Ithaca College have roiled campus and led to similar demands, to which administrators quickly agreed. Protestors at each university claim that endemic, institutionalized racism is the major factor of life on today's campuses.

The effect of the growing protests on free speech, civility, and social relations will resonate widely for decades to come, especially if the students' tactics win out over civilized discourse. Few, if any, of the various charges at Yale, Missouri, Ithaca, or

other places have been proved; they remain a mix of allegations that should be investigated. If any alleged incidents of racism or harassment are shown to be true, then offenders should be punished, including possibly expulsion for any civil-rights violations or criminal acts. But the rush to judgment, with forced resignations and premature acceptance of wrongdoing, is a blow to administrative rationality, undermines the rule of law, and threatens civic relations.

Most of the commentary so far has focused on the students at the center of the campus crisis, trying to understand why some of America's most privileged young adults are so angry, so threatening toward elders, and so unwilling to even acknowledge that allegations remain just that, until proven, and that rational debate is the bedrock of civil society. As one Yale student named Jencey Paz wrote in the campus newspaper: "I don't want to debate. I want to talk about my pain." Yale's administrators, like those at Missouri and Claremont-McKenna, have surrendered to this flood of passion. The Yale residential college master at the heart of the controversy sent a letter acknowledging that his wife's triggering e-mail about Halloween costumes was "hurtful," when, as many commentators have shown, it was anything but.

Yet focusing only on the students expressing their grievances and exercising their newfound power is not to explain, but only to account. To understand how things got to this point, we must look past the students, to those supposedly charged with educating them. As James Kirchick asks in an excellent article, "Where are the adults?" Indeed, if you want to understand the pathology of today's college students, you must look first at the pathology of the professoriate. While students are the instigators, this autumn of discontent is as much about them as it is about their enablers, the professors.

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As a former college professor, at Yale as it turns out, I feel at least moderately able to both interpret and even explain some of the mindset among America's academics. I went to a prestigious private university, got my M.A. and Ph.D. at Big 10 universities, and taught for seven years at Yale, though my first and possibly best teaching job was at a community college. I have seen and worked with academics at both the top and

near the bottom of the academic hierarchy, and while I would never claim to know what is individually in the hearts of the tens of thousands of professors in this country, as a professional class, they share certain world views, character traits, and experiences that perhaps help to explain how they have created an environment that has resulted in today's protests.

The issue is not simply, as is often claimed by conservatives, that the vast majority of American academics are ideologically liberal. Though true, that is not perhaps the salient socio-intellectual element in their makeup. Rather, it is that most professors, and certainly those in the humanities and social sciences, have adopted an oppositional stance to society and power their entire lives, one that becomes engrained and unreflective over time. Their embrace of the political over the intellectual is what Julien Benda decried in the early 20th century as the "treason of the clerks." It is part of the assumed ethos of being a professor, the belief that one is sacrificing one's self-interest for the larger community or the dispassionate search for knowledge. This also helps make many professors feel martyrs to the cause of social justice, equality, world peace, and the like. As Jacques Barzun wrote in 1959: "The beleaguered intellectual — it is a badge and a position in life."

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In reality, though, what it often means is that America's universities and colleges are filled with adults who themselves have not moved much beyond their own student days, either emotionally or intellectually. They also are as a group very risk averse; after all, the crown of academic achievement is tenure, where lifetime employment insulated from the regular job market is assured.

Most professors have thus spent their entire lives in the collegiate community, going directly or almost directly from undergraduate to graduate to teaching. Most have never held any real responsibility, certainly any accountability, and even when they have had such positions (dean, etc.), the system has largely insulated them from any real exercise of or need to respond to power. It is, in many ways, a comfortable way to spend one's life, where class time and office hours circumscribe the boundaries of

one's responsibilities, along with the ever-present need to write books and articles, grade papers, and advise students.

But in dealing with the real issues of the world, outside the safety zone of the classroom, professors are singularly ill-equipped, especially in cases of inchoate student rage directed at themselves, of all targets. Used to being lords of the lecture hall, they are unprepared to deal with actual dissent. If the professors are sympathetic to the students, then meek capitulation is the initial response; if in disagreement with the students, then active opposition, sometimes even physical, is taken to be their right on their campuses. Their varied responses are part of the very problem that is feeding the escalating demands these past weeks.

Take submission first. Inherently uncomfortable with power, and identifying all their professional lives with the underdog, the oppressed, and the righteous strugglers, professors are more likely to adopt a submissive position toward students demanding social justice, regardless of the basis of the students' complaints. To this attitude, proof is less important than commiseration, process less vital to the orderly working of campus society than the assumption of injustice and the nearly immediate acceptance of student demands. The supposed academic commitment to the dispassionate search for objective truth is jettisoned when the issue is presented as one of social justice; emotions triumph over analysis, and the professoriate reverts to its own emotional and intellectual biases.

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Thus, both Peter Salovey, the president of Yale, and Jonathan Holloway, the dean of Yale College (both of whom I knew), rushed to admit their university's apparent failings, without trying to defend the free speech of their fellow academics — in this case the master of Silliman College and his wife — and in the face of serious questions about the veracity of other racially charged episodes. As administrators, they abdicated their role of ensuring that the truth is brought forth, that real justice is done, and that a deliberate process is followed. Instead, their reactions only abetted the sense of entitlement among their students and led to greater protests and demands. At the same time, the public humiliation and subsequent resignation of Tim Wolfe at the University of Missouri showed the dangers of not appearing sufficiently chastened

by the chorus of public allegations. Salovey quickly accepted nearly every demand the student protesters made, including subjecting Yale's top administrators to diversity and sensitivity training.

But submission, as the novelist Michel Houellebecq limns so powerfully, means not merely surrender, but also at times the joining. Thus, there are other professors who actively side with the protesters, allying their interests with the agitators' and becoming foot soldiers in the war to eradicate injustice from America's college campuses.

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For some, it may be the first real excitement they've had in their professional lives, the overpowering sense of finally putting their ideas into practice or of finding meaning outside the classroom. It also can turn professors into activists, harassing students whom they believe are on the wrong side of social issues. For an example of both such excitement and opposition, watch the widely seen [video](#) of Missouri communications professor Melissa Click obstructing and intimidating a student journalist as he attempts to film campus protests. Her body language gives away her nervous energy, as does her juvenile mocking of the student's First Amendment claims. Like a chirpy femme fatale in a bad gangster film, Click actually yells out for "muscle" to come help her block the student journalist. While rare, perhaps, she is not alone.

Last year, University of California–Santa Barbara feminist studies professor Mireille Miller-Young pleaded no contest to charges of stealing and destroying an anti-abortion activist's poster during a campus confrontation in which the adult academic physically assaulted the teenage demonstrator, who was in a recognized campus free-speech zone. Like her ideological colleague Click, Miller-Young enlisted willing students to physically harass and block anti-abortion activists from retrieving their property. For these younger professorial social-justice warriors, today's struggles make up for their missing of the real counterculture revolution, back in the 1960s. Others may not (wo)man the barricades, but they join with alacrity to pen open letters condemning their own administrators and siding with the protesters, as happened at

Missouri. And in doing so, they send an unmistakable message of encouragement for more incivility, rushes to judgment, and occasionally physically threatening acts.

What is missing in today's protests, of course, is any attempt by professors to act as adults to control such crises, dispassionately guide debate, and assert that there are rules and procedures for investigating such charges, or for protecting speech with which they disagree. The professorial enablers are justifying the demands of students that they not be held accountable to standards of proof or civility, or they are actively interfering with those students on the opposite side of issues about which they are passionate. In doing so, they fail to set an example of how mature citizens in a free society are expected to interact. But to expect them to do so is to ask them to take a responsibility that is not often part of their adult experience and to display an even-handedness that is all too rare at American universities. Barzun, again, identified the anti-intellectualism of the intellectual, which already in the 1950s had led to an environment in which "the school is not to teach but to cure."

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The lesson is abysmal, and self-reinforcing. Any student confronted with the spectacle of his pedagogical leaders standing silently and shamefacedly for hours in a circle of jeering or insulting undergraduates, as Yale's Holloway endured, will come away with a clear lesson in how to exercise fear and power. In the Missouri case, it was supercharged by the threatened boycott of upcoming games by the black members of the football team. The tools of economic and social coercion are being joined together in a toxic stew, and principled opposition is threatened into silence.

And indeed, the spreading protests, increasingly aggressive and comprehensive in their demands, show that the students are learning from each other and finding encouragement in the submission of the professors. It is just as likely that today's victorious protesters will inherit a healthy contempt for their elders and a presumption that in the future, any similar demands they make in their professional lives will be agreed to with as much alacrity as during their student days.

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It may not be too much to claim that the academy as a whole is teetering toward complete intellectual unsustainability. If nothing can be discussed, if speech itself is physically harmful, if debate must be controlled by the mob, then there can only be an ever-shrinking sphere of rational discourse, and the university will become just a grant laboratory for the hard sciences (and possibly not even there). The vast majority of students, of course, want nothing to do with these dramas and are being punished by the disruptions on their campuses for which they are neither responsible nor from which they are being protected.

There is undoubtedly continued racism and bias occurring at America's universities. Asian students have recently filed complaints against Harvard for systematic discrimination in the admissions process, while the number of anti-Semitic incidents across the nation continues to rise. Conservatives, of course, are regularly shouted down and threatened on campus, including earlier this month at Yale at a conference on free speech, of all things. No doubt blacks and other minorities encounter prejudice from their peers and sometimes offer the same, as well.

Yet precisely because of sensitivities among intellectuals to the country's bitter past of slavery and Jim Crow, universities have spent decades since the 1960s erasing any vestiges of institutional racism, sexism, or oppression. As a professor at Yale, I was impressed and envious of how all students were coddled and catered to, given the finest facilities, and submerged in institutional identity, gender, and race support mechanisms. Yale, for example, has had an Afro-American Cultural Center since 1969, and a flourishing African-American Studies Department, of which the Yale College dean is a member, among other ethnic departments and programs. Regular courses and events on racism, civil rights, and the like are reminders of America's continuing journey toward a truly color-blind society.

The truth is that a student of any color or religion on today's campuses is all but insulated from any of the real racism that lurks outside campus gates. They may encounter bigots along the way, and occasionally act like one themselves, but the idea of endemic racism or oppression occurring at Yale, and at any other academic institution with which I was familiar, is risible, and the professors, who ensured that such an environment would not exist, know that better than anyone else.

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Yet still the professoriate enables its young charges' anger and alienation. In doing so, the professors reveal all too starkly their own limitations and weaknesses. They may well have inherited young adults already convinced of their righteousness, but as those educating them for the first time out of the familiar confines of family and hometown, they have a special duty to prepare them for life beyond collegiate gates and, in many cases, to become leaders. Consciously or not, professors are almost certainly now going to be less likely to be color-blind in their treatment of students, their grading, and their mentoring; and all students will suffer, including minorities.

In an essay entitled "The Tension of Order and Freedom in the University," Russell Kirk argued that modernity's overthrow of religion led to "asserting freedom as an absolute, somehow divorced from order," and thereby leading to the loss of freedom through oppression from both the extreme right and left. The university, he continues, "was raised to restrain passion and prejudice through right reason. . . . The university is not intended to be a staging-ground for the destruction of order . . . in society."

And yet that exactly is what is happening today on our college campuses. America's faculty members have collectively abandoned their commitment to discipline and order as the underpinning of intellect. Instead, they either surrender to or abet the unrestrained and atavistic behavior of their supposed pupils. The lack of the professors' confidence in their mission, and their failure to appreciate and defend the very behaviors that help ensure the survival of their world apart, is a depressing and dangerous portent for the future of American civil society.

— *Michael Auslin, a frequent contributor to NATIONAL REVIEW ONLINE, was an associate professor of history at Yale from 2000 to 2007.*

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CONTROLLING EXECUTIVE POWER IN THE WAR ON TERRORISM

Mark Tushnet*

Imagine this scenario: after a series of bombings in New York, the President directs U.S. armed forces to round up Arab American males over the age of fifteen in the New York metropolitan area and confine them in a sports stadium; those who military officers determine pose no continuing threat to domestic security are released back to their communities, a process that predictably will lead to some detentions lasting a month and more.¹ The discussion by Professors Bradley and Goldsmith of the Authorization for the Use of Military Force² (AUMF) adopted on September 18, 2001,³ raises the intriguing question: would such action be authorized by the AUMF already in place?⁴ This Reply addresses only a few aspects of the problems Professors Bradley and Goldsmith consider, in an attempt to draw out some of the more general implications of their analysis for constitutional law.

How does — or should — the U.S. Constitution regulate the exercise of power in response to threats to national security, to ensure that power is used wisely?⁵ Broadly speaking, two mechanisms of control are available: a separation-of-powers mechanism and a judicial-review mechanism.⁶ Both mechanisms aim to ensure that the national government exercises its power responsibly — with sufficient vigor to meet the nation's challenges, but without intruding on protected liber-

* Felix Frankfurter Visiting Professor of Law, Harvard Law School; Carmack Waterhouse Professor of Constitutional Law, Georgetown University Law Center.

¹ The hypothetical is suggested by the plot of the movie *The Siege*, the position taken by the Bush Administration with respect to those detained as enemy combatants, and *Ex parte Endo*, 323 U.S. 283 (1944).

² Pub. L. No. 107-40, 115 Stat. 224 (2001).

³ Curtis A. Bradley & Jack L. Goldsmith, *Congressional Authorization and the War on Terrorism*, 118 HARV. L. REV. 2047 (2005).

⁴ I will not discuss in this Reply two additional questions, which Professors Bradley and Goldsmith note but (properly, given their focus) do not discuss in detail: (1) whether the President would have — or already has — the power under the Constitution even without congressional authorization to order the detention of American citizens under the facts I have imagined, and (2) whether such detentions, whether authorized by Congress or by “pure” Article II powers of the presidency, whatever they might be, violate the Constitution's rights-protecting provisions, including the equality component of the Fifth Amendment.

⁵ For reasons that will appear, the distinction between *does* and *should* is important to my argument. See *infra* pp. 2680–81.

⁶ These mechanisms, I emphasize, are designed to *regulate* the exercise of power so that it is used wisely — forcefully enough to meet threats to national security but delicately enough to preserve liberty within the United States — and *not* (merely) to limit the exercise of power.

ties.⁷ Under the separation-of-powers mechanism, nearly all of the work of regulating power is done by the principle that the President can do only what Congress authorizes.⁸ Its primary concern is what Professors Bradley and Goldsmith call Executive Branch unilateralism, a fear that Presidents acting on their own might make unsound decisions, engaging in too much (or too little) military action, intruding on liberties too much (or too little). Under the judicial-review mechanism, courts enforce two sets of principles: principles allocating power between the President and Congress, and principles protecting individual liberties, such as those embodied in the Fourth and Fifth Amendments. Its primary concern is that the government as a whole will act improvidently. To avoid unilateral executive (or congressional) action, the judicial-review mechanism makes the concerns that underlie the separation-of-powers mechanism enforceable by the courts. I believe that neither the separation-of-powers nor the judicial-review mechanism of control is adequate to the task of structuring the exercise of national power under modern conditions, and that we would benefit from creative thinking about good constitutional design.

Defenders of the separation-of-powers mechanism make both a positive and a negative case.⁹ The positive case rests on the classic “ambition counteracting ambition” theory articulated in *The Federalist Papers*.¹⁰ Congress and the President stand in structural opposition to each other, with each side alert to possible “power grabs” by the other that would threaten — simultaneously — the people’s liberties and the prerogatives and power of the opposing branch.¹¹ In addition, the people influence the President and Congress differently, with members of the House of Representatives concerned that their constituents might turn them out of office if they fail to challenge presidential initiatives that the people believe threaten their liberties, the President

⁷ The scope of those liberties might of course depend on the degree to which it is necessary to exercise power vigorously. For a discussion of this issue, see Eric A. Posner & Adrian Vermeule, *Accommodating Emergencies*, 56 STAN. L. REV. 605 (2003).

⁸ The qualifications to this principle are that the President might have some residual power from Article II alone and that there might be some residual individual-rights protections enforceable against actions that Congress has authorized. But the operative term in these formulations is *residual*: under the separation-of-powers approach, the scope of the President’s independent power is narrow, and the restrictions on what Congress can authorize are minor.

⁹ For a good presentation of the separation-of-powers view, see Samuel Issacharoff & Richard H. Pildes, *Between Civil Libertarianism and Executive Unilateralism: An Institutional Process Approach to Rights During Wartime*, in THE CONSTITUTION IN WARTIME: BEYOND ALARMISM AND COMPLACENCY 161 (Mark Tushnet ed., 2005). The separation-of-powers mechanism operates through a number of channels, including oversight hearings, congressional investigations, and bargaining with the President over funding for his programs.

¹⁰ THE FEDERALIST NO. 51, at 319 (James Madison) (Clinton Rossiter ed., 1961).

¹¹ *The Federalist Papers*’ observation that a government with various loci of power provides a “double security . . . to the rights of the people” is relevant here, although that observation was made in connection with federalism rather than the separation of powers. *Id.* at 320.

having a nationwide constituency more sensitive than smaller and more parochial constituencies to national security concerns, and the Senate free to deliberate about what good policy would be without concern for short-run political disadvantage.¹² The separation-of-powers mechanism rejects executive unilateralism, but identifies no enduring substantive limitations on what the President and Congress may do; the only limitations are those worked out in the interactions between the President and Congress.¹³

Professors Bradley and Goldsmith indirectly challenge the adequacy of the separation-of-powers mechanism of control by showing how the AUMF can be given an entirely reasonable interpretation that some might think authorizes actions within the borders of the United States that pose threats to basic liberties of American citizens.¹⁴ Such actions may seem permissible because the only operative limitation on authorized actions appears to be that they be taken against persons with, as Professors Bradley and Goldsmith put it, some nexus to al Qaeda, the Taliban, and the September 11 attacks. Indeed, on Professors Bradley and Goldsmith's interpretation, which I emphasize is a reasonable one, that nexus need not have existed *on* September 11. Clearly, a person who — after the event — knowingly harbored an individual who planned the September 11 attacks would have the requisite nexus.¹⁵ Nor would it be unreasonable to conclude that a person who, as the jargon now goes, provides material support (today) to those who planned the attacks (several years ago) has the required nexus. That support, I would think, would obstruct the implementation of the AUMF's directive "to prevent any future acts of international terrorism" by those who planned the September 11 attacks.¹⁶

¹² The positive case could be bolstered by a suspicion of judicial-review mechanisms generally, on the ground that self-governance requires that reasonable interpretations of constitutional values as embodied in legislation enacted by representative institutions prevail over reasonable interpretations of such values as articulated in decisions by less representative institutions. This argument may play some role in supporting the principles of deference to executive interpretation that Professors Bradley and Goldsmith identify.

¹³ The courts' role in the separation-of-powers mechanism is confined to the (not insignificant) task of interpreting statutes to determine what Congress has tried to do. With such interpretations in hand, the President and Congress return to their power struggles.

¹⁴ I refer to the threats to citizens so as to avoid controversy over what constitutional restrictions apply to exercises of power that adversely affect noncitizens, including those lawfully residing in the United States. For an extensive discussion of such restrictions, see DAVID COLE, *ENEMY ALIENS* (2003).

¹⁵ In the AUMF's terms, such a person will have "aided the terrorist attacks" by insulating those who planned the attacks from retaliation or capture that would "prevent any future acts of international terrorism" by the planners. See Authorization for Use of Military Force, Pub. L. No. 107-40, § 2(a), 115 Stat. 224, 224 (2001).

¹⁶ *Id.*; see also Bradley & Goldsmith, *supra* note 3, at 2082, 2083 n.146 (noting the argument that the AUMF gives the President the authority to "identify the covered enemy" generically, though perhaps not person by person).

Professors Bradley and Goldsmith do provide some additional guidelines for interpreting the AUMF. They argue, for example, that the AUMF should be interpreted to authorize actions taken against “direct participants” in activities with the requisite nexus, which, they suggest, addresses reasonably well concerns expressed by some that the AUMF authorizes large-scale “sweeps” of those said by administration officials to be supporters of terrorism.¹⁷ I am not as sure as they that this interpretation alleviates all reasonable concerns. The reason is that Professors Bradley and Goldsmith note that reasonable Executive Branch interpretations of international law may be entitled to judicial deference.¹⁸ They observe that the contours of the category “direct participation” are not well defined in international law.¹⁹ It would seem, then, that were a President to interpret “direct participation” expansively — for example, to include those who unintentionally provide material support to actors with the required nexus — *that* interpretation should be given deference, unless it is “unreasonable,” a concept the contours of which Professors Bradley and Goldsmith do not define.

As Professors Bradley and Goldsmith suggest, the possibility of invoking clear statement principles animated by concerns about individual liberty is perhaps more promising.²⁰ But once again, they offer an interpretive principle that reduces the impact of clear statement principles on interpretation of the scope of the AUMF. Drawing on *Ex parte Endo*²¹ and *Duncan v. Kahanamoku*,²² Professors Bradley and Goldsmith suggest that liberty-protecting clear statement principles should be invoked when — but seemingly only when — the practices at issue involve “presidential actions . . . unsupported by historical practice in other wars, and implicate[] the constitutional rights of U.S. citizen *non-combatants*.”²³ Suppose we shift the emphasis in that formulation to the phrase *unsupported by historical practice*. Large-scale detentions of U.S. citizen noncombatants do have historical support, of course — in the detention of American citizens of Japanese descent during World War II.²⁴ So, at least to this point, the legal analysis

¹⁷ See Bradley & Goldsmith, *supra* note 3, at 2116.

¹⁸ *Id.* at 2084 n.150 (“The justifications for . . . deference . . . are probably even stronger with respect to customary international law, an amorphous and evolving body of law, the content of which has always been informed by political discretion and national self-interest.”).

¹⁹ *Id.* at 2115–16.

²⁰ *Id.* at 2104 (“A clear statement requirement to protect individual liberties is potentially more relevant [than one based on delegation concerns].”).

²¹ 323 U.S. 283 (1944).

²² 327 U.S. 304 (1946).

²³ Bradley & Goldsmith, *supra* note 3, at 2105. I simply note that this formulation would not require the invocation of a liberty-protecting clear statement rule as to non-U.S. citizen noncombatants, including long-term lawfully resident alien noncombatants.

²⁴ That those detentions have been discredited in some contexts does not, I think, count against their being the kind of historical practice relevant to the limits on the clear statement prin-

would not justify the invocation of a liberty-protecting clear statement rule in the situation I described at the start of this Reply.²⁵

I should emphasize here that I am not arguing that the interpretation of the AUMF I have outlined follows inexorably from the principles that Professors Bradley and Goldsmith identify.²⁶ Rather, my argument is that the interpretation is within the bounds of reasonable legal argument predicated on the separation-of-powers mechanism for regulating government actions in response to threats to national security. I may be wrong about some of the specific implications of their analysis, but I believe that on any view Professors Bradley and Goldsmith have shown that quite expansive interpretations of the AUMF are reasonably available.

That conclusion raises questions about the adequacy of the separation-of-powers mechanism itself. Consider first how reasonable legal arguments function in that mechanism's operation. We are dealing with an area in which the President has a significant first-mover advantage. That is, the President has the power to act without seeking additional approval from Congress once it has authorized the use of force.²⁷ After the President has acted, the burden lies on other institutions to force him to alter his policies. But the fact that a reasonable, if expansive, interpretation of the AUMF supports the President's policies (even if there are also reasonable grounds on which to challenge them) makes the task of the other institutions more difficult. Congress would have to persuade enough of its (and the President's) constituents that the President's legal arguments were insufficient to justify his action, even though, by hypothesis, they were not unreasonable. We can expect doing so to be quite difficult.²⁸

principle's invocation, particularly because we may be observing a process of rehabilitating the World War II detentions — a process that might include presidential interpretations to which, again, deference would be appropriate.

²⁵ Professors Bradley and Goldsmith argue that the treatment of 18 U.S.C. § 4001(a) by the plurality in *Hamdi v. Rumsfeld*, 124 S. Ct. 2633 (2004), could be read as “rejecting a clear statement requirement in th[e] context [of the detention of enemy combatants], or as accepting only a weak version of such a requirement that could be satisfied by background interpretive factors rather than specific text.” Bradley & Goldsmith, *supra* note 3, at 2106. On either view of the holding, the AUMF might reasonably be interpreted to authorize large-scale detentions of U.S. citizens. On the former view, the weak requirement would be satisfied by the historical practice of such detentions, and on the latter, the statute would not impose any clear statement requirement because the triggering feature — lack of support in historic practice — is absent.

²⁶ Nor, and I hope obviously, do I believe that they accept the interpretation I have outlined.

²⁷ At least he may do so if, as in the AUMF, the approval does not impose conditions on additional actions. I discuss below why contemporary authorizations might infrequently contain such conditions. See *infra* pp. 2678–79.

²⁸ Exercising their limited role of interpreting statutes, the courts would have to muster arguments showing that the President's legal arguments are weaker than the alternatives, a job made even more difficult by the fact that this is an area where one interpretive principle is deference to presidential judgment.

The first-mover advantage is supplemented by the so-called “rally round the flag” effect: a President’s military initiatives result in a short-term boost in his popular approval, at least when the initiatives appear to have relatively small immediate costs.²⁹ The effect may dissipate over time, but the authorizations that Presidents obtain ordinarily come early, when the effect persists. And indeed, the authorization itself is apt to be adopted by Congress as a means by which its members can themselves rally round the flag.

The advantages conferred by the President’s first-mover position and the rally round the flag effect enable Presidents to obtain quite generous authorizations from Congress, which they can then use as springboards for a wide range of actions. But contemporary Presidents also have a structural advantage arising from the modern political party system. The separation-of-powers mechanism weakened with the advent of political parties that linked national officials, especially the President, to the local political coalitions that selected candidates for Congress. The joint membership of a President and members of Congress in a single political party reduced the incentives on each side to oppose the other: the conflict envisioned in the separation-of-powers mechanism would impair the political party’s ability to accomplish goals shared within the party. But parties alone need not make the separation-of-powers mechanism entirely feeble. For much of the nation’s history, the so-called “national” political parties have been coalitions of local party organizations, which often held quite different views on important questions of public policy.³⁰ Differences *within* the major political parties thus kept the separation-of-powers mechanism alive, as a President’s opponents within his own party could join with those in the other party to constrain him.

Two modern developments transformed the party system.³¹ First, over the course of the twentieth century, political parties became nationalized under presidential leadership. Especially after the New Deal, Presidents had at least as much patronage to dispense as local party leaders did, and were able to use national programs to gain con-

²⁹ See BRUCE RUSSETT, *CONTROLLING THE SWORD: THE DEMOCRATIC GOVERNANCE OF NATIONAL SECURITY* 34 (1990).

³⁰ Consider, for example, the ideological differences between northern urban Democrats and southern white Democrats in the New Deal period, when the former were strong supporters and the latter were at best reluctant supporters — and often strong opponents — of President Franklin Roosevelt’s initiatives. Consider as well the differences between the internationalist wing of the Republican Party in the 1950s, represented by Dwight Eisenhower and John Foster Dulles, and the party’s isolationist wing, represented by Senator Robert Taft.

³¹ I describe these developments, which are the subject of a large literature in political science, in the broadest possible terms, knowing that any detailed account would have nuances and qualifications. For one important contribution to the literature, which has influenced my thinking a great deal, see STEPHEN SKOWRONEK, *THE POLITICS PRESIDENTS MAKE: LEADERSHIP FROM JOHN ADAMS TO GEORGE BUSH* (1993).

trol over local parties and whip them into supporting presidential agendas. Second, the national political parties became increasingly ideologically coherent: conservatives in the South migrated from the Democratic to the Republican Party, and Rockefeller Republicans in the Northeast became independents or Democrats.³² Ideological divisions within the parties have nearly disappeared.

When government is unified, in the sense that the President and Congress are in the hands of the same party, and that party is itself more unified than ever, Congress will probably authorize anything for which the President asks. When government is divided, with at least one house of Congress not controlled by the President's party, the story is more complicated, but broad authorizations still seem likely because of the President's first-mover advantage and the rally round the flag effect.³³ The result is functionally executive unilateralism within the form of a separation-of-powers system. If practical concerns animate nervousness about executive unilateralism, its achievement through the operation of modern politics should be as troubling as would be its defense as a matter of constitutional interpretation.

So far I have argued that the positive case for the separation-of-powers mechanism is worryingly frail under modern circumstances. Ordinarily, the natural next move would be to say that, *faute de mieux*, we should adopt the judicial-review mechanism. Doing so, however, would ignore the negative case for the separation-of-powers mechanism. The negative case is that judges have proven extremely deferential to actions taken by the political branches, and their deference to the political branches in national security matters is entirely predictable. Judges rarely have the background or the information that would allow them to make sensible judgments about whether some particular response to a threat to national security imposes unjustifiable restrictions on individual liberty or is an unwise allocation of decisionmaking power.³⁴ Thus, the difference between the residual role given individual rights in the separation-of-powers mechanism and its seemingly prominent role in the judicial-review mechanism

³² For a vivid demonstration of the ideological polarization of the parties in Congress, see Daniel R. Ortiz, *Got Theory?*, 153 U. PA. L. REV. 459, 479-83 (2004).

³³ The President's ability to receive broad grants of power even during periods of divided government seems especially likely if the President's party has a substantial minority presence in the House of Representatives or the Senate.

³⁴ As the Supreme Court once put this concern, the President "has his confidential sources of information. He has his agents in the form of diplomatic, consular and other officials. Secrecy in respect of information gathered by them may be highly necessary, and the premature disclosure of it productive of harmful results." *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 320 (1936). The reference here is to the President's special resources in the field of national security relative to those of Congress, but the underlying concern obviously can be generalized to encompass the differential resources available to the political branches as compared to the courts.

nearly disappears. Indeed, a principle of deference to the political branches in a context in which the President has a first-mover advantage often amounts in practice to deference to the President — executive unilateralism in a new guise.³⁵ Further, if courts purport to police the policymaking process but actually supervise it with an extremely loose hand, the negative case asserts that the judicial-review mechanism might *worsen* the political branches' performance because their members might mistakenly believe that the courts will bail the people out of whatever trouble the political branches make.

I believe that this negative case is substantial. Yet, if we cannot rely on the courts to do a good job of ensuring that the government acts responsibly, and the separation-of-powers mechanism is similarly unreliable, what can we do?

At this point, I think, we should step back and examine the framework within which the entire discussion occurs. The discussion takes as its organizing question, "Given the Constitution we have, what are the best ways to structure a government that has adequate power to deal with national security threats and yet is constrained by considerations of individual liberty in exercising that power?" Neither the separation-of-powers mechanism nor the judicial-review mechanism seems an effective way to structure government. I suppose we could await the development or invention of a third mechanism within the existing Constitution. Alternatively, we might ask why we take the existing Constitution as a given.³⁶ One coming afresh to the challenge of designing institutions to deal with modern national security threats would not, I think, naturally take the institutions created in 1789 as the starting place. Those institutions were designed with different kinds of threats to national security in mind.³⁷ And, although the general and abstract terms used in the 1789 Constitution are indeed commodious and adaptable to new circumstances, they might not be commodious enough. Or at least, conducting the discussion of institutional design within the terms set by the 1789 Constitution can distract us from developing appropriate institutional responses to modern conditions.

³⁵ Justice Powell's position in *Goldwater v. Carter*, 444 U.S. 996 (1979), provides a nice example. In a case challenging the constitutionality of the President's abrogation of a treaty without securing the Senate's advice and consent, Justice Powell refused to exercise judicial review because the Senate as a corporate body had not expressed its position on the constitutional question. *See id.* at 997–98 (Powell, J., concurring in the judgment). The President's first-mover advantage thus placed a difficult-to-overcome burden on the Senate.

³⁶ For an exploration of this question from a different angle, see Mark Tushnet, "Our Perfect Constitution" Revisited, in *TERRORISM, THE LAWS OF WAR, AND THE CONSTITUTION: DEBATING THE ENEMY COMBATANT CASES* (Peter Berkowitz ed., forthcoming 2005).

³⁷ For a demonstration, see PHILIP BOBBITT, *THE SHIELD OF ACHILLES: WAR, PEACE, AND THE COURSE OF HISTORY* 144–204 (2002).

I confess that I am not particularly creative in imagining alternative institutional designs that would ensure that power be exercised wisely under modern circumstances. Simply to illustrate what I have in mind, though, suppose we engaged in a detailed policy analysis and concluded that it would be helpful to have a new institution to supervise modern exercises of military power, an institution that drew on the different forms of expertise now lodged in Congress, the Executive, and the judiciary. Perhaps we would want to design an institution in which a group of judges, legislators, military officers, and civilians elected by the nation as a whole promulgated legally binding rules for the conduct of military engagements — without the intervention of Congress or the President — and could sometimes issue immediately binding orders to U.S. citizens, enforceable by contempt sanctions imposed by the new institution itself. The constitutional problems associated with such an institution jump off the page: the Incompatibility Clause, Article III, the nondelegation doctrine, and much more. These constitutional problems, of course, would be largely independent of any normative policy arguments regarding such a proposal.

Perhaps we could be persuaded that this new institution's design did indeed conform to the constraints on institutional innovation imposed by the existing Constitution. I am sure, though, that the discussion of the proposal's soundness as a matter of policy would be polluted by discussions of whether the proposal, if enacted, would be constitutional.³⁸ Those in favor of such an institution on policy grounds might find themselves arguing — perhaps somewhat disingenuously — that the innovation is indeed compatible with the Constitution. We could avoid such distractions if the proposal were cast as a constitutional amendment.³⁹ The amendment process is a difficult

³⁸ For an example of the phenomenon I have in mind, consider the reaction to Bruce Ackerman's proposal for a framework statute governing the exercise of power during emergencies. See Bruce Ackerman, *The Emergency Constitution*, 113 YALE L.J. 1029 (2004). The critical discussion of his proposal included questions about whether the framework statute was consistent with the existing Constitution. See, e.g., Laurence H. Tribe & Patrick O. Gudridge, *The Anti-Emergency Constitution*, 113 YALE L.J. 1801, 1805 (2004) ("Do we think Ackerman's proposal is unconstitutional within the terms of ordinary constitutional law? In an important sense, the question answers itself. Of course we do . . ."). I should note that Professor Ackerman would not require that the textual Constitution be formally amended for his proposal to be constitutional in the end, even if he believed it to be currently unconstitutional, because he has an account of constitutional amendment outside the procedures provided for in Article V. See 2 BRUCE ACKERMAN, *WE THE PEOPLE: TRANSFORMATIONS* 383 (1998).

³⁹ I note two additional, but quite modest, advantages of thinking about institutional design questions as implicating the need to amend the Constitution. First, the President has no formal role in the amendment process. See *Hollingsworth v. Virginia*, 3 U.S. (3 Dall.) 378, 382 (1798) (holding that constitutional amendments need not be submitted to the President for signature before transmittal to the states for ratification). Formally, then, the process will not be affected by the President's first-mover advantage, although as a practical matter the President would have a large role in any amendment process dealing with national security. Second, thinking about insti-

one, of course, and the problems we face may seem so pressing that they need to be addressed immediately, such as through litigation under the existing Constitution. As I have observed elsewhere, however, at the time of this writing José Padilla remains incarcerated, uncharged and with only a single trial judge having evaluated the grounds for his detention, nearly three years after he was taken into custody.⁴⁰ It is not obvious to me that the problems posed by Padilla's detention would have been solved less promptly had we begun to consider constitutional amendments to deal with his circumstances — and, more generally, with the design of institutions to ensure the responsible exercise of power in the war on terrorism — as soon as he was detained. Waiting for the existing Constitution to solve the problems thrust on the nation, that is, may take more time than amending the Constitution.⁴¹

Unfortunately, I have neither the creativity nor the space in this short Reply to suggest an institutional mechanism that might do a better job than the separation-of-powers or judicial-review mechanisms in organizing the modern response to national security threats. As is often the case, though, we might do well to take Abraham Lincoln as our guide. In his second annual message to Congress, Lincoln said:

The dogmas of the quiet past, are inadequate to the stormy present. The occasion is piled high with difficulty, and we must rise with the occasion. As our case is new, so we must think anew, and act anew. We must disenthrall our selves, and then we shall save our country.⁴²

Perhaps we should consider the possibility that the existing Constitution is one of the dogmas of the quiet past.

tutional design by means of constitutional amendment would license examination of institutional designs in other constitutional systems without triggering concern that comparative constitutional experience is irrelevant to the problems at hand. *Cf.* *Printz v. United States*, 521 U.S. 898, 921 n.11 (1997) (observing that the “comparative [constitutional] analysis . . . [is] of course quite relevant to the task of writing [a constitution]”).

⁴⁰ Tushnet, *supra* note 36, at 32.

⁴¹ Of course, the political conditions that affect assessment of the President's actions would also affect the amendment process. In that process, though, the politics would affect consideration of a proposal rather than of an action already taken, and it seems to me that the politics surrounding proposals differ from those surrounding completed actions. It seems appropriate to note as well that my advocacy of a constitutional amendment process is designed as much to get our thinking unstuck as to propose a practical political program.

⁴² Abraham Lincoln, Annual Message to Congress (Dec. 1, 1862), *in* 5 COLLECTED WORKS OF ABRAHAM LINCOLN 518, 537 (Roy P. Basler ed., 1953). Lincoln of course believed that much, perhaps all, of what he did was consistent with the existing Constitution, but he was not averse to acting in a manner that some, at least, thought was inconsistent with the Constitution, and with respect to some of his actions he did not regard the charge of acting unconstitutionally as seriously impugning his leadership.

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The Age of Fallibility: The Consequences of the War on Terror

by George Soros

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No single person has done more to promote the open society—a society in which free expression and political opposition are protected—over the past thirty years than George Soros. During the Communist era he used his Open Society Foundation to support greater freedom in the Soviet bloc and China. After the Communist system imploded his foundations acted to mitigate the impact of ethnic war in former Yugoslavia. Later they backed reform movements in Georgia and Ukraine, and Soros formed close relationships with the new leaders who emerged, such as President Mikhail Saakashvili of Georgia. This led Russian President Vladimir Putin to accuse him of orchestrating the “color revolutions.”



George Soros; drawing by David Levine

For many years his global network of foundations has helped people in many countries suffering from persecution—women, gays and lesbians, gypsies, and others—to achieve a secure place in society. In the United States the Open Society Institute has contested current policies on illegal drug use, HIV/AIDS, and health care during terminal illness. More recently it has addressed the ”

resource curse”—the damaging effect of sudden oil wealth in developing countries. Soros has also taken a strong stand against US foreign policy, opposing the Iraq war and attacking the “war on terror” as misconceived and counterproductive. Aiming to make the world safe from terrorism and at the same time to entrench American supremacy, the Bush administration has made the world more dangerously unstable while causing a steep decline in American power.

In *The Age of Fallibility*—his most important book to date and a stark warning of the dangers facing open societies today—Soros attempts to explain this turn of events. Much of the book is a probing reexamination of the conceptual frame that underpins Soros’s activities both as an investor and as a philanthropist; but some of its most interesting passages have to do with Soros’s personal experiences of what he calls “far-from-equilibrium situations”—conditions in which accepted rules of human behavior are suspended or destroyed.

Such a situation came into being with the Nazi invasion of Hungary in 1944, when like other members of the country’s Jewish population Soros and his family faced mortal danger. Soros survived owing to the foresight and courage of his father, Tivadar, who acted decisively to help the family and many others. “It was his finest hour,” Soros writes.¹ Tivadar Soros, he writes, was mentally prepared for the collapse of normal life by his time in Siberia after having been taken prisoner by the Russians when serving as a volunteer in the Austro-Hungarian army in World War I. He instilled in his fourteen-year-old son the fact that “there are times when the normal rules do not apply, and if you obey the rules at those times you are liable to perish.” Soros describes this as “the formative experience of my life,” and there can be little doubt that it imbued in

him a willingness to depart from established expectations and wipe the slate clean each day that has shaped his career as an investor. At the same time it implanted in him questions that have pursued him ever since. How could human beings be seized by irrationality as so many were in the Nazi period? What are the flaws in human reason that make such “far-from-equilibrium situations” possible?

The range of social and political causes to which Soros has contributed is remarkably wide, but this is not simply a large-scale exercise in philanthropy of the sort that is now commonly practiced by some among the seriously rich. Uniquely, Soros has used his wealth to promote a view of human knowledge and progress that confronts some of the central dilemmas of liberal thought at the present time. In managing his foundations—which he does with the active intensity he brought to his hedge funds—Soros has been guided by a version of Karl Popper’s view of human knowledge. Mainstream Western philosophy has traditionally aimed to secure a foundation for knowledge that is beyond reasonable doubt, but according to Popper we should not seek any such foundation. In science, which Popper sees as the model for all branches of inquiry, false theories are eliminated so that better ones can be developed; but no theory can claim to contain the final truth. Rejecting any method of induction in which past experience is used as a guide to the future, Popper advocated a method of trial and error in which knowledge grows by a process of falsification. Our most rational beliefs are not those that are most strongly verified, but those that have best survived criticism and refutation.

This philosophy is often called “fallibilism”—a term coined by the American pragmatist Charles Sanders Pierce, which has also been applied to describe John Stuart Mill’s theory of knowledge. Popper’s fallibilism is distinctive in rejecting induction, and many philosophers think that in leaving no reason for thinking that we can approach truth it may in the end be closer to skepticism. In contrast, for Popper an acceptance of fallibility facilitates the growth of knowledge and is also the defining feature of a progressive society. As he explained it in *The Open Society and Its Enemies* (1945), an open society is one whose public policies are formulated and tested as scientific theories, with those that fail being revised or abandoned. Accepting their fallibility and employing trial and error, open societies can bring about a cumulative improvement of human life that parallels the growth of knowledge in science.

Soros has always acknowledged the vital importance to him of Popper's philosophy, but he is by no means an uncritical disciple. When it is applied to human affairs, he believes, Popper's theory of fallibility does not go far enough. Popper believed the same methods could be used in natural science and in social inquiry; but we cannot study the human world in the way we study natural objects. Social objects are not like stars or stones, which exist independently of how humans think about them; social objects are partly created by human perceptions and beliefs, and when these perceptions and beliefs change, social objects change with them. This introduces an element of uncertainty into our view of the world that makes us even more prone to error than Popper believed: we can never have objective knowledge of society, if only because our shifting beliefs are continuously changing it.

Soros calls this relationship “reflexivity,” and argues that it undermines standard economic theories. Believers in *laissez faire*—or market fundamentalists, as Soros sometimes calls them—claim that when left to their own devices markets tend to equilibrium. But as Soros rightly notes, this theory “is just as much a perversion of supposedly scientific verities as Marxism-Leninism is.”² Since they are created and run by fallible human beings, markets have a built-in tendency to overshoot and collapse in recurrent cycles of boom and bust. It is not only that our prevailing economic theories may be mistaken. Rather, they are bound to give a distorted picture of social reality. For example, money is not something that can be measured unproblematically in the way physical processes can be. It is embodied in human practices, which may change when it is known that an attempt at measurement is being made. When we act on a theory about society we always risk altering the reality to which the theory refers. As a result of this fact—which Soros terms “radical fallibility”—the condition of coordination postulated in economic models of equilibrium, which rests on an assumption of perfect knowledge, is not even a theoretical possibility.

Soros believes this insight into reflexivity has been vitally important in his investment career; but his extraordinary success, which includes remarkable financial results over long periods and developing the hedge fund model of investment beyond anything that existed before, may owe more to his early experiences and his intuitive gifts than to his theoretical beliefs. That does not mean his insight may not, in essence, be sound.

In a well-known critique the Nobel Prize winner Robert Solow argued that Soros neglects well-established theories of disequilibrium while his account of the boom-bust process “is not a theory at all.”³ No doubt Solow is right that many economists have questioned equilibrium models—most obviously John Maynard Keynes, who identified a large-scale breakdown of equilibrium in his analysis of the Great Depression.⁴ It is also true that Soros is not always consistent in his account of how reflexivity operates, sometimes referring to the paradoxes that arise when we try to predict our own behavior, sometimes to the dynamic interactions that occur in public settings where others are influenced by what we do or say, and sometimes to self-reinforcing shifts of mood of the kind that have been studied in the psychology of crowds. When in *The Age of Fallibility* Soros illustrates the workings of reflexivity in financial markets he refers to all of these processes without clearly distinguishing them, and it would be clarifying if he could do so in future writings.

Even so, it seems to me Soros is right to think that the fact of reflexivity implies a basic limitation in our knowledge of the social world. Like other aspects of human life, economic activity is shaped by volatile beliefs. The goal of natural science is to develop theories that contain universal laws; but the social sciences deal with unique historical processes, and the shifts of human beliefs cannot be expressed in such laws. To object to Soros’s account of reflexivity on the ground that it is not a consistent theory is to miss the central point, which is that theories of the kind that have been developed in natural science are not possible in the study of society.

Soros is not alone in thinking that the phenomenon of reflexivity limits the ambitions of the social sciences. Philosophers such as Ludwig Wittgenstein and Peter Winch have thought likewise, as have hermeneutic theorists such as Alfred Schutz and Charles Taylor and sociologists such as Anthony Giddens. All these thinkers accept that the project of a unified science—which was central in the Vienna School of Logical Positivism, and which, despite his hostility to that school, Popper shared—breaks down when it is applied to the human world. In also rejecting this project Soros has moved away from Popper’s philosophy, but he continues to share Popper’s belief that progress can be achieved in ethics and politics by using the methods of science. Like Popper he assumes that when public policies prove to be ineffective or disastrous the reason can only be that they embody mistaken hypotheses, whose errors can be corrected by criticism. This assumption is central to Popper’s brand of rationalism, and it also shapes much of Soros’s analysis of

the failings of the Bush administration. The trouble is that the view of the world expressed in Bush's foreign policies may not be formed from beliefs that can be falsified.

In an earlier book, *The Bubble of American Supremacy* (2004), for example, Soros noted that the outlines of the Bush doctrine were set out in a 1997 mission statement of the neoconservative Project for the New American Century.² Noting that at the close of the twentieth century the United States was the world's preeminent power, the signers proposed a number of policies aiming to entrench this position. Soros argued that as a result of these policies the United States entered

far-from-equilibrium territory. I see a certain parallel between the pursuit of American supremacy and the boom-bust pattern that can be observed from time to time in the stock market. That bubble is now bursting.

In *The Age of Fallibility*, Soros goes further: "In the years since 9/11, America's power and influence in the world have declined more than at any other time in its history." The proximate cause of this change is the invasion of Iraq, which Soros describes as "an ill-conceived and ill-executed adventure that would undermine the American supremacy that it was meant to underpin." The goal of the Bush administration may have been to secure American primacy in a stable world order, but the upshot has been to create a situation in which "the main obstacle to a stable and just world is the United States."

In *The Bubble of American Supremacy* Soros argued that the Bush administration adhered to a far-reaching ideology. Market fundamentalism, religious fundamentalism, and the neoconservative doctrine of American supremacy came together to support a foreign policy that emphasized rivalry between states rather than the possibilities of international cooperation. In *The Age of Fallibility*, Soros modifies this view: "The current regime has the support of disparate groups unified only by the desire for political power and influence." Soros is right to accept that his original analysis was faulty. For much of the time since Iraq was invaded, the administration has been floundering, unable to mount a coherent response to the calamitous developments it has set in motion. It would be fanciful to suppose that it has been implementing any rationally defensible theory or strategy.

But that does not mean it lacks a definite view of the world. Though Soros notes "the rise of religious fundamentalism which until recently stayed at the

fringes of politics,” he says little in *The Age of Fallibility* about the role of religion in the Bush administration. Yet it is here more than anywhere else that it has departed from its predecessors. Some of the most dangerous features of its approach to foreign policy betray the influence of beliefs deriving from Christian fundamentalism. Consider strategies for dealing with terrorism. Soros acknowledges fully that terrorist threats exist; but he suggests that the “war on terror” embodies a mistaken metaphor. Successful counterterrorist strategies have focused chiefly on security measures and political initiatives rather than conventional military operations. These strategies may include concentrated military action—as when Taliban bases were destroyed by America and its allies in Afghanistan—but campaigns of the kind that the US is fighting in Iraq tend to alienate the general population and boost terrorist recruitment. These facts are well understood by military and intelligence analysts in the United States and throughout the world. If the administration persists in its counterproductive policies the reason cannot be that it is unaware of their effects. No doubt intellectual inertia plays a part, but the administration’s view of the world has a delusional quality that goes beyond such errors of judgment.

The “war on terror” is not just a mistaken metaphor. It embodies a tendency to think of international conflict in theological terms that has long been present on the American right, which the increased power of evangelical Christianity has reinforced. A Homeland Security Planning Scenario document published in July 2004 describes the terrorist threat facing the United States as being perpetrated by the Universal Adversary—a description that is echoed in Bush’s many references to a “war against evil.”⁶ Conservative evangelicals count heavily both in funding the Republican Party and as voters. There is not much doubt that they form the principal intended audience of Bush’s apocalyptic rhetoric.⁷ The Christian right’s role in the Bush administration is not simply that of an ally that must be courted and appeased, however. There is a clear affinity in worldview. Millennialist beliefs shape the administration’s thinking, in secular as well as overtly religious forms.

In his seminal study of late medieval millenarian movements,⁸ Norman Cohn argued that the beliefs that animated these movements did not die out in modern times. They were reproduced in twentieth-century totalitarian ideologies. In different ways, Nazism and communism claimed to be based on science but were actually vehicles for apocalyptic myths. Each believed a major rupture in history was imminent that would usher in a new world. Cohn’s analysis of the political role of millenarian beliefs may be relevant

today. Though they may present their news as based on social-scientific theories of modernization, neoconservatives who believe that humankind is on the brink of an American-led “global democratic revolution” in which tyranny will be overthrown forever are voicing a chiliastic faith. They are engaging in prophecy, no less clearly than their allies among Christian evangelicals when they speak of Armageddon and the End Time. The belief that a catastrophic conflagration in the Middle East would inaugurate a new world order to which some on the Christian right subscribe is not an empirical hypothesis that can be revised on the basis of experience. For those who accept it, it is a revealed truth. Equally, no reverse will alter the belief of neoconservatives that the world is destined to adopt an American version of democracy. Inasmuch as it is shaped by such millenarian beliefs the Bush administration’s foreign policy is a faith-based mission rather than a rational engagement with the world.

Soros tries to account for the disastrous foreign policy record of the Bush administration since September 11 as the result of a series of errors, but he is plainly dissatisfied with this explanation. “Who would have thought,” he asks, that “the oldest, most well-established, and most powerful open society in the world could pose a threat not only to the concept of open society at home but also to peace and stability in the world? Yet that is what has happened in the aftermath of the terrorist attack of 9/11.”

No doubt part of the answer is in the trauma induced by the terrorist attacks, which the administration exploited to stifle criticism of its policies. Yet this can hardly be the whole story. Soros tells us that he “watched events unfold after 9/11 with a bias rooted in my adolescent experience of Nazism and communism. My conceptual framework was also based on that experience.” He is far from claiming that the United States is becoming a totalitarian regime—it remains “a functioning democracy with an independent judiciary and the rule of law.” He suggests that there are some “similarities in propaganda methods” between totalitarian propaganda and opinion management by the Bush administration, and refers to the work of George Lakoff, whose work in cognitive science has enabled the manipulation of public opinion to be better understood.² But he remains bemused by the success with which the administration has been able to impose its interpretation of reality: “How is that possible? It is almost as if people were clamoring to be deceived.”

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he missing element here is the pivotal political role of millennialist religion. The attacks activated apocalyptic beliefs widely current in sections of the American population, which the Bush administration has been able to mobilize in support of its agenda. This was not simply cynical manipulation, for there seems little doubt that Bush shares these beliefs. Millenarian belief systems of the kind found on the Christian right are not explanatory theories that can be overturned by contrary evidence. They are myths, which serve a need for meaning rather than truth. The worldview of the Christian right embodies a view of history that is framed in eschatological concepts, according to which American power can be used to rid the world of evil. In theological terms the belief that human action can eradicate evil is decidedly heterodox. Judged by empirical standards it can only be termed irrational.

During much of the last century it seemed that the capture of power by irrational systems of belief could occur only in dictatorial regimes. Nazi Germany and the Stalinist Soviet Union were closed societies whose ruling ideologies could not be exposed to critical scrutiny. Given the success of liberal democracy in defeating its rivals and spreading throughout much of the world it was easy to assume that it has a built-in rationality that gives it an advantage over any kind of authoritarianism. Open societies were liberal democracies, almost by definition, and it seemed they would come into being wherever dictatorship had been overthrown.

Soros is clear that this was much too simple a view:

The collapse of a closed society does not automatically lead to an open society; it may lead to continuing collapse and disintegration that is followed by some kind of restoration or stabilization. Thus a simple dichotomy between open and closed society is inadequate.... Open society [is] threatened from both directions: too much liberty, anarchy, and failed states on the one hand; dogmatic ideologies and authoritarian or totalitarian regimes of all kinds on the other.

In fact, Popper's taxonomy may need a more fundamental revision than Soros has yet realized. When closed societies collapse but fail to make the transition to openness the reason need not be that they languish in anarchy or suffer a return to dictatorship. It may be that they adopt an illiberal form of democracy. Along with the liberal democratic tradition that goes back to Locke and the English civil war there is a tradition, originating in the French Revolution and formulated theoretically by Rousseau, which understands democracy as the

expression of popular will. The elective theocracy that is emerging in much of post-Saddam Iraq is a democratic polity in the latter sense, as is the current regime in Iran; so is the Hamas government in Palestine.

To be sure, these regimes often lack freedom of information and expression and legal limitations on government power, which are essential features of democracy in the liberal tradition. In these respects they are closed societies; but they are not dictatorships. It is often forgotten that democracy, defined chiefly by elections and the exercise of power in the name of the majority, can be as repressive of individual freedom and minority rights as dictatorship—sometimes more so.

To the extent that they repress intellectual freedom, authoritarian regimes necessarily depart from any ideal of the open society; but they may on occasion apply reason in the formulation of their policies more consistently and successfully than the most well established liberal democracy. This is illustrated in the ongoing expansion of Russian power. With characteristic candor Soros declares himself “astounded” by the reemergence of Russia as a key player in the international system.

In part this is a side effect of the global energy crisis, which he examines in an incisive chapter. Russia is able to assert itself in international affairs and disregard Western disapproval of its regressive internal policies because it commands vast reserves of natural resources—above all, oil and natural gas—that are urgently needed during the present period of accelerating globalization. Russia’s revival as a major power is also, however, a product of the policies the Putin regime has pursued. Using European and international dependency on Russian energy supplies as a lever, Putin has skillfully advanced Russia’s geopolitical interests. He has made mistakes—such as his heavy-handed intervention in Ukraine—but they have arisen from miscalculations rather than irrationality. Except with respect to the intractable problem of Chechnya, Russian policies have been highly effective in achieving their goals. Chinese foreign policy has followed a similarly pragmatic pattern, and if anything has been even more successful. While Russia and China are advancing, America has suffered an unprecedented loss of power and influence. No doubt the Bush administration has committed many avoidable mistakes; but its central folly has been to implement a faith-based foreign policy in which the identification and correction of errors play hardly any part.

Indeed, rather than recognizing and rectifying its errors the administration tends to compound them. It seems likely that some neoconservatives in the administration would welcome an escalation of the current conflict in the Middle East to the point where US military action against Iran could appear justified. In part their concern is caused by the rise of Iran as the predominant power in the Gulf—a development furthered by the war in Iraq, which by destroying Saddam’s secular despotism removed the chief counterweight to Iran’s regional power and created the conditions for the emergence of an Islamist regime that is bound to be increasingly subject to the influence of Tehran.

American air strikes on Iran would reinforce the negative consequences of the war. They would have a highly destabilizing effect on global oil supplies, damaging the US and benefiting Russia. They would also increase the influence in the Gulf and throughout the Islamic world of the apocalyptic Shia tradition expressed by Iranian president Mahmoud Ahmadinejad, and embroil the US in an expanded and intensified regional conflict. The overall result would be to accelerate the decline of American hegemony that began with the invasion and occupation of Iraq. Less than twenty years after the Communist collapse, the rising powers in the international system are authoritarian regimes that will not tolerate open political opposition. Closed or semi-closed societies are proving more capable of framing and executing rational strategies than the world’s premier open society, whose faith-based foreign policies have been consistently counterproductive. The “new American century” could last less than a decade.

Soros’s early experiences left him with a need to understand human behavior in extreme circumstances, which led to his lifelong engagement with the ideas of Popper. Popper never doubted that the ills of society could be remedied by the use of reason, and despite his criticisms of Popper’s philosophy Soros would like to agree. It is a belief—or hope—that has inspired him to promote intellectual and political pluralism throughout the world and it informs his admirable stand in opposing the follies of the Bush administration. Yet the searching self-criticism he undertakes in this book points in a different direction. If there cannot be a science of society, neither can society be expected to repeat the cumulative advance that has been achieved in science. The extreme situations that Soros experienced as a youth, and which in a different form he sees today, are not solely a result of fallibility—even of the radical kind he discusses in his account of reflexivity. They have a deeper

source in irrational beliefs, which remain potent forces in politics. Over the long sweep of history, far-from-equilibrium situations are normal. Open societies can never be safe from the disorders of faith.

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- 1 Tivador Soros recounts his experiences in *Masquerade: Dancing Around Death in Nazi-Occupied Hungary* (Arcade, 2001). ↵
 - 2 George Soros, “The Capitalist Threat,” *The Atlantic Monthly*, February 1997, pp. 45–58. ↵
 - 3 Robert M. Solow, “The Amateur,” *The New Republic*, February 8, 1999, p. 29. ↵
 - 4 In *The Age of Fallibility* (footnote on pp. 11–12), Soros acknowledges that a number of important twentieth-century economists “recognized that knowledge is imperfect and that this leads to fundamental difficulties in defining economic rationality,” and mentions F.A. Hayek, J.M. Keynes, and Frank Knight as examples. ↵
 - 5 The text of the mission statement, signed by Dick Cheney, Paul Wolfowitz, and Donald Rumsfeld, is reprinted in *The Bubble of American Supremacy: Correcting the Misuse of American Power* (Public Affairs, 2004), pp. 5–7. ↵
 - 6 The document can be viewed at www.globalsecurity.org/security/library/report/2004/hsc-planning-scenarios-jul04_intro.htm. ↵
 - 7 For the role of evangelical Christianity in Bush’s rise to the presidency, see Kevin P. Phillips, *American Theocracy: The Peril and Politics of Radical Religions, Oil, and Borrowed Money in the Twenty-first Century* (Viking, 2006); and Michael Lind, *Made in Texas: George W. Bush and the Southern Takeover of American Politics* (Basic Books, 2003). ↵
 - 8 Norman Cohn, *The Pursuit of the Millennium: Revolutionary Millenarians and Mystical Anarchists of the Middle Ages*, revised and expanded edition (Oxford University Press, 1970). Cohn has also analyzed the role of apocalyptic myths in fueling anti-Semitism. See his *Warrant for Genocide: The Myth of the Jewish World Conspiracy and the Protocols of the Elders of Zion* (London: Serif, 1996). ↵
 - 9 See Lakoff’s recent book, *Whose Freedom?: The Battle over America’s Most Important Idea* (Farrar, Straus and Giroux, 2006). ↵

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Richard
Posner, Not a
Suicide Pact
(New York: Oxford
University Press,
2006)

CHAPTER SIX

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Rights of Privacy

THE AMERICAN PUBLIC worries more about invasions of privacy than about summary proceedings against suspected terrorists, curtailments of the freedom of speech of the law-abiding, or the right of the media to publish government secrets. Few Americans fear being accused of links to terrorism, fewer still wish to speak out in support of terrorists, and most recognize the legitimacy of keeping the operational details of programs for fighting terrorism secret. But almost everyone places a high value on his privacy. Yet the "right of privacy," which has become such a cockpit of constitutional debate though nowhere mentioned in the Constitution, does not refer to privacy in the usual senses of enjoying some peace and quiet (seclusion) and of being able to conceal personal information about oneself (secrecy). It refers instead to sexual and reproductive freedom. So Americans now have constitutional rights, created by the Supreme Court without any basis in the constitutional text, to use contraceptives, to have an abortion, and to engage in homosexual sex. But there are only hints that they might have a constitutional right to seclusion or secrecy.

Some constitutional provisions, either literally or as interpreted by the Supreme Court, do protect—but only, as it were, by accident—one or the other of these interests, and sometimes both. The prohibition against requiring religious oaths for public office; the interpretation of the First Amendment as permitting (in most situations) anonymous publication; the Third Amendment’s prohibition against quartering troops in private homes in peacetime; the Fourth Amendment’s prohibition against unreasonable searches and seizures of one’s person, houses, papers, or effects (a prohibition that includes the Postal Service’s reading the letters it carries and that has, as we know, been extended to wiretapping and other means of electronic interception); and the Fifth Amendment’s prohibition against compelled self-incrimination all have the effect of guaranteeing a measure of privacy in the two normal senses of the word, senses unrelated to the modern constitutional right of (sexual and reproductive) privacy. That is, they create rights to be left alone by the government in one’s private space (seclusion) and to conceal a variety of beliefs, assertions, personal information, and behaviors from the government (secrecy).

Although seclusion and secrecy (but not sexual and reproductive freedom) were well-understood aspects of privacy in the eighteenth century, the concern of the Constitution’s framers, in the various provisions that I have mentioned, was with protecting property rights and political rights rather than with protecting seclusion and secrecy for their own sake. They are, it is true, among the motivations for wanting to keep the police from entering one’s home, rummaging through one’s things, and reading one’s private papers. But the scope and the purpose of a legal protection need not coincide. The fact that the Fourth Amendment gives some protection to the secrecy interest needn’t imply that anything that invades that interest violates the amendment. The much-criticized *Olmstead* decision, which held that wiretapping that does not involve a trespass (the tap is usually attached to the telephone line outside the premises of the

person whose phone conversations are being intercepted) is not a search or seizure within the meaning of the Fourth Amendment, not only had a sound historical pedigree and conformed to the language of the amendment, which refers to the search or seizure only of solid objects (persons, houses, papers, and effects), but also reflected the difference between searches that invade the seclusion interest in privacy—and usually the secrecy interest as well (the search is for something that the target of the search had tried to conceal)—and searches that invade only the latter interest. Compare entering a person's house and stealing his computer to obtain the files with removing the files by hacking into the computer via the Internet. That is not to say that *Olmstead* was decided correctly. Language and drafters' intent are not the only or even, in my judgment, the best guides to constitutional rule making; they are merely the most orthodox ones.

The idea that there should be a general right of privacy, including privacy of communications, emerged long after the Constitution was drafted. First urged by Samuel Warren and Louis Brandeis in a law review article in 1890 (though without reference to communications), it gradually became a part of the common law of most states, although it was not yet a well-established right when *Olmstead* was decided. In constitutional cases, other than ones involving wiretapping and other electronic eavesdropping, it figures more often as a constitutional value than as a constitutional right—that is, as a social interest, like the interest in public safety, that limits the scope of constitutional rights. The Court has upheld against First Amendment challenges laws limiting the volume of sound trucks used to broadcast political messages; the noise from the sound trucks invades the peace and quiet—the seclusion—of people within the range of the sound. The Court has allowed city governments to place limits on the routes taken by political marchers, in order to minimize interference with the routines of other people in the city. But it has invalidated laws that prohibit the media from publishing the names of rape victims.

When freedom of speech and privacy as seclusion or secrecy collide, freedom of speech usually wins out.

The privacy interest that is particularly relevant to the present national emergency is the interest in concealing personal information about oneself, although a quarantine or other aggressive public health measure imposed in an effort to limit the effects of a biological attack would invade people's personal space, as do physical searches.

Since national security intelligence is concerned with learning the identity of terrorists and their supporters rather than just learning more about known terrorists, some of the personal information gathered by intelligence agencies pertains to people who have no links to terrorism; they are fish too small to eat, caught in a net with a fine mesh. Civil libertarians who believe that only criminal suspects should ever be subjected to surreptitious surveillance don't give enough weight to intelligence needs.

To decide what if any constitutional rights the little fish have to prevent the government from collecting personal information about them requires making several distinctions. One, noted in Chapter 4, is between information that is merely searched electronically and information that is scrutinized by a human being. An electronic search no more invades privacy than does a dog trained to sniff out illegal drugs, though the dog's "alerting" to the presence of drugs in a container provides probable cause for a (human) investigator to search the container.

Another distinction is between the pure interest in concealment of personal information and the instrumental interest based on fear that the information will be used against one. In many cultures, including our own, there is a nudity taboo. Except in the sex industry (prostitution, striptease, pornography, etc.), nudist colonies, and locker rooms, people generally are embarrassed to be seen naked by strangers, particularly of the opposite sex, even when there are no practical consequences. Why this is so is unclear, but it is a brute fact

about the psychology of most people in our society. A woman (an occasional man as well) might be disturbed to learn that nude photographs taken surreptitiously of her had been seen by a stranger in a remote country before being destroyed. That invasion of privacy would not have harmed her in any practical sense. Yet it might cause her at least transitory emotional distress, and that is a harm even if it has no rational basis. But if the stranger used the photos to blackmail her, or in an effort to destroy her budding career as an anchorwoman for the Christian Broadcasting System published the photos in *Hustler* magazine, she would have a different and stronger grievance.

Of course, in many cases of instrumental concealment of personal information the motive is disreputable (deceptive, manipulative): a person might want to conceal his age or a serious health problem from a prospective spouse, or his criminal record from a prospective employer. But not in all cases; the blackmailed woman in my example was not trying to mislead anyone in resisting the publication of the photos.

Legitimate deliberative activity, another example of legitimate instrumental concealment, can be deterred by publicity, because publicity hampers candid communication. When people are speaking freely they say things that an eavesdropping stranger is likely to misconstrue. When they speak guardedly because they are afraid that a stranger is listening in, the clarity and candor of their communication to the intended recipients are impaired. There is a social value in frank communications, including being able to try out ideas on friends or colleagues without immediate exposure to attacks from rivals or ill-wishers. Legitimate strategic plans also require secrecy to be effective. Competition would be greatly undermined if business firms could eavesdrop on competitors' planning sessions or steal their trade secrets with impunity. And, as the Supreme Court recognized in *NAACP v. Alabama ex rel. Patterson* (1957), freedom of political speech requires allowing a controversial advocacy group, whose

members if known might be exposed to retaliation, to keep its membership list secret.

Government, too, is a site of deliberations, and therefore has a legitimate interest in a degree of privacy. Civil libertarians want government to be transparent but private individuals to be opaque; national security hawks want the reverse. People hide from the government, and government hides from the people, and both the people and the government have both good and bad reasons for hiding from the other. Complete transparency paralyzes planning and action; complete opacity endangers both liberty and security. Terrorists know this best. Eavesdropping imposes costs on innocent people because their privacy is compromised, but the costs it imposes on terrorists are even steeper because it thwarts their plans utterly and places them at risk of capture or death. Of course, from our standpoint as a people endangered by terrorism, the higher those costs the better.

Many people are frightened of the eavesdropping capacity of modern electronic technology. Suppose that the National Security Agency's listening devices gathered the entire world's electronic communications traffic, digitized it, and stored it in databases, where it was machine-searched for clues to terrorist activity, but the search programs were designed to hide from intelligence officers all data that contained no clues to terrorist plans or activity. The data vacuumed up by the NSA in the first, gathering stage of the intelligence project would after being screened by the search programs present intelligence officers with two types of communication to study: communications that contained innocent references to terrorism, and communications among the terrorists themselves. Both types of communication would be discouraged once people realized the scope of the agency's program, but the consequences for the nation would be critically different. Discouraging innocent people from mentioning anything that might lead a computer search to earmark the communication for examination by an intelligence officer would inhibit the

free exchange of ideas on matters of public as well as private importance. But discouraging terrorists from communicating by electronic means would discourage terrorism. Foreign terrorists would find it difficult to communicate with colleagues or sympathizers in the United States if they had to do so face-to-face or through messengers because they knew the government was eavesdropping on all their electronic communications. This is simply my earlier point writ large: protected communications are valuable to the persons communicating, whether they are good people or bad people, and this duality is the source of both the costs and the benefits of intercepting communications for intelligence purposes. ebrary

A distinction at once crucial and problematic is between the involuntary and the voluntary disclosure of personal information. The former is illustrated by surreptitious interception of mail, of phone conversations, and of other communications; here the Fourth Amendment comes into play and offers a measure of constitutional protection of privacy (how great a measure I will discuss shortly). Surveillance cameras that photograph pedestrians, a security measure implemented on a huge scale in London (enabling identification of the July 2005 terrorist bombers), is another example, at least if the existence or location of the cameras is concealed. If the entire city is known to be under camera surveillance, the surveillance is no longer surreptitious; submission to it is as a practical matter involuntary. ebrary

A far greater amount of personal information is revealed voluntarily than involuntarily, as these words are conventionally used. But the case of the pervasive surveillance cameras, avoidable only by never leaving one's home or by moving to another city, suggests that the distinction is often tenuous. No one is required to drive and therefore to have a driver's license. But driving is a practical necessity for most adult Americans, and if you want to drive legally you need a license, which requires that you disclose certain personal information to the motor vehicle bureau. A federal statute forbids colleges

and other educational institutions to reveal a student's grades without his consent. Yet virtually all students give their consent because otherwise a prospective employer is likely to assume the worst. To get a good job, to get health and life insurance, to get a bank loan, to get a credit card, you need to reveal personal information. Every time you make a purchase other than for cash you convey information about your tastes, interests, and income that may well end up in some easily accessible database. Every time you use E-ZPass or some equivalent automatic toll system, your location is recorded. Digitizing medical records will help doctors and patients by making it much easier, swifter, and cheaper to transfer these records when a patient switches doctors or is treated by a new doctor in an emergency or needs to consult a specialist. But once the records are digitized rather than existing solely in the form of hard copies in the office of the patient's primary physician, the risk that unauthorized persons will gain access to them is increased. Nevertheless, the movement to digitize medical records is inexorable.

The *reductio ad absurdum* would be to argue that since you don't have to have a phone, if the government announces that it is going to tap all phones and you continue using your phone, you have "voluntarily" disclosed the content of your calls to the government. That is a bad argument, but not if the issue is government access to digitized medical records even if the government *required* all medical records to be digitized and sharable over the Internet. That measure would have a justification unrelated to a desire to snoop; in addition, the disclosure of medical information to the doctor in the first place, the information that goes into the records, is voluntary.

An intermediate example would be a law requiring that all homes and offices contain surveillance cameras that would film the interiors continuously, but the government could obtain the films only if it had probable cause to believe that criminal activity had occurred that the cameras had recorded. In the case of homes, at least, such a law

would be regarded as an intolerable invasion of privacy. Round-the-clock surveillance, if only by a machine, is felt as an invasion of seclusion in a way that monitoring only communications is not.

There are interesting cultural differences. European countries have much stricter laws than the United States does against the acquisition of personal information by business firms, and much laxer laws against the acquisition of personal information by government. The difference reflects American suspicion of government and European suspicion of markets.

But the essential point is that a person would have to be a hermit to be able to function in our society without disclosing a vast amount of personal information to a vast array of public and private demanders. This has long been true, but until recently the information that people voluntarily disclosed to vendors, licensing bureaus, hospitals, and so on was scattered, fugitive (because the bulkiness of paper records usually causes them to be discarded as soon as they lose their value to the enterprise), and searchable only with great difficulty—which provided a further incentive to discard information. So although one had voluntarily disclosed private information on innumerable occasions to sundry recipients, one retained as a practical matter a great deal of privacy. But with digitization, not only can recorded information be retained indefinitely at little cost, but the information held by different merchants, insurers, and government agencies can readily be pooled, opening the way to assembling all the recorded information concerning an individual in a single digital file that can easily be retrieved and searched. It should soon be possible—maybe it is already possible—to create a comprehensive electronic dossier for the vast majority of American adults, the sort of dossier the FBI compiles when it conducts a background investigation of an applicant for sensitive government employment or investigates a criminal suspect. The difference is that the digitized dossier would be continuously updated.

The personal information that an organization collects in the course of its dealings with its customers and employees often has commercial value to another organization as well, to which the collector might therefore like to sell the information. Through such transactions, expanding pools of personal information about individuals are created. The rational seller will, it is true, balance the profit from such a sale against the cost in loss of customers. Many people are reluctant to provide personal information to a supplier, an insurer, or other organization without a contractual assurance that the information will not be resold, and so such assurances are common. Still, a vast amount of personal information is exchanged and pooled because much information is in official records that the public is legally entitled to inspect (such as registries of title to real estate and most court records, including records of bankruptcy proceedings, often rich in personal information), or because it has found its way onto the Web or was disclosed accidentally or deliberately despite a promise not to disclose it, or because the customer had failed to obtain a promise of confidentiality. Also, digitized information tends to have many more loci than paper documents, residing as it usually will in a number of different computers to which many persons may have access—including hackers. Living a normal American life, one cannot avoid disclosing to strangers a tremendous amount of personal information that will find its way into publicly accessible, readily searchable databases, and so one's privacy, or much of it, is blown.

Yet the Supreme Court has held, in *United States v. Miller* (1976) and other cases, that once a person "voluntarily" reveals personal information to a bank, a health insurer, or any other nonintimate, he loses any constitutional right to claim that his privacy has been invaded should the government obtain the information from the entity to which he had revealed it or an entity to which the receiver had disclosed it. Indeed, earlier the Court had held that even disclosing incriminating information to an undercover agent whom one

considered a friend or a trustworthy business associate resulted in the forfeit of any claim to informational privacy. Nothing is more common, moreover, than for a prisoner to snitch on his cellmate; often he will be offered inducements by the authorities to do so. The cellmate whose informational privacy is invaded has no remedy.

It is unclear whether in allowing such tactics the Supreme Court is being unrealistic about the voluntary character of such disclosures (is a disclosure meaningfully “voluntary” when it is procured by deceit?) or believes that the only constitutional protection of informational privacy is found in the Fourth Amendment and that information you reveal in the ordinary course of your personal and business dealings cannot be thought the product of a “search.” That is an unsatisfactory explanation because the search occurs not at the initial disclosure but later, when the government demands the information from the bank, insurer, cellmate, or other recipient.

The *Miller* decision is the constitutional foundation of the FBI’s “national security letters.” These are demands on banks and other records custodians for information that has been voluntarily disclosed to them. If the demand is refused—which is rare, as most custodians want to remain in the Bureau’s good graces—the government must ask a court to subpoena the records. There is no constitutional obstacle to the enforcement of such a subpoena. But a court can refuse to enforce it if it is unduly burdensome or invades privacy beyond what seems reasonable (for a pertinent example, see the *Northwestern Memorial Hospital* case [2004]). This limitation on enforcement, ignored by critics of the national security letters, is important because it can be invoked even when information bearing on national security is sought. But it is not a constitutional limitation. A subpoenaed bookstore cannot claim that its record of customers’ purchases is constitutionally protected property. The store is merely a repository of information that, having been furnished to it voluntarily, lost

the constitutional protection that information receives when seized by the government without consent, as by surreptitious wiretapping.

Besides the principles governing the enforcement of a subpoena seeking private information, there is a common-law right of privacy and a number of federal and state privacy statutes—all attesting to the value that people place on their privacy—but they are not directly relevant to my discussion, which is limited to constitutional issues. They do confirm, however, that privacy of information is a highly valued commodity, perhaps one that should be accorded the status of constitutional “property” or “liberty.”

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CIVIL LIBERTARIANS’ CONCERN with the government’s demanding access to data found in databases to which individuals have “voluntarily” consigned personal information has focused on section 215 of the USA PATRIOT Act (passed by overwhelming majorities in both houses of Congress within weeks after the 9/11 attacks), and more recently on the collection activities of the National Security Agency in arguable violation of the Foreign Intelligence Surveillance Act. As amended in March 2006, section 215, the so-called (and misnamed) libraries provision, empowers the government to demand books, papers, records, and other materials from any individual or organization (libraries are not singled out, though they are not excluded) if there are reasonable grounds to believe that the records contain information relevant to a national security investigation.

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Civil libertarians argue that the government ought to be required to demonstrate that it has a reasonable basis for believing that the person to whom the records pertain is involved in terrorist activity. But as should be clear by now, that would be too restrictive a requirement. To impose it would be either to misunderstand the needs of intelligence or to underestimate the value of intelligence in the struggle against terrorism (or perhaps to underestimate the terrorist

threat). Information about an individual who is *not* part of a terrorist ring may nevertheless be highly germane to an investigation of the ring or, what may be as important, to an investigation aimed at discovering the existence of such rings. The information might concern an imam who, though not himself involved in terrorism, was preaching holy war. It might concern family members of a terrorist, who might have information about his whereabouts. It might consist of sales invoices for materials that could be used to create weapons of mass destruction, or of books and articles that expressed admiration for suicide bombers.

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The impact of section 215 on civil liberties is quite limited—only a few dozen section 215 demands have been served on libraries. Most records custodians will, as I said, voluntarily hand over nonprivileged records to the government when told the records may contain information relevant to national security. A custodian's refusal to disclose the records might generate enough suspicion to enable the government to obtain a subpoena even under a much narrower version of section 215.

One understands, though, why civil libertarians have labeled section 215 the “libraries provision” despite its being used so rarely against libraries. To discover what people have been reading, as distinct from discovering their financial or health status, is to gain insight into what they are thinking—and what they are planning. This is *why* the government might want to obtain a record of a person's library borrowings (not to mention his bookstore purchases, records of which also fall within the scope of section 215). And when the quest for knowledge of what a person is thinking is driven by concern with terrorism, which is almost always politically motivated, success in the quest is likely to include the acquisition of a comprehensive picture of the subject's political beliefs. Knowing that the government is seeking to compile such pictures, people of unorthodox views may hesitate to buy or borrow books that express such

views. This is the same issue that is raised by the government's conducting surveillance of mosques. Whether such surveillance presents Fourth Amendment problems depends on the method used to conduct it; surveillance as such, as we saw in Chapter 4, does not violate the First Amendment despite its undoubted effect on the exercise of free speech.

The *Miller* line of decisions, in holding that a voluntary disclosure of information manifests a willingness to waive or forfeit any right of privacy, seems unrealistic about the meaning not only of "voluntary" but also of "privacy" itself. Informational privacy does not mean refusing to share information with everyone. Obviously a telephone conversation is not private in that sense, nor a letter, nor a conversation between spouses or friends. Every conversation is at least two-sided. The fact that I disclose symptoms of illness to my doctor does not make my health a public fact, especially if he promises (or the rules of the medical profession require him) not to disclose my medical history to anyone without my permission.

One must not confuse solitude with secrecy; they are distinct forms of privacy. Solitude fosters individualistic attitudes; conversely, the constant presence of other people or the sense of being under constant surveillance enforces conformity. But one also needs freedom to communicate in private. The planning of organized activity obviously is impossible without communication; less obviously, productive independent thinking almost always requires bouncing ideas off other people. And few of us are sufficiently independent-minded to persist in an unorthodox idea if we don't discover that others share it.

If "liberty" in the Fifth Amendment's due process clause can connote sexual freedom, and "due process" can be understood to require that any restriction on liberty be no greater than is necessary, why can't there be a due process right to control information about oneself that is not already public knowledge, unless one is trying to

use that control for unlawful ends or the government has a pressing need for the information? Maybe there can be—provided, however, that the “pressing need” qualification is taken seriously. Constitutional rights, as we have seen throughout this book, are not absolutes whose scope is fixed without regard to competing interests. How much information about oneself one should be permitted to withhold from the government depends critically on how valuable the information is to the government. In an era of global terrorism and proliferation of weapons of mass destruction, the government has a compelling need to gather, pool, sift, and search vast quantities of information, much of it personal.

I SAID AT THE OUTSET of this chapter that Americans value their privacy; here I add that they value two aspects of privacy the most. The first is being free to go about one’s business with a minimum of interference; the second is not having personal facts used against one. The latter is a subset of what I have been calling the secrecy sense of privacy. Americans are not known for reticence or personal modesty. Most of us are quite casual about disclosing personal information to strangers, provided it isn’t likely to boomerang. The widespread use of that most indiscreet of communications media, the Internet, is not the only evidence of this. People have become blasé about having their personal belongings X-rayed and their persons searched by security personnel at airports. They are overheard everywhere talking loudly on cell phones. They are oblivious to the mushrooming of surveillance cameras, interior as well as exterior. Fewer people make use of encryption programs to conceal their electronic communications than invite strangers to read their correspondence: Gmail, Google’s e-mail application, automatically searches the text of an e-mail and posts advertisements keyed to its content. Gmail is immensely popular.

The fact that one can't negotiate modernity without continuously revealing personal information to a variety of demanders has resulted in a lowering of expectations of privacy. People have become habituated to a culture of radically diminished informational privacy. In this new culture, the degree to which a disclosure of personal information inflicts harm depends less on what information is disclosed than to whom, and to how many, and what use it is put to by people to whom it is disclosed. Maybe most of us no longer care much if strangers know intimate details of our private lives, though this depends on who the strangers are and whether the details that each possesses are combined to create a comprehensive dossier on us.

Intelligence officials like to say that the information they're interested in is actually more limited than the information that a medical provider or public health officer, a prospective spouse or employer, a health or life insurer, or even a bank or other seller of goods or services would like to have. That is both correct and incorrect. In the initial computer sifting designed to pick out data meriting scrutiny by an intelligence officer, only facts bearing on national security will trigger scrutiny. But once an individual is identified as a possible terrorist or foreign agent, the government's interest in him will explode. Besides obtaining contact information, it will want to learn about his ethnicity and national origin, education and skills, previous addresses and travel (especially overseas), family, friends and acquaintances, political and religious beliefs and activities, finances, any arrest or other criminal record, military service if any, mental health and other psychological attributes, and a range of consumption activities, the whole adding up to a comprehensive personal profile. If these profiles are digitized, pooled, and searched electronically to reveal links and interactions among individuals, the intelligence services will have access to a body of information of potentially very great utility for identifying and tracking members of terrorist cells and piecing together their financial and other support networks. They

will, for example, know everything that Amazon.com knows about an individual's preferences in books and movies because they will have gotten the information from Amazon.com, and they will know a great deal more by pooling that information with information from other sources, public and private.

I mentioned this kind of national security data gathering in Chapter 4, but here I want to emphasize the degree to which it would *not* depend on electronic surveillance that would raise questions under the Fourth Amendment or under statutes such as Title III (the general federal wiretap statute) and the Foreign Intelligence Surveillance Act. The Defense Department's Able Danger project (well discussed in an article by Shane Harris) showed that valuable intelligence could be obtained without the kind of surveillance that normally requires a warrant.

Privacy is the terrorist's best friend, and the terrorist's privacy has been enhanced by the same technological developments that have both made data mining feasible and elicited vast quantities of personal information from innocents: anonymity combined with the secure encryption of digitized data makes the Internet a powerful tool of conspiracy. The government has a compelling need to exploit digitization in defense of national security. But if this is permitted, intelligence officers are going to be scrutinizing a mass of personal information about U.S. citizens. And we know that people don't like even complete strangers poring over the details of their private lives. But the fewer of these strangers who have access to those details and the more professional their interest in them, the less the affront to privacy. One reason people don't much mind having their bodies examined by doctors is that they know that doctors' interest in bodies is professional rather than prurient; we can hope that the same is true of intelligence professionals.

The primary danger of such data mining is leaks by intelligence personnel to persons inside or outside the government who might

use the leaked data for improper purposes. Information collected by a national security data-mining program would have to be sharable within the national security community, which would include in appropriate cases foreign intelligence services, but not beyond. Severe sanctions and other security measures (encryption, restricted access, etc.) could and should be imposed in order to prevent—realistically, to minimize—the leakage of such information outside the community. My suggestion in the last chapter that the principle of the Pentagon Papers case be relaxed to permit measures to prevent the media from publishing properly classified information would reinforce protection of the privacy of information obtained by national security data mining.

I have said both that people value their informational privacy and that they surrender it at the drop of a hat. The paradox is resolved by noting that as long as people don't expect that the details of their health, love life, or finances will be used to harm them in their interactions with other people, they are content to reveal those details to strangers when they derive benefits from the revelation. As long as intelligence personnel can be trusted to use their knowledge of such details only for the defense of the nation, the public will be compensated for the costs of diminished privacy in increased security from terrorist attacks.

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Civil libertarians will not be reassured. They combine an instinctive distrust of government activities to protect national security with a systematic disparagement of the menace to national security that terrorists pose. The distrust is excessive and the disparagement irresponsible. Although there is a history of misuse by the FBI, the CIA, and local police forces of personal information collected ostensibly for law enforcement and intelligence purposes, it is not a recent history. The legal and bureaucratic controls over such misuse are much tighter than they used to be, in part because of the investigations conducted by the Church and Pike committees in the 1970s. The

media are nosier, more vigilant, more competitive. Whistleblowers have more legal protection against retaliation. Legal sanctions on misconduct by government officials are heavier. The new criminal-investigative technique of interrogating journalists about the sources of the leaks they publish, such as the leak of the identity of Valerie Plame Wilson as an undercover CIA officer—a breach of privacy—will reduce the number of leaks. The point is not that human nature has changed since the days when J. Edgar Hoover ran roughshod over civil liberties; it hasn't. It's the environment in which law enforcement and intelligence personnel work that has changed, reducing the risk of abuse of private information by its governmental custodians at the same time that the menace of terrorism has increased. The lines have crossed.

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Conclusion

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CONSTITUTIONAL RIGHTS are largely created by the Supreme Court, by loose interpretation of the constitutional text. Created as they are in response to the felt needs and conditions of the time, they can be and frequently are modified by the Court in response to changes in those needs and conditions. A constitutional right *should* be modified when changed circumstances indicate that the right no longer strikes a sensible balance between competing constitutional values, such as personal liberty and public safety. A national emergency, such as a war, creates a disequilibrium in the existing system of constitutional rights. Concerns for public safety now weigh more heavily than before. The courts respond by altering the balance, curtailing civil liberties in recognition that the relative weights of the competing interests have changed in favor of safety. That is the pragmatic response, and pragmatism is a dominant feature not only of American culture at large but also of the American judicial culture.

What the current administration calls the “war on terrorism” is not a conventional war, because it is not a military conflict with a foreign state. But it has essential features of a war, indeed of a total

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war. It is a violent conflict with a powerful, resilient enemy that wants to injure the United States and Europe grievously, overthrow governments in the Middle East, Africa, and Central and Southeast Asia, destroy Israel, and force the United States to withdraw from the Eastern Hemisphere. Al-Qaeda and its spin-offs and allies constitute a formidable enemy. Their lack of a national base makes them in some ways more dangerous than when they had one in Afghanistan because it weakens our ability to retaliate against them or even find them. The stakes are magnified by the enemy's effort to obtain and deploy weapons of mass destruction, which are becoming increasingly accessible to terrorist groups and against which, in the hands of terrorists, retaliation in kind is impossible. The fighting is intermittent (except in Iraq), but that is a feature of many wars.

We have enemies besides the terrorists. But it is the peculiarly insidious character of the terrorist threat that requires responsive measures that test our commitment to civil liberties and make the question of the constitutional balance between liberty and safety an urgent one. With the 9/11 attacks receding in time, forgetfulness and complacency are becoming the order of the day. Are we safer today or do we just feel safer? Though scattered by our invasion of Afghanistan and by our stepped-up efforts at counterterrorism, terrorist leaders may even now be regrouping, and preparing an attack that will produce destruction on a scale to dwarf 9/11.

I have argued that the proper way to think about constitutional rights in a time such as this is in terms of the metaphor of a balance. One pan contains individual rights, the other community safety, with the balance needing and receiving readjustment from time to time as the weights of the respective interests change. The safer we feel, the more weight we place on the interest in personal liberty, the more endangered we feel, the more weight we place on the interest in safety, while recognizing the interdependence of the two interests. Civil libertarians should value safety not only for its intrinsic

merits but also because a terrorist attack or other national security crisis incites curtailments of civil liberties. National security experts should value civil liberties not only for their intrinsic value, and not only because civil liberties abuses could cause disaffection among members of communities whose loyalty to the nation is at once vital and perhaps precarious, but also because civil liberties reinforce the separation of powers by limiting the discretion of the executive branch. The separation of powers is an essential mechanism for correcting the errors to which each branch of government would be prone in the absence of a competitive environment.

Civil liberties and constitutional rights tend to be discussed in the same breath, but they are not synonyms. Civil liberties are shaped by statutes, regulations, and the discretionary judgments of law enforcement and national security personnel as well as by courts in the name of the Constitution. Prudential and practical considerations, as well as public opinion (including elite public opinion, which is often highly influential with Congress) and interest group pressures, have resulted in the creation by legislatures and courts of a body of statutory and common-law civil liberties that is far more extensive than anything to be found in the text or the authoritative interpretations of the Constitution. I noted in Chapter 3 how the right of a U.S. citizen detained as an enemy combatant to seek habeas corpus was confirmed by the Supreme Court on the basis of a statute, and in Chapter 4 how FISA was a legislative reaction (indeed overreaction) to executive-branch abuses. Recall too how the House of Representatives defied public opinion by impeaching President Clinton. Congress has a mind of its own—it is not just a transmitter of ignorant public opinion, let alone a toady of the executive branch. This point reinforces what should be the cornerstone of judicial interpretation of the Constitution in emergency situations, which is judicial modesty. The Supreme Court's constitutional decisions are extremely

difficult to change except by the Court itself, which is, however, reluctant to overrule its decisions lest by doing so it acknowledge the essentially pragmatic, political, and ad hoc character of constitutional decision making. And Supreme Court justices have scant knowledge of national security, a deficiency that may make them lean too far either way—in favor of what they do understand, which is the legal tradition of protecting civil liberties, or in favor of upholding security measures because they don't understand them. Congress knows more about national security and so may perform a more effective checking function on the president than the courts are able to do.

It is a matter of concern when the legal cart is put before the policy horse, so that instead of asking the practical question of what should be done, we ask the lawyers what their partial and parochial perspective, their traditions and hobbyhorses, their shibboleths and taboos, their rights fetishes, and their imagined histories lead them to recommend. Consider once again the storm that arose in December 2005 over the president's having ordered the National Security Agency to conduct electronic surveillance outside the framework created by the Foreign Intelligence Surveillance Act. The critics charged that the surveillance violated the act, as indeed it seemed to. The administration riposted that the joint resolution authorizing force against al-Qaeda, viewed as a declaration of war, was an implicit authorization of whatever surveillance the commander in chief might think necessary to the prosecution of the war and that anyway the president, as commander in chief, cannot be straitjacketed in his conduct of war by a mere statute. The administration also argued that the warrant procedure imposed by FISA is too cumbersome. Even though the warrant can be sought retroactively (up to seventy-two hours after the surveillance begins) if there is no time to get it in advance, the sheer volume of modern communications makes it difficult to cope with the paperwork burdens of literal compliance with the statute; the statute requires that the warrant application con-

tain a formidable amount of information. Critics argued that if FISA is unworkable in the era of global terrorism and advanced communications, it should be amended, not flouted or bypassed.

All this legal cut-and-thrust was premature. The focus of debate should have been on the adequacy of FISA in the current emergency. If it is inadequate—and it surely is—it can be changed (as civil libertarians point out) or perhaps bypassed (as the administration argued). When the question is cast as one of constitutional rights and powers, the priority of policy analysis over legal analysis is even more imperative. Constitutional law is especially plastic, for reasons discussed in the first chapter of this book. Intuitions of policy guide the judges in molding the plastic into some definite shape. Policy, together with such institutional or systemic concerns as the competence of judges to evaluate national security needs and the proper balance between the judiciary and the other branches of government (judicial activism versus judicial modesty or self-restraint), should be the focus of debate over how far the Constitution should be understood to limit government responses to national emergencies.

Analysis guided by these concerns has persuaded me that the measures taken in the wake of the 9/11 attacks to combat the terrorist threat do not violate the Constitution, except the effort to deny the right of habeas corpus to U.S. citizens—a measure that the Supreme Court invalidated—and to foreign terrorist suspects captured in the United States. Terrorist suspects are entitled to due process of law, but they can be tried as unlawful combatants before military tribunals (the constitutionality of which is at this writing pending in the Supreme Court) and thus denied most of the constitutional rights possessed by criminal defendants. Additional counterterrorist measures, in particular in the related areas of electronic surveillance and computerized data mining, could be taken without violating the Constitution (even if there were a clear constitutional right to informational privacy), especially if the effect on privacy is minimized by

a strict rule against using information obtained through such means for any purpose other than to protect national security. More can be done to deter the leaking of national security secrets to the media and, if necessary (I do not think it is yet necessary), to crack down on extremist speech. Coercive interrogation up to and including torture might survive constitutional challenge as long as the fruits of such interrogation were not used in a criminal prosecution. I repeat that the Constitution is not the sum total of civil liberties. Statutes and treaties provide additional protections. Constitutional law is a looser garment, continually rewoven by Supreme Court justices mindful (one hopes) of the need to balance security and liberty concerns as the weights of these concerns shift.

I WANT TO CLOSE by returning to an earlier theme that requires qualifying the metaphor of the balance. Recall the discussion in Chapter 4 of whether it is better to have a strict legal rule against torture and hope that it will be violated in situations of genuine exigency or to recognize in the formulation of the constitutional principle itself that torture should be permitted in truly exigent circumstances. The general question is whether to govern difficult and sensitive issues that arise at the intersection of civil liberties and national security by a rule or by a standard. Although legal principles should be based on a balancing of competing interests, it is a separate question whether to embody the balance in a rule or in a standard. The former will be simpler to enforce, but its application is likely to produce occasional anomalies. The latter will avoid the anomalies but by its inherent sponginess invite applications that may distort its scope.

Rules create a space for what might be termed "licensed civil disobedience." To stop up any loopholes, they characteristically are overinclusive. If they are legal rules, they overstate duties, with the further aim of repelling cynicism and "making a statement." No one

actually goes through life never violating the letter of the law; “work to rule” is a well-known method of industrial sabotage, as activity grinds to a halt unless work rules are bent from time to time. So in practice many violations of rules, including legal rules, are condoned, and even approved, though usually tacitly in order to preserve the rules. The combination of an overinclusive rule with prosecutorial discretion (that is, authority not to prosecute even a clear violation of law) may be superior in many situations both to a standard and to a rule that is festooned with exceptions. The upshot is a class of criminal acts that are not excused but are nevertheless permitted. It is a long-standing device of government that should not be scorned.

There is even a sense, though it is easily misunderstood, in which rules are made to be broken. The choice to govern some activity by a rule is a choice to exclude from consideration some relevant circumstances in the interest of clarity and simplicity. But those circumstances do not cease to be relevant; they hover in the wings, as it were, waiting for a case to arise in which their force is so great that the rule must bend, either by recognition of a new exception or by simply being ignored.

Lincoln was morally justified in suspending habeas corpus at the outset of the Civil War, not only because there was strong support for the Confederacy in key states, notably Maryland (which together with Virginia surrounds the District of Columbia), but also and relatedly because the Union was in grave peril. To prevent a collapse of the North’s will to fight, Lincoln had to demonstrate unflinching resolve to resist the secession, and one way to do that was to act sternly against disloyal citizens. The importance of demonstrating resolve at the outset of a grim struggle explains and to a degree justifies the excesses of repression that so often accompany our entry into war, including the war against al-Qaeda.

One response to Lincoln’s actions might be to say that if he was acting justifiably, we should amend the Constitution to authorize

presidents to suspend habeas corpus in emergencies (or at least ask Congress to authorize the president to suspend habeas corpus, a measure arguably within Congress's suspension power, though remember that the power is limited, perhaps too narrowly, to cases of invasion or rebellion). The alternative, which has been chosen by default, is to say that we are not going to give the president that legal authority but we are going to expect him to suspend habeas corpus if doing so is necessary (as Lincoln believed) to save the nation. I prefer the latter approach; the fact that it has worked pretty well for more than two centuries is a practical argument for its retention.

A president legally authorized to suspend habeas corpus in an emergency would be tempted to test the outer bounds of "emergency" (or whatever other formula was chosen to define his suspension authority) because presidents want to expand their power. If the legal authority is withheld, the president will be cautious in his definition of an emergency, since if the exigent need to violate the Constitution is not plain he will pay a high political price for his illegal action, as Nixon did. To put this differently, conferring legal authority to suspend constitutional rights reduces the cost of that extreme action to the president, and we may want him to bear a heavy (though not prohibitively heavy) cost so that he will be temperate in his exercise of power. There is the further concern that if the suspension power is narrowly defined it will fail to make provision for novel emergencies (notice how Congress's authority to suspend habeas corpus, being limited to situations of rebellion or invasion, fits poorly with the emergency created by the 9/11 attacks—were they an "invasion"?), while if it is broadly defined it will give the president too much power.

In a curious way, the extralegal approach that I am defending places tighter constraints on the president than the legal approach of amending the Constitution to authorize suspending constitutional rights in emergencies, and is structurally more akin to the preferred

approach of civil libertarians. They like rules that are protective of civil liberties and allow for only narrow exceptions. My approach has the rule-and-exception structure, but the only exceptions are the ad hoc ones that presidents “buy” by paying the political price of breaking the law. In contrast, legal authorization for suspending constitutional rights in emergencies would operate in practice as a loose standard within whose capacious and perhaps elastic bounds the president could operate without paying any political price.

An intermediate approach deserves some consideration. It would be to extend the doctrine of “qualified immunity,” which allows a public officer to escape having to pay damages for an illegal act that he has committed if the illegality was not clearly established when he acted, to national security officials who violate a constitutional right in good faith in compelling situations of necessity. In the famous English case of *Regina v. Dudley & Stevens* (1884) the defendants, adrift on the open sea in a lifeboat after their ship sank, killed and ate the third person in the boat, a cabin boy. The cabin boy was dying, and all three probably would have died had the defendants not resorted to cannibalism. The defendants were nevertheless prosecuted for murder, convicted, sentenced to death—and immediately pardoned. That was an ad hoc response evoked by reluctance to try to define a defense of “reasonable cannibalism.” I am suggesting something more systematic—a partial defense in cases in which a rule is violated in extraordinary circumstances. This may be the best approach as we move deeper into the era of international terrorism and weapons of mass destruction. If it is rejected, we can expect a rash of presidential pardons of national security officers; we might even witness the spectacle of a president’s pardoning himself, which apparently would be legal (see my book *An Affair of State*).

The partial defense will not always do the trick, even if it is extended to excuse criminal as well as civil liability, because a court may deem the defendant’s violation unarguable. That would be a

likely response in a case of torture, however compelling the practical argument for it in the particular case—the ticking-time-bomb case that civil libertarians are reluctant to acknowledge, for example. So should we worry that unless we legalize all tactics that might be justified in a national emergency, it will be difficult to find public officers who are willing to assume the legal risk of using them? (The purpose of the qualified immunity defense is indeed to make public officers less timid in the performance of their duties.) I think not. In national emergencies most soldiers and other security personnel are willing to do what the situation demands and leave their legal liabilities to be sorted out later. They live for such emergencies, and they are selected for courage.

A comparative perspective on the question of suspending constitutional rights in an emergency may be illuminating. Despite the sorry precedent of Weimar Germany, most European countries, perhaps all, allow the head of state—the president or the (constitutional) monarch—to exercise such a power; Article 15 of the European Convention on Human Rights authorizes such exercise. This power, which foreign nations vest in the head of state, our Constitution vests in Congress, for the power to suspend habeas corpus is essentially the power to suspend constitutional rights—if you cannot get a judge to hear your case, the government can do whatever it wants with you.

The reason for this difference in where the suspension power is lodged lies in the difference between the parliamentary and presidential systems of government. The former has a head of state who is usually at some distance above the ordinary play of politics (the prime minister is the nation's political leader), and so he can be entrusted with such a power. The U.S. president, however, is at once the head of state and the nation's political leader, and so he is not trusted to exercise such power in a politically disinterested fashion. But the congressional alternative is unsatisfactory too, not only be-

cause Congress is a political body but also because it is not designed for taking prompt and decisive action. This makes the extralegal approach to the exercise of emergency powers an attractive alternative in our system.

But there is a downside, noted by Machiavelli in commending (in chapter 34 of the *Discourses*) the provision in the law of the Roman Republic for six-month emergency dictatorships. It is that condoning legal violations by the nation's highest official will bring the laws—the foundation of republican government—into disrepute. (This was the principal ground for the impeachment of President Clinton.) But maybe we can climb out of this box by recognizing, in an echo of Lincoln, a category of “constitutional unconstitutional” actions, as Benjamin Kleinerman urges:

First, action outside and sometimes against the Constitution is only constitutional when the constitutional union itself is at risk; a concern for the public good is insufficient grounds for the executive to exercise discretionary power. Second, the Constitution should be understood as different during extraordinary times than during ordinary times; thus discretionary action should take place only in extraordinary circumstances and should be understood as extraordinary. Since it is only necessitated by the crisis, the action should have no effect on the existing law. To preserve constitutionalism after the crisis, the actions must not be regularized or institutionalized. Third, a line must separate the executive's personal feeling and his official duty. He should take only those actions that fulfill his official duty, the preservation of the Constitution, even, or especially, if the people want him to go further.

However, one can imagine a president treating Kleinerman's three-factor test as a rule and thus wanting to see how far it can be stretched.

We will have less “action outside and sometimes against the Constitution” if we insist that the president’s power to disobey the law be acknowledged as power, not authority, and be justified as such rather than sugared over with legalism, as in the ingenious suggestion that the Constitution “should be understood as different during extraordinary times.” The Constitution is not different if it is the president who suspends habeas corpus instead of Congress; the president’s suspension of it is unconstitutional, and so justification for it must be sought in a “law of necessity” understood not as law but as the trumping of law by necessity, as in the case of rebellion or invasion. There can be such a thing as an excess of legalism, as President Roosevelt recognized when he violated the Neutrality Act in 1940 by supplying munitions to Great Britain to keep it in the war.

Bruce Ackerman, going well beyond Kleinerman, suggests a variety of controls over presidential assumptions of emergency powers, including strict time limits and frequently required reauthorizations by Congress, that deserve consideration as an alternative approach to the law of necessity.

But these are details. The essential point is that, one way or another, law must adjust to necessity born of emergency. In the words of David Hume, an eighteenth-century voice speaking with greater clarity than the Constitution:

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The safety of the people is the supreme law: All other particular laws are subordinate to it, and dependent on it: And if, in the *common* course of things, they be followed and regarded; it is only because the public safety and interest *commonly* demand so equal and impartial an administration.

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The First Amendment and the War Against Terrorism

University of Pennsylvania Law School, September 23, 2002

We meet today at a time unique in our history. Savagely attacked by murderous and suicidal terrorists just over a year ago, our nation—and certainly my city, New York—is only now fully getting back to something approaching normalcy. But there can be no true normalcy in the sense of returning to the world we lived in (or thought we lived in) on September 10, 2001. That world is gone and our new world requires new decisions and some difficult and delicate assessments of the claims of national and personal security vis-à-vis those principles of civil liberties embodied in the Bill of Rights of which we are so justly proud.

Let me start with an example I have been thinking about for some months. I was one of many people who supported the so-called USA-PATRIOT Act, legislation which, among other things, makes it easier for the government to wiretap, easier to read e-mails, and easier to incarcerate people, particularly non-citizens, on less evidence than might otherwise have been possible. Most of the provisions of that bill were not conceived of, in the first instance, by the Department of Justice under the leadership of Attorney General John Ashcroft, but were articulated first during the Clinton Administration by one of a number of presidential task forces that reviewed issues relating to terrorism in the 1990s. Like all the other recommendations of such task forces (one of which I worked on), their recommendations were filed and duly ignored.

In any event, I supported the PATRIOT Act, notwithstanding its obvious threats to civil liberties. I still do. But I also appear before you as someone who is deeply concerned about both the predictable and the as-yet-unforeseeable risks to civil liberties of this legislation and other acts of the Administration. I never doubted, for example, when the Act was passed that civil liberties would have been far better accommodated with a two-year rather than a four-year sunset provision on the entire legislation and with far more judicial oversight. What I had not doubted sufficiently, however—what I had been insufficiently cynical about, that is—was the Administration's willingness to report to Congress about how the legislation works in practice. For even if the legislation was generally (as I still think) a reasoned response to the new level of danger confronting us, it surely raises special risks to civil liberties which require a high level of congressional scrutiny. And when the House Judiciary Committee Chairman and its ranking member (one person in each party) on June 13, 2002, sent a list of questions of about 50 issues relating to the PATRIOT Act to the Department of Justice, only 34 were answered at all as of the House's summer recess. In fact, the Administration wrote to the Congress explicitly refusing to provide detailed information on how the new powers granted under the PATRIOT Act had been used. Taken together with its resistance to almost any judicial review of its conduct, the Administration has sought to walk on constitutionally dangerous terrain with virtually no oversight at all.

I cite that as only one example of this difficulty, yet the continuing necessity, of making a series of painful cost-benefit decisions rooted in the threats to our national and personal security and the threats to the security of our civil liberties. Some, but not all, of what I will say will be about the First Amendment. Some will reflect agreement with the Administration, some disagreement. All of what I say will relate to topics that are difficult and as to which reasonable people may plausibly disagree.

To start: I am persuaded that the degree of threat to our individual security is unparalleled in American history. We live in a new world in which foreign terrorists, dedicated to our destruction, suicidal in behavior, and with possible access to modern weapons, imperil our people. If I thought otherwise, I would have very different views with respect to many of the comments I will offer to you today. If I thought the Al-Qaeda threat was a passing one, or akin to that of the Barbary pirates of the past, or the equivalent (as Michael Mandelbaum has argued) of a "badly stubbed toe" that caused pain and

shock but left “the world . . . much as it had [been] before,”¹ I would not be at all so ready to make painful compromises between the claims of security and freedom.

But I do consider the terrorist threats to us to be real and continuing and thus transformative in their impact. MIT Professor Stephen Van Evera put it well when he said recently that “We’re in a struggle to the death with these people. They’d bring in nuclear weapons here if they could. I think this could be the highest threat to our national security ever: a non-deterrable enemy that may acquire weapons of mass destruction.”²

Our country is not at existential risk. These enemies cannot conquer or destroy it. But our people are indeed at enormous risk, perhaps more so than ever before in our history. An editorial in last week’s *New Yorker* summarized well our enemies and the challenge they pose to us this way:

Those who attacked the United States last year were not merely avatars of fanatical intolerance; they were and are mortal enemies of the very idea of tolerance. To review the list of the thousands of the dead, to see their faces, to learn even a little of how they lived, is to view a microcosm of the United States and of the world. Their killers meant to destroy not only as many lives as possible but also a set of conditions—modernity, fluidity, personal liberty—that constitute an increasingly global aspiration. The challenge to an open society is how to deal with, and defeat, those who exploit its freedoms in violent pursuit of a closed, intolerant, and unfree society. . . .³

How are we to do that? It will not do to act as if we can decide every civil liberties issue as if the events of September 11 had not occurred. We were not the victims of some terrible once-in-a-century natural disaster. No perfect storm happened upon us last September; no unforeseeable tsunami rose out of the ocean to overcome us. We were attacked. We may well be attacked again. We must defend ourselves while taking care not to lose those special qualities of our free society that our Bill of Rights exists to protect.

But we should not deceive ourselves that the Bill of Rights will or should be interpreted without regard to the nature of the risks we face or the likelihood that those risks will be transformed into dreadful reality. I have never been much of a fan of Learned Hand’s transformation of the “clear and present danger” test into one that examines the “gravity of the ‘evil’ discounted by its impossibility” to determine if free speech rights may be limited.⁴ That test can far too

easily lead to far less speech at the very time it is most needed. But at times like these we must not forget that the gravity of the evil before us is both very great and very real.

We must also recognize something else. Our new situation is long-term in nature. While the notion of a war on terrorism is part reality/part metaphor, that war—or, at the least, the new and grim dangers before us—will be with us for many years to come. And so, therefore, will any impositions upon civil liberties that we choose to accept as the price tag for seeking to avoid still more successful attacks on us. We must accept that as Professor Laurence Tribe has observed, “the sacrifice of checks and balances has to be weighed not as a temporary expedient but assessed as a proposed permanent change.”

Must we agree to sacrifice anything in the area of civil liberties at all? With the deepest regret, I think we must.

In 1993, I wrote an article for *The New York Times Magazine* shortly after the World Trade Center bombing.⁵ My topic was privacy and my theme was that we should prepare regretfully—very regretfully—to give up considerable privacy rights in the service of avoiding terrorism in the future. There would be more surveillance, I said; it was unavoidable but terribly sad, I said. At its best, my piece was a sort of journalistic eulogy for privacy—how important it is, how deeply the new state of affairs after the World Trade Center bombing would inevitably cut into it, how much we would miss it.

What never occurred to me then was that the 1993 bombing would lead to almost no new limitations on privacy at all—or, to put it differently, no new serious or meaningful steps to prevent additional acts of urban terrorism at all.

A few years later, I served on a civil liberties advisory committee to a commission headed by Vice President Gore relating to aviation safety and security. Asked by that commission to advise it on a proposal to “implement an automated profiling system for all passengers on all flights,” we responded unequivocally. Any profiling system, we said, “should not contain or be based on material of a constitutionally suspect nature—e.g., race, religion, national original of U.S. citizens.”⁶

I, as well as others, had insisted on the inclusion of the words “U.S. citizen”: It was preposterous, I thought, to tell airport officials not even to consider the citizenship of visitors from any, say, Iran or Libya when deciding whom to search with particular intensity.

And now we meet a year after 19 suicidal, murderous hijackers—all from the Middle East, all Arabic-speaking—have attacked our

nation in conjunction with what appears to be cells of others who are also of Middle Eastern background, and are all also Arabic-speaking. We meet at a time when we have already committed troops to overthrow the Al-Qaeda connected Taliban regime in Afghanistan and at a time when we may well commit far more troops to engage Saddam Hussein's forces in Iraq. And we meet at a time when our government has just announced new regulations requiring visiting citizens of Iran, Iraq, Syria, Sudan, and Libya to be fingerprinted, photographed, and required to regularly report their addresses and activities while in the USA. Those regulations, criticized by some on civil liberties grounds, seem to me to be perfectly reasonable accommodations to the new level of danger that afflicts us.

In fact, an accompanying regulation may not even go far enough. Fingerprinting, photographing, and reporting requirements are also to be imposed on "anyone arriving with a student, business, or tourist visa who is believed to fit the criteria of a potential terrorist . . . [or] who [is] considered [a] security risk by the State Department or by the Immigration and Naturalization Service officers, based on intelligence reports of terrorist strategy and behavior." This seems to me fine so far as it goes. But the *New Republic* last week asked a telling question: "why, for heaven's sake, would anyone who is in any meaningful sense 'believed to fit the criteria of a potential terrorist' or considered a security risk by government officials be admitted to the United States at all?"⁷

My view, in short, is that we must accept that we now live at a level of vulnerability which requires distressing steps of a continuing nature in an effort to protect ourselves. As a result, we must, I think, be prepared to yield some of our privacy, to accept a higher level of surveillance of our conduct, even to risk some level of confrontation with the Fourth Amendment of the United States Constitution.

Let me pose another question, one that I answer the same way. It is whether FBI agents should be permitted to attend public meetings of a political or religious nature for the purpose of reporting upon what is said there. When it did so in the 1950s and 1960s, some of the worst abuses of the regime of J. Edgar Hoover occurred. The "chill" on speech was real; Hoover intended just that and achieved just that. It was a civil liberties disaster. After Hoover died, new guidelines, drafted by former Attorneys General Edward Levi and William French Smith, were adopted, effectively barring FBI agents from doing so in most circumstances.⁸ Those limits were hailed by civil libertarians—and they should have been.

A quarter of a century has now passed, however, and we now face new risks. Shall we now permit, as Attorney General Ashcroft has determined, FBI surveillance of such events? If the FBI concludes that public statements made in a particular mosque, say, may be of assistance in preventing future acts of terrorism but it is short of proof sufficient to demonstrate the likelihood of criminal behavior, should surveillance of the event be permitted? I think so. Yet when we make that trade-off, we obviously risk the very governmental overreaching and misconduct that tends to accompany any broadening of governmental powers.

I have thus far cited examples that fall in the area in which I would be most inclined to give the government some greater powers. It is what we might characterize as the area of prevention of terrorism rather than punishment of it. Obviously, these areas intersect; punishment is, after all, supposed to prevent as well as to punish. But the more we move away from the surveillance mold and into that of how we treat individuals that we have already apprehended, the less willing I think we should be to move even incrementally away from the rules that have historically governed the way we treat people we have apprehended and we believe have committed grievous wrongs.

Another example may be useful. Perhaps the most disturbing constitutional overreaching of all by the Administration has occurred in its treatment of American citizens who have been deemed "enemy combatants" and thus, according to the Administration, denied virtually all rights that the Constitution provides to our citizens. The case of Yasser Esam Hamdi is one well publicized example. Now incarcerated in a military prison in Virginia as an enemy combatant, Hamdi—apparently an American citizen—has been treated as if he had no rights at all under a theory rightly characterized by the Court of Appeals for the 4th Circuit as rooted in the "sweeping position" that "with no meaningful judicial review, any American citizen alleged to be an enemy combatant could be detained indefinitely without charges or counsel on the government's say so."⁹

If anything, the less publicized case involving Jose Padilla is still more troubling. Like Hamdi, Padilla is an American citizen. Unlike Hamdi, however, he was not apprehended in Afghanistan, but in Chicago, and he has been held indefinitely since then, without charges being filed against him and without being granted access to counsel. In fact, when the civilian judicial system began to impose its normal obligations upon the government, it simply withdrew him from that system altogether, deeming him an enemy combatant and taking the

position that he was not entitled to the protections of the Bill of Rights and that the scope of review by the judiciary was all but nonexistent.

In cases of this sort, we are left (and, perhaps more important, the defendant deemed an enemy combatant is left) without the benefit of almost any legal protections. According to the government, so long as it presents even a pro forma articulation of that which he is suspected of doing, no lawyer may go behind it and no judge may question it. This, as the *Washington Post* observed recently, "is a breathtakingly radical" position, one about which the *Post* rightly concludes that "among the many confrontations between civil liberties and the war on terror, the government is advancing no contention more dangerous."

You will notice that I have already cited two judicial rulings. I could cite many more and I think special tribute is owed to our courts in this respect. In India, during the so-called "emergency" declared by then Prime Minister Indira Gandhi in the 1970s which significantly limited civil liberties, only the courts were willing to resist that governmental misuse of power. This was done at considerable personal risk to the judges themselves. Here, our judges are not in any such peril. But it remains not at all easy for even our judges to say to our government at a time such as this that steps enacted to fight terrorism may not be permitted. Yet to their enormous credit, in one case after another, our courts have been willing to take a hard look at what the government is doing and, more often than not, to rein in unlimited and unconstitutionally exercised executive branch power.

One thing I am not prepared to even begin to compromise about is the First Amendment. In fact, as we give the government more power, it is all the more important that the press be utterly free to criticize the manner in which the government exercises that power and (more controversially) to be knowledgeable about what the government has done. If, for example, the government should abuse the new powers that are embodied in the anti-terrorist legislation (and some level of abuse is inevitable), only the press is likely to serve as a check upon that governmental conduct.

That is why I believe the Court of Appeals for the Sixth Circuit was so correct in barring the government from effectively closing all immigration proceedings to public scrutiny and why Judge Keith of that court was so eloquent in observing that "[d]emocracies die behind closed doors."¹⁰ That is why we must continue to resist every effort of the Administration to characterize dissent as treason. And

that is why we should oppose the ongoing and pervasive efforts of this Administration to prevent the public from learning just who is being detained, for how long, and for what reason, and otherwise to avoid public and congressional scrutiny.

I want to be clear. The Administration has taken no direct steps to curtail public criticism. Fortunately, the First Amendment is part of our culture as well as our law, and although the Administration might well wish that less were said of a critical nature, it is unlikely to attack the right of critics frontally and has not done so.

Not much anyway. In the days shortly after the attack, we had some disturbing examples of overreaction by the Administration. Commenting on some on-air remarks of Bill Maher, Ari Fleischer warned—no other word will serve—that we should watch what we say. It reminded me of my youth during World War II, when we heard on the radio and saw on billboards the repeated refrain: “Loose Lips Sink Ships.” But Bill Maher wasn’t sinking ships. He was making a political statement in a tasteless way at a time of national grieving. Fleischer’s response should have been well outside the bounds of threatening presidential commentary. In fact, one might well remind him of the dangers of loose lips.

At around the same time, we had a troubling level of pressure placed on the news media not to broadcast or publish what bin Laden said about the events of the day. I have no doubt that everything he said (or—who knows?—may yet say) is for propaganda purposes. But it is important for the public to know what he says and how he says it. There was never any risk of our public buying into his manic mumbling of demented ideas. But there was great risk in the government seeking to keep us from hearing and seeing him or anyone else.

Since then, Attorney General Ashcroft has repeatedly walked far down the road of suggesting that critics of, among other things, his military court proposals were lending aid and comfort to the enemy—an outrageous notion not only because his proposals were worthy of criticism, but because critical speech about those proposals (whether correct or not) is at the heart of self-government. And as it turned out, that speech mattered. Some of the most troubling features of the initial Ashcroft proposals were changed *because* of the criticism it engendered from Bill Safire of the *New York Times*,¹¹ among others—the right to appeal, the presumption of innocence, unanimous vote to impose the death penalty, etc. The First Amendment worked: The differences between the initial notion of military courts as set forth in an Executive Order of the President and the final one issued by

the Defense Department bear witness to how important public criticism can be in the formulation of policy.

It is not as if we have no history of major governmental abuse of civil liberties during wartime. President John Adams, recently favored by David McCullough's more than generous (and now Pulitzer Prize-winning) biography,¹² signed into law the Sedition Act of 1798 and chose the defendants for prosecution under it. This was a law passed when war with France seemed imminent and which made it a crime to defame the United States Government, the President, or Congress. The Act is the single most repressive piece of domestic legislation relating to civil liberties ever adopted in this country. Not until 1964, a century and a half later, did the Supreme Court, in *New York Times Co. v. Sullivan*, have occasion to conclude that the verdict of history was that the law was unconstitutional.

Or consider almost everybody's favorite president, Abraham Lincoln. During the Civil War, he suspended, on multiple occasions, the writ of *habeas corpus*. That is, in more trying and dangerous circumstances than any President has ever faced, he simply scrapped for a time, one of the most central individual rights protected by the Constitution—the right to have a court pass upon the legitimacy of placing someone under arrest and imprisoning her. Lincoln later sought and obtained congressional approval of his conduct.

Or consider the now justly reviled conduct of President Franklin Roosevelt in overseeing the placement of Japanese-Americans (American citizens, all) in camps throughout the duration of World War II, actions that the Supreme Court let stand in opinions which themselves have not stood the test of time and which were, it is now clear, indefensible when issued. Had the effort of the Nixon Administration to suppress publication of the Pentagon Papers in the *New York Times* succeeded in 1971, that might have been on my list as well.

Our government's conduct, it is worth saying again, is nowhere near anything of the sort I've just recalled for you. And, as I said earlier, the risks posed by our enemies are real and dangerous. But as our security risks have risen, so have our civil liberties risks. There will be no easy answers about how to reconcile the two. But we had better take the greatest care as we attend to the painful task of determining how to do so.

Notes

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SAFE AND SURVEILLED:

FORMER U.S. ATTORNEY GENERAL
MICHAEL B. MUKASEY ON THE NSA,
WIRETAPPING, AND PRISM

The Hon. Michael B. Mukasey*

On March 26, 2014, the National Security Law Journal at George Mason University School of Law hosted Safe and Surveilled, a symposium featuring a keynote address by former U.S. Attorney General Michael Mukasey, who spoke on the NSA, wiretapping, and the data-mining program known as PRISM. Following is an edited transcript of his remarks.

I want to thank Amy [Shepard] for having me here, and George Mason for having me here, and the *National Security Law Journal* for having me here, and Jamil [Jaffer] for that splendid introduction.¹

I'm grateful not only for the privilege of this podium but also for the fact that you're conducting this very important symposium and debate on issues that are really vital to this country—and let's face it, if we don't get this right, nothing else really matters.

* Eight-first Attorney General of the United States, 2007-2009.

¹ This article is an edited transcript of remarks delivered on March 26, 2014, at the *Safe and Surveilled* symposium hosted by the *National Security Law Journal* at George Mason University School of Law in Arlington, Virginia.

Now a good deal of this debate is centered around two programs of the NSA—two statutes that are used to conduct the electronic surveillance that is among this country's main defenses, sometimes its only defense, against not only state adversaries but also against people who believe that it's their religious obligation to destroy our way of life. Because this is an audience principally of lawyers, I'm going to start with the laws themselves: Section 215 of the USA PATRIOT Act and Section 702 of the Foreign Intelligence Surveillance Act, or FISA as it's known. Then we'll examine the sources and some of the content and the criticism of these laws and the programs that they establish. The first of the two laws that I want to talk about—laws put in place after 9/11—is Section 215 of the PATRIOT Act, which allows the FBI to apply for an order from the Foreign Intelligence Surveillance Court to require the production of tangible things. It doesn't say what kinds of tangible things; it just says tangible things, and that includes business records needed for investigation to obtain foreign intelligence information about a non-U.S. person to protect the country against international terrorism.

Using that provision, the FBI has obtained a series of essentially business records orders that are renewable at 90-day intervals, which authorized the gathering of telephone metadata. The NSA, which has the technical capacity, acts on that order. It acquires the telephone metadata in bulk, and metadata—as I'm sure many or most of you know—is simply the information that [the] telephone company has on every call that's made. It's used to generate a typical telephone bill: the calling number, the number that is called, [and] the date and duration of the call. It does not include information about the content of the call. It doesn't even include information about the identity of the caller or the recipient. What the NSA does is to aggregate that data from several companies, preserving it in one place, so that it is not discarded in the normal course of business as the telephone companies sometimes do, and so it could be readily accessed.

The order, which has been approved and reapproved more than thirty-five times by at least fourteen different federal judges on the FISA court since 2006, does not allow random searching of the database, and that program has been found many times to be entirely

consistent with the Constitution and entirely lawful. When the system was in fact generating an algorithm that caused some of the few searches that were made to go beyond what was permissible, that excess was pointed out to the FISA court by the government, and the judge that heard the case and who criticized the NSA in that instance nonetheless reauthorized the program. The metadata, which after all is lawfully in the hands of the telephone companies, is not information I would suggest that is even arguably protected by the Fourth Amendment as it is actually drafted—as opposed to the Fourth Amendment as it might exist in the minds of some folks on the left and on the right.

The Fourth Amendment as drafted by the folks who did the drafting back in the day protects the rights of the people, and that means the people of this country—not people of the world over—to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. The concept that is embodied here is simply the concept of a trespass. So what is protected is their persons, and their bodies, and what they are carrying on their bodies. We still have those, of course.

What is protected against is not only a knock on the door by the constabulary, but also thermal imaging of what goes on inside your house, conducted even from several blocks away; [your] papers, which are reasonably read to include electronic storage devices like thumb drives; and effects, which is simply your stuff. It does not include the business records of a third party like a telephone company that simply keeps track of when and how long you use their equipment. Now, that's not to say that the Fourth Amendment sets the limit on what privacy protection Congress may enact if it chooses to do so, nor does it set the limit on the debate over what we want or need in the way of privacy protection. That's why you're here, and that's why you're conducting this symposium; but that is the limit of what the Fourth Amendment protects.

So, what's the information useful for? If the government gets access to a suspicious number—say, a foreign terrorist cell or a safe house—it can then run that number against the database of U.S. numbers to determine whether that number has either called or been

called by a number in the United States, [and] then examine what numbers inside and outside the United States the number that was either called or made the call has been calling. Now, obviously, if there's been contact with a suspicious number overseas and a number in the United States, further investigation can be conducted. If facts are gathered that establish probable cause to believe that a crime has been or is being committed, then a warrant can be obtained to listen in on conversations on that U.S. number, but there's no listening in unless and until a warrant is issued in the same way that warrants are issued in criminal cases and by the same standard.

The database of numbers is segregated and is not accessed for any purpose beyond the specific counterterrorism program. It's accessible only by about twenty-some odd people, counting supervisors, and the government is required to follow procedures that are overseen by the FISA court to minimize any unnecessary dissemination of U.S. numbers that are generated as a result of queries to the database. As you can imagine, that can be and indeed has been a valuable tool for protecting us from foreign-based terrorists or from domestic terrorists with foreign connections, and for detecting networks of people in this country who have ties to foreign terrorists. It's virtually the only way that the government can look outward from the United States to see what's coming in from overseas, unless we rely on good fortune in discovering what's coming overseas with the cooperation of our foreign partners. At a minimum, it could tell us that a foreign group we are looking at has not contacted anyone in the United States. We don't have to waste valuable resources or alarm people unnecessarily.

Now, there's been a good deal [of] debate on whether the Section 215 program has or hasn't resulted in the breaking of terrorist plots. Let's demystify that. If what we're talking about is whether the 215 program has scored the jump shot at the buzzer that won the game, the answer is no. On the other hand, for those of you who follow basketball, there's a lot of point-scoring that goes on before the jump shot at the buzzer that wins the game, and in that regard, it has been enormously valuable. Intelligence is gathered step by step and item by item, so it is not only the jump shot at the buzzer

that counts. In addition to being subject to court approval, the valuable Section 215 metadata program is overseen by the executive branch and by Congress, specifically the foreign intelligence and judiciary committees of both houses. When Section 215 was reauthorized in 2011, the administration briefed Members of Congress, and members of those committees, on the details of the program and provided briefing documents which were asked to be made available to all Members of Congress. Those documents included the specific disclosure that under the program, NSA acquires the call detail metadata for—this is right out of the document that was given to those committees and made available to all Members of Congress—“substantially all of the telephone calls handled by the companies [meaning the providers], including both calls made between the United States and a foreign country and calls made entirely within the United States.” The committees provided briefings on those details to all those interested Members of Congress. In other words, any Member of Congress who was there in 2011 either got briefed on this, particularly if that person was a Member of either the intelligence committee or one of the judiciary committees, or had the chance to get briefed on it. They all had a chance to be briefed on it following the Snowden leaks. So if you hear that some Congressman who was actually there in 2011 has expressed surprise at this program that was reauthorized at that time, you should have the same reaction that you had if you saw the movie *Casablanca* when Louie the Prefect says he is “shocked, shocked” to see there is gambling going on at Rick’s just before his winnings are handed to him in an envelope. They are “shocked, shocked” in exactly the same way. And yet as we sit here, more accurately as I stand here, and you sit here, the President and his administration has called for legislation that would end the gathering of this information gathered by the NSA and replace it with a system whereby the telephone companies would keep this information for no legislatively required period of time. The only period of time that they are required to keep it is under FCC regulation, and that’s for eighteen months, and that of course is changeable at a moment’s notice. And when the NSA wanted to run a number, it would first go to court for a judge to review the finding that that number is suspicious, and then go around to each of the providers and get each of them to search its database of numbers, rather than having all of the numbers in one

place. We can't rely on private companies to keep this information for longer than they have to, and in fact, if the FCC gets rid of its regulation that [they] have to keep it for eighteen months, it is not hard to envision a carrier saying, "Use our service, we clean house every day."

Also being presented is another proposal from people who claim to want to protect the Section 215 program that works essentially the same way. Now, I'm not going to get into the details that distinguish one legislative proposal from another, because the point that I'm trying to make is a good deal broader. The sponsors from both the administration proposal and the alternative are urging the adoption of their proposals in part because it makes it more difficult for the NSA to gather information. That is they are competing [in] who can put more obstacles in the way of the NSA, all the while claiming that none of these roadblocks makes us any less safe. But, of course, they make it more cumbersome for the NSA to gather information about people who mean us harm, and to process that information, and all of this is being done even though there is no one who has pointed to any actual misuse of this information. Rather, what we're being protected against is the possibility that somebody could misuse it. The same logic would suggest that we should disarm the police because one of them might run amok with his gun and start shooting civilians.

The other program that's been the subject of debate is administered under Section 702 of the Foreign Intelligence Surveillance Act (FISA). That program allows the Attorney General and the Director of National Intelligence to authorize jointly, for up to a year, surveillance that's targeted at foreign persons reasonably believed to be located outside this country, provided that the FISA court approves the targeting procedures under which the surveillance occurs and the minimization procedures that govern the use of the information once it's gathered. Under this program, NSA can operate within the United States to gather the content of telephone calls and Internet traffic of people outside the United States.

How's that possible? Well, it's possible because the Internet and telephone messages that flow overseas pass through servers in

the United States, so though telephone conversation or an exchange of e-mail may be between parties located entirely outside this country, the NSA can monitor cables passing through the United States to get that information. The NSA generates specific identifiers that may include, for example, telephone numbers or e-mail addresses of foreign persons outside this country, and then use[s] those identifiers to pick out communications that it is entitled to get from the general flow. The surveillance by law may not target anyone of any nationality known to be in this country or intentionally target a U.S. person anywhere in the world. In other words, they can't do reverse targeting on U.S. persons by listening in on foreign conversations. In order to get the content of communications involving anyone in the United States or any U.S. person located anywhere in the world, it's necessary to get a warrant supported by a showing of probable cause, just as one would in an ordinary criminal case.

Now, if these programs are as apparently lawful and limited as I've described, what's so controversial about them? Well, a good deal of the controversy seems rooted in the fact that until they were disclosed—mainly but not exclusively by Edward Snowden—they were secret and necessarily had to be in order to be effective. Obviously, if people know you are interested in—people that you are interested in detecting are aware of how it is that you can detect them, they can try to take steps to avoid detection. However, because of the secrecy when they were ultimately disclosed, the message was delivered by someone with a clear desire not simply to disclose what he considered to be improper conduct—but as I think I can show as obvious—was someone who wanted to injure this country. Therefore, the disclosure was accompanied by all sorts of claims of impropriety that are entirely false.

Let's take a look at who Edward Snowden is and at what he is. I suspect that there would be a good deal less support for these heroes like Snowden and others if people were aware of who they were and what they think. So, let's look for a moment at Edward Snowden, perhaps the most celebrated of these so-called whistleblowers. Actually, what I would have liked to do at this point would be to quote extensively [from] what Snowden wrote before he

knew that the world was watching and listening, but I can't do that extensively because a lot of what he wrote is the sort of thing that you don't do in mixed company or indeed in any polite company. So, let's just do a quick fly-over. Snowden's version of the story, of course, is that he became politically aware while he was working for the CIA in Geneva in 2007, when he sees surveillance going on that he thinks is improper. He considers leaking information at that time, but decides not to because Barack Obama gets elected President and he has promised hope and change. Well, there's no change, Snowden loses hope, and starts downloading information while he was employed at Dell in 2010. Then he lands a job in Hawaii with an NSA contractor—a job he sought and accepted so he could get access to even greater quantities of information. He said that he had only the purest of motives. The NSA presented what he called “an existential threat to democracy.”

Sounds great, except it's not the truth. A more accurate account may be had in a splendid article by Sean Wilentz in the January issue of *The New Republic*, which I recommend to all of you.² Snowden is a high school dropout who developed an interest in computers, and by his own description, joined a group of what he called “alpha geeks” exploring the mysteries of sex and online gaming and sometimes firearms. At one point, he insisted—he disclosed that he had a Walther P22 that he “loved to death.” In 2004, he enlists in an Army Special Forces program, but soon afterwards was granted a medical discharge when he breaks both legs in a training accident—which is something of a curiosity, because although the accident was enough to get him out of the Army, he later developed an enthusiasm for kickboxing. He says he joined the Special Forces because he felt it was his “obligation to help free people from oppression.” His first employment by an intelligence agency was as a security guard at the CIA; he then becomes a security specialist, and in 2007 is posted to Geneva. Now, however Snowden felt about the administration that

² See Sean Wilentz, *Would You Feel Differently About Snowden, Greenwald, and Assange If You Knew What They Really Thought?*, NEW REPUBLIC, Jan. 19, 2014, available at <http://www.newrepublic.com/article/116253/edward-snowden-glenn-greenwald-julian-assange-what-they-believe>.

was then in power as late as January of 2009, he attacks *The New York Times* for exposing a plan to sabotage Iran's nuclear facility. He says the newspaper was like Wikileaks and deserved to go bankrupt. He urged that whoever leaked "classified shit"—his words, not mine—to the *Times* be "shot in the testicles" (that's not the word he used, but you get the picture). Economically, he supported Ron Paul's position that we should return to the gold standard, and urged that Social Security be abolished. He wrote that old people "wouldn't be [expletive deleted] helpless if you weren't sending them [expletive deleted] checks to sit on their asses and lay in hospitals all day." He made \$250 contributions to Ron Paul during the 2012 primaries.

Now, although Snowden claims that he got access to highly sensitive information in the NSA by working his way up, with his considerable talents, it appears that the way he got it was by tricking one or more of his coworkers into disclosing their passwords so that he could then unleash a program that would go pick through the data to which they had access, and pick out information of the type that had been written into the program for selection. Snowden's denials here are particularly illuminating. In fact, they are Clintonian. He denies that there were legions of coworkers whose passwords he stole, to which, of course, leaves open the distinct possibility of which it was only a few. He says that he never stole any classified documents, which of course meant that he allowed the program to do it for him. He denies that he disclosed any secret information, claiming that he simply disclosed it to journalists and they decided what to publish and what not, an act he considers entirely reasonable and responsible. Of course, the journalist [to] whom he leaked the information was a writer for *The Guardian* and sometime-blogger named Glenn Greenwald. Now, there's not enough time here to explore his history, except to note that he, too, journeyed through support for Ron Paul and arrived to a worldview that seemed congenial to critics of this country's national security on both the far right and the far left.

What damage has been done to our national security by Snowden's disclosure? Well, the Defense Intelligence Agency has prepared a report for the House permanent subcommittee that's classified, but what is already clear is that although press reports have

focused on NSA foreign intelligence collection, much of the information that Snowden stole actually relates to current U.S. military operations, and in the words of [House Permanent Select Committee on Intelligence] Chairman Mike Rogers, is likely to have “lethal consequences for our troops in the field.” According to the Ranking Member to the Committee Dutch Ruppersberger, we have already seen terrorists changing their methods because of Snowden’s leaks. The operations affected ranged beyond terrorism, into cybercrime, narcotics, and human trafficking. A program in Latin America that helped rescue women in that part of the world from human trafficking rings had to be abandoned because documents relating to it were leaked and the identity of informants was compromised. Vital operations for all four of our military services have been affected. The exposures as to foreign intelligence operations are potentially devastating. They include, for example, an NSA report of self-assessment in fifty aspects of counterterrorism that reveals gaps in our knowledge about the security of Pakistani nuclear material when it’s being transported; of the capabilities of China’s next generation of fighter aircraft (that includes secrets that were stolen from our own F35 planes back in 2007); of what plans Russian leaders might have to deal with destabilizing events, such as large protests or terrorists incidents. The capabilities he has disclosed, thus far, include how NSA intercepts e-mails, phone calls, and radio transmissions of Taliban fighters in Pakistan; the fact that NSA is watching the security of Pakistan’s nuclear weapons; that NSA is capable of measuring the loyalty of CIA recruits in Pakistan; [and] how NSA hacks into telephones in Honk Kong and the rest of China. Just last weekend, *The New York Times* carried another leak from the Snowden trove, a story that describes how NSA has tried—apparently successfully—to penetrate a Chinese manufacturer of electronic equipment, including communications equipment, [of] Huawei, so that it could monitor what purchasers of that equipment, including foreign governments, do with it. Right in the body of that story was the revelation that the *Times* had withheld certain technical details from the story at the request of the Obama administration, but nonetheless the Chinese government and Huawei are now on notice of the effort and can set about taking steps to guard against it.

You want to imagine the nature of the damage that he has done? Think of someone disclosing the acoustic signature of a nuclear submarine. That's among the most closely guarded of secrets that we have, because if it is disclosed, it makes that submarine—an investment of literally billions of dollars—useless. That is the nature of what he has done to a lot our intelligence capabilities.

It is, of course, no accident that Snowden has wound up in Russia, whose geopolitical goals are consistent with weakening U.S. intelligence. Russia itself is technologically and economically and militarily a basket case, but undermining the capabilities of the United States can't help [but even] the playing field. The distortion in allocating resources is another byproduct of these disclosures. As you can imagine, if a single disclosure is made, all possible sources of damage have to be considered and mitigated to the extent possible. If means and methods are disclosed, adjustments have to be made. If human assets are disclosed, steps have to be taken to get them and others with whom they may have a relationship to safety. Two disclosures complicate the problem still further. When you have millions of documents with varied disclosures, the problem of building a protective wall around what can be salvaged in each case is one that could absorb virtually the entire resources of even the best-resourced agency. And, of course, resources devoted to damage control are not then available for the active protection of our national security. But that's just the damage within our own intelligence community.

Relationships between the United States and Europe, between European nations themselves, are undermined because confidence is undermined—and I'm not speaking of the Angela Merkel cellphone problem. In fact, for years it had been an open secret in the intelligence community [that] Angela Merkel used a conventional cell phone that could be overheard, and we were by no means the only country that overheard it. The French were quite active in that regard. Besides, even if we were the only country, if you're dealing with a country like Germany that's been champing at the bit trying to avoid sanctions on Iran for years, you would certainly want to know what the leaders of that country is saying in her less-guarded moments.

Rather, what I'm talking about is simply how seriously we can be taken by even our friends. If we can't keep secrets secure from somebody like Snowden, how willing do you think foreign intelligence agencies will be to share information with us? Because the United States is a leader in the gathering of intelligence, the result is to paralyze western intelligence capabilities and our self-defense. Snowden and his public handlers . . . have sold the public in general, and some conservatives in particular, on the idea that what they have disclosed is that the United States Government is secretly spying on all of its citizens, on their communications, and indeed on all aspects of their lives—of any electronic interaction, whether through e-mail, banking, telephone calls, card transactions, you name it. They portray Snowden as romantic and idealistic rather than self-absorbed and traitorous—as someone who more closely resembles Robin Hood or Paul Revere than Alger Hiss or Benedict Arnold. And the popular press, which has an ongoing interest in being able to continue to get stories from the Snowden trough, has gone along with the message in the way it reports information, which guarantees continued access.

What this has produced is kind of an odd coalition of the extreme left, which suspects and opposes any intelligence-gathering programs [as] an actual or potential infringement of civil liberties, and the libertarian right, which suspects any branch of government and delights in conjuring up images of Big Brother so that the narrative of a spying and intrusive government comes very natural to them. As a result, we saw in the last Congress that almost half of the House of Representatives voted to defund the programs that I described, led by a coalition of libertarian Republicans and left-wing Democrats.

Of course, this isn't the first time in our history that we've seen our intelligence agencies under attack, although this is the first time that I think it's happened on this scale. Jack Goldsmith, in an excellent book called *The Terror Presidency*, published back in 2007, described what he called "cycles of aggression and timidity" in our

intelligence community.³ As he describes it, political leaders—and he might just as well have mentioned opinion leaders, including academics and journalists—in his words, “pressure the community”—and that’s the intelligence community—“to engage in controversial action at the edges of the law, and then fail to protect it from recriminations when things go awry.”⁴ This leads the community to retrench and become risk averse, which invites complaints by politicians that the community is fecklessly timid. Intelligence excesses in the 1960s led to the Church Committee hearings and reforms in the 1970s, which in turn led to complaints that the community had become too risk averse, which led to aggressive behavior under William Casey in the 1980s that resulted in the Iran-Contra and related scandals, which in turn led to another round of intelligence purges and restrictions in the 1990s that deepened the culture of risk aversion and once again led—both before and after 9/11—to complaints of excessive timidity.

And, of course, after 9/11 we all remember the public hearings, the 9/11 Commission, [and] other inquiries that followed that awful day where the narratives produced were in many instances stories of missed opportunities. The subtext of these narratives—in fact, at times, the text—was that risk aversion can have grave costs. The 9/11 Commission report, for example, tells of operations against Osama Bin Laden that were contemplated but not executed; of surveillance considered but not requested; of information not shared; of so-called dots not connected.

Complaints about risk-averse national security were commonplace in the first few years following the September 11th attacks. This time around, the cycle threatens to damage not only careers of people involved in gathering intelligence—which is bad enough for the injury that it causes to talented and dedicated people we rely on to keep us safe, and the lessons that it teaches other talented and dedicated people who we should be able to rely on for

³ JACK GOLDSMITH, *THE TERROR PRESIDENCY: LAW AND JUDGMENT INSIDE THE BUSH ADMINISTRATION* 163 (2007).

⁴ *Id.*

the same purpose—but also the institutions themselves, in which those careers are pursued: to some degree, the CIA, a civilian institution; but also the NSA, the National Security Agency, a military institution. So, if you were in the intelligence gathering business, and you had a family and a mortgage, how eager would you be in the current climate of suspicion to render an opinion based on what you actually believe to be the limit of the law if you think that that limit might change? Self-censorship is a real danger. The view that the NSA is a threat to civil liberties in this country is being exploited, whether ignorantly or cynically, by politicians ranging from the self-described progressives on the left to self-described libertarians on the right.

I would suggest to you that we should not be standing with the people who are trying to weaken the national security apparatus of this country. Rather than dealing in absurd imaginary scenarios of NSA employees spending their time listening in on their fellow citizens, we should be worrying about actual abuses—for example, those at the IRS—and be able to explain to those, to our fellow citizens, that in reality there is no such thing as “the government”; it’s just a bunch of people. Some of them are dedicated and skilled and honest, and by and large, those people work at NSA and the CIA and other agencies where the one nightmare that keeps them awake is the possibility of another attack on this country. Others of whom are neither dedicated nor skilled nor honest, and a disproportionate number of those people work at the IRS. That should not be a hard message to get across, because in addition to simplicity, it has the truth going for it.

Now, I hope that I haven’t painted too depressing of a picture of what it is that we face, and I want to end where I began. If I feel anything to be optimistic about, it’s about people like you, and those you are going to hear from, who get together to discuss and debate these issues and seek the truth, because in a free country we can have no better protection than that.

Thank you very much.

