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FOREWORD

RELIGIOUS DISCOURSE AND THE REINVIGORATION OF AMERICAN POLITICAL LIFE

JOHN ROBINSON*

For most of this century, it has been quite clear to most Americans what it was that we opposed ourselves to. We corroborated our sense of ourselves and of our essential goodness by opposing ourselves to atheistic communism. The best argument against a proposal was always the one that showed that the proposal in question was the kind of thing the communists do; it followed enthymematically from that that we should not do it. From a logical point of view, there is something unattractive about this way of proceeding. Psychologically, however, this way of confirming an individual self-concept or a collective self-image seems to be quite common.1 Advocates of the adversarial method of determining guilt have often used a mythologized version of inquisitorial methods as a way of affirming the merits of their preferred modus operandi,2 and lawyers distinguish themselves as professionals from business men and women, as if the latter were freer to be motivated by the profit motive than lawyers are.3 More generally, we seem instinctively to raise children as boys or girls by contrasting sex-appropriate behaviors with those that are more characteristic of the opposite sex.

* Assistant Professor of Law and Philosophy and Acting Director, Thos. J. White Center on Law & Government, Notre Dame Law School. Member of the Bar of Rhode Island. B.A., Boston College, 1967; M.A., University of Notre Dame, 1972; Ph.D., University of Notre Dame, 1975; J.D., University of California, 1979.

2. See Fletcher, Lawmaking as an Expression of Self, 13 N. KY. L. REV. 201 (1986).
This would be of no relevance to a symposium on the religion clauses of the first amendment except for a subtle shift in the nature of our national contrary opposite that has taken place in the past decade or so. The efforts of Mikhail Gorbachev and Deng Xiao Peng to bring the Soviet Union and the People's Republic of China into the twentieth century, with its market economy and its tolerance of at least some forms of dissent, have made those nations less suited to function as foils for our own self-image than they were in the despotic days of Stalin and Mao. At the same time the efforts of the Ayatollah Ruhollah Khomeini to drag Iran back to the eleventh century, combined with the political chaos of the Middle East, have created, I believe, an ideal surrogate foil for us. The specter of Islamic fundamentalism has replaced the threat of atheistic communism as that in opposition to which we define and affirm ourselves.

But how, you might ask, is any of this relevant to a symposium on the religion clauses? In just this way: for so long as communist societies functioned as negative role models for us, the popular perception of religion benefitted. Communism was, after all, *atheistic*, and there was something unmistakably godlike about the Invisible Hand that made the free enterprise system so effective. Now that Teheran and Beirut have replaced Moscow and Beijing as our cultural opposites, the popular perception of religion suffers. At the core of the Iranian Revolution is Shiite fundamentalism, and the only category into which we in the modern West can put that phenomenon is the one labeled “religious fanaticism.” Logically, of course, that category should not be at all troublesome: one can be religious without being fanatical, and one can be fanatical without being religious. But, psychologically, “religious fanaticism” evokes the pre-Enlightenment era, when, as we understand it, to be religious was to be fanatical, when, that is, Europe was riven by religious warfare so lethal and so pervasive that it looked for a time as if Christendom would destroy itself in a sectarian bloodbath.

But why does this concern me? Here my reasoning takes an unconventional turn, and I must ask my reader’s indulgence for a moment. As I understand the popular consensus on the history of the West, the Enlightenment is perceived as having delivered us from religious fanaticism and as having instilled in us a salutary fear of returning to the mindset that made the wars of religion possible. The Enlightenment did this in two ways: first it exposed intolerance as profoundly irreligious, or
at the very least as thoroughly unchristian. Pierre Bayle⁴ and John Locke⁵ are two instances of this approach. This was, in my judgment, the Enlightenment's great contribution to western history, but even this accomplishment is distressingly incomplete. Knowing that intolerance is evil is not at all the same as knowing what toleration amounts to, and we have, I think, plenty of evidence that what passes for tolerance is merely a wholly meritless contempt for ideas as forces in human life.

The second way in which the Enlightenment sought to overcome religious fanaticism is vastly more dubious in both its content and its consequences than the first. It consisted in the reworking of Christianity to make it acceptable to rational consciousness. Locke,⁶ again, is paradigmatic here, but Joseph Priestley⁷ and his disciple, Thomas Jefferson,⁸ are also instances of what I mean. This approach took many forms, but the most attractive and destructive of them was the one in which Christianity was stripped of all those apparent oddities and alleged accretions that might trouble a thoroughly enlightened consciousness. The goal was to produce a form of Christianity that could not subsist with the fanatical mindset and one that would contribute to the formation of an enlightened society. The result was the neutering of religion: the sterilization of its discourse and the cabinization of its efficacy. As these are odd claims, let me take a moment to explain them.

What might be described as the Enlightenment's constructive religious project involved, at the conscious, explicit level, the substitution of the "God of the Philosophers" for the "God of Abraham, Isaac, and Jacob" in the inter-denominational religious language of post-fanatical Europe.⁹ It also involved the de facto triumph of unitarianism in the Christology implicit in inter-denominational religious discourse. From these two moves there followed the marginalization of all that was myste-

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⁴ See P. Bayle, Philosophical Commentary (1986).
⁶ See Locke, Second Vindication of the Reasonableness of Christianity, in 7 The Works of John Locke, id. at 188.
⁹ The contrast between the God of the Philosophers and the God of Abraham, Isaac, and Jacob can be traced to B. Pascal, Penseés (H.F. Stewart trans. 1950).
rious and miraculous in religious experience, and the transformation of the Gospels from accounts of sacred history into illustrative moral manuals. As Jesus was no longer empowered to save (and as God was no longer disposed to damn), all that was left was for Jesus to model socially acceptable behavior. This inter-denominational religious language—the discourse shared by believers who are attempting to be mutually tolerant—became the only legitimate form of religious speech in the public, that is to say, political, sphere. It entered our political life, in the days before feminism, as a celebration of the brotherhood of man under the fatherhood of God. For so long as politico-religious discourse takes this form, it is acceptable. Insofar as it goes beyond these palatable generalities, it threatens to break the tacit agreement that we creatures of the Enlightenment have reached as to the truce that must be observed if religious fanaticism is not to recrudesce.

What, other than its excessive gender specificity, is wrong with a politico-religious argot cast in terms of the brotherhood of man and the fatherhood of God? So far as it goes, nothing is wrong with it. The catholicity of the Gospel dawned on the first Christians like a thunderclap, produced the greatest crisis in the life of the early Church, fueled the missionary zeal of every Christian confession, and promises to contribute enormously to the emergence of a planetary community of nations. To subtract from Christianity its claim that a loving divinity will sit in judgment upon each of us and that that same person will determine our eternal lot on the basis of that judgment would surely be to work radical change in the Christian message, and our Enlightened forebearers can be forgiven for thinking that this might be the one Christian teaching that must be clung to even after every other doctrine was renounced.

Much more can be said in favor of the idea of God as Father. Insofar as it suggests an omniscient, loving person who judges each of us with perfect justice, it contributes immensely towards the emergence of an intention-based ethical system, one that predicates blame and reward on the disposition of the agent and not on the often adventitious consequences of the agent’s conduct. Indeed the very idea that love is consistent with a willingness to punish in circumstances in which the person being punished has evinced a fixed hostility toward the

10. Note in this regard how zealous Locke, Priestley, and Jefferson are to purge Christianity of any transcendent dimension. Jefferson’s expurgated New Testament, for example, reports neither the miracles of Jesus nor his resurrection from the dead.

good is itself a singular contribution to sound ethical thinking. My complaint with the Enlightenment is not that it selected the wrong imagery in its attempt to render Christianity rationally acceptable; my complaint is with the entire project of rationalizing religion. Once we purge religion of all that is divisive, arational, mysterious, and miraculous, we find, among other costs, that we have thereby silenced it, or come so close to silencing it that it ceases to enrich our public discourse.

It might help at this point to recall that religion involves both a set of contested claims and distinctive modes of discourse. The former—claims about the existence of God, the divinity of Jesus, and the immortality of the soul, for example—have figured more prominently in recent history than have the latter, but it is the latter that I want to focus on here. In the modern world, genuine religion nurtures forms of expression that are at once vulnerable to Enlightened attack and crucial to an adequate appropriation of our individual and social experience. The forms of expression that I have in mind are those that are rooted in natural processes—birth, death, regeneration, daily and annual rhythms—or in forms of political experience—royal rule, slavery, captivity, deliverance—that have little place in the Enlightenment project. These idioms resist quantification and analysis; they also, I suspect, threaten the implicit priority of deracinated reason that lies at the base of that project. They doubtless have a destructive potential as the Nazi use of "blood and soil" reveals, but they also possess an irreplaceable illuminative power that requires just a word of comment here.

The capacity of an individual or of a society to learn from experience depends upon the individual's or the society's ability to register and to recall that experience. Both of those processes are themselves dependent upon linguistic capacity, which can be rich, impoverished, or somewhere in between. An individual or a society that privileges aseptic discourse and embargoes organic speech will end up with an emaciated vocabulary, one that denies it access to everything deep in its own life. As repressive as religion may be at times, it is nowhere near as repressive at this level as is pseudo-religion. Like the snake oil that the sick take instead of the medicine that would cure them, pseudo-religion fills the expressive place that should be held by genuinely religious speech, and as a consequence our ability to articulate our own experience suffers.

If modern western political discourse were independently rich and dense, we might consider accepting this cost as a reasonable price to pay for the defusing of religious fanaticism.
The fact is, however, that our public discourse is singularly impoverished; it consists of an odd blend of utility-talk with rights-talk, both of which suggest as the paradigmatic political actor a selfish, rootless, rational maximizer in single-minded pursuit of his or her own idiosyncratic preference schedule. While these modes of discourse are legitimate insofar as we are all both rights-claimants and utility-maximizers and insofar as the state ought to affect a certain neutrality among competing conceptions of the good, they should still not be allowed to pre-empt our linguistic field. Religious discourse that is kept within the confines set by the Enlightenment does little to challenge their hegemony, however. Indeed, John Austin showed nicely how to reconcile belief in the universal fatherhood of God with Benthamite utilitarianism, and several recent papal pronouncements show how easy it is to reconcile rights-discourse with the belief in a divinity who wishes each of his human creatures to flourish both physically and morally.

What our polity needs if our political discourse is to break the confines that utility and rights set for it, is for that discourse to be enriched by language that relies on root metaphors that are both different from those that underlie the languages of utility and rights and accessible to the members of our political culture. Any decent poet or novelist could easily satisfy the first criterion, but religious language is singularly suited to satisfying both of them. What we are inclined to dismiss cavalierly as the Judaeo-Christian tradition has steeped us in the language of slavery and deliverance therefrom, the language of death and of life through death, the language of the struggle between nocturnal and diurnal forces, the language of the pilgrimage and of the reconceptualization of the goal that occurs during it, the language of moral blindness and subsequent insight, and so on.

Because these forms of discourse are rooted either in historical experience or in natural processes, they have an accessibility that rights- and utility-discourse lack. They function equally well on the personal level and on the communal; they, therefore, counter the privatization of religion, which is the most baneful consequence of the Enlightenment's domestication of religion. To take the most obvious case, if I understand God as my ally in my struggle to free myself from servitude to

sin, I am nicely positioned to understand God as the ally of the oppressed in their struggle to free themselves from political or economic servitude. I am equally well positioned to find the claim that I should leave my religious insights behind when I enter the political sphere to be quite literally absurd.

What would it be like for religious discourse to invigorate our political speech? It could, of course, function divisively, fomenting fanaticism and worsening our current cacophony. It might, on the other hand, function positively. Consider in this regard Abraham Lincoln's two best known political speeches. Ignoring chronology, consider first the closing lines of his Second Inaugural Address:

If we shall suppose that American slavery is one of those offenses which, in the providence of God, must needs come, but which, having continued through His appointed time, He now wills to remove, and that He gives to both North and South this terrible war as the woe due to those by whom the offense came, shall we discern therein any departure from those divine attributes which the believers in a living God always ascribe to Him? Fondly do we hope, fervently do we pray, that this mighty scourge of war may speedily pass away.

Yet, if God wills that it continue until all the wealth piled by the bondsman's 250 years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said 3,000 years ago, so still it must be said, "The judgments of the Lord are true and righteous altogether."14

This is the language of God as Father and Judge taken to its zenith. It is not, however, a deracinated, rationalized Father God to whom Lincoln is referring. It is the Father God for whom the slavery of His chosen and their deliverance from it was a central concern over several centuries of salvation history. It is, in other words, a God whom our shared tradition recognizes. Here religious discourse functions not ceremonially but crucially in our political life.

It is easy to reconcile the imagery of the Second Inaugural with the requirements of the Enlightenment. The same cannot be said of Lincoln's supreme rhetorical achievement, the Gettysburg Address. What Lincoln does there is to tap the collective consciousness of the Christian community, taking from it

14. The text of this speech can be found in B. Barondess, THREE LINCOLN MASTERPIECES 51 (1954).
its central images and putting them to an explicitly political purpose. He begins his Address in the exalted style of biblical genealogy ("Four score and seven years ago . . ."), then he models the formation of the republic after the unique mode of generation characteristic of the Trinity. ("Our fathers brought forth . . .") Having alerted his hearers to his religious frame of reference, he then touches the central nerve of Christian revelation and asserts that from death life can emerge.

But, in a larger sense, we cannot dedicate — we cannot consecrate — we cannot hallow — this ground. The brave men, living and dead, who struggled here have consecrated it far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here. It is for us, the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced.

It is rather for us to be here dedicated to the great task remaining before us — that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion; that we here highly resolve that these dead shall not have died in vain; that this nation, under God, shall have a new birth of freedom; and that government of the people, by the people, for the people shall not perish from the earth.15

Let me suggest that this is, whether consciously or not, the consummate integration of religious discourse and political purpose. It taps into the primordial imagery of the Christian tradition. It evokes, without exploiting, the resurrection theme that, the Enlightenment notwithstanding, is at the core of Christian revelation. Lincoln does not require his hearers to believe that Jesus rose from the dead, or even that the dead shall themselves rise. This is the domain of religious belief, and, belief not being responsive to volition, the state should not (because it cannot) require it of anyone. What Lincoln does do, however, is to invite his hearers to integrate their faith with their political experience, to illuminate the latter by reference to the former, and to invigorate the former by way of its contact with the latter. For Lincoln, the whole universe of religious discourse was admissible in political speech. We should be as free to convey political conviction in religious imagery as Lincoln was.

15. The text of this speech can be found in B. Barondess, id. at 33 (emphasis added).
Two sorts of considerations count against what I have advocated here. One asserts the low analytic utility of religious discourse; the other asserts the high demagogic potential of it. There is much truth to both of these objections, but not enough, I think, to justify the virtual exclusion of unrationa-
lized religious discourse from the political sphere. I will take up both of these lines of arguments in turn.

We are inclined, I think, to attribute too much analytic util-
ity to cost/benefit discourse, seeing it as free from unquantifi-
able value preferences when in fact it merely masks them, and pretending that conflicting interests are commensurable when in fact they are not. We are also inclined, I believe too readily to assume that as political actors all of us do see ourselves as self-regarding monads; as if, that is, our only actual interest was self-interest crudely defined. It is possible, of course, that this assumption is correct, but we make it vastly more likely to be correct than it would otherwise be when we privilege utility-
discourse and marginalize the unsanitized organic discourse of our religious traditions.

The relegitimation of genuine religious speech might help us to test the adequacy of the selfish monad conception of political agency. It might also enrich our political life in other, less determinate, ways. The first requisite of sound policy-for-
mation is the accurate depiction of the status quo in all of its lived reality. A preoccupation with a mode of discourse that will pass tests of analytic rigor can deny us access to forms of expression that allow us to capture those qualitative aspects of human experience that, for all of their oppressive or liberating reality, escape quantification and elude analysis. We know from the Civil Rights era how effective biblical imagery was in motivating people to act; we are less likely, I suspect, to realize how useful that imagery was to the correct portrayal of the evils of segregation. My suggestion here is that shared public access to religiously-based speech might make that descriptive task easier to accomplish than is the case under our current regime of sterilized public speech.

I turn, finally, to the question of demagogic potential. If patriotism is the last refuge of scoundrels, enlisting God on their side is surely their first ploy. More precisely, the diviniza-
tion of the status quo (or of some alternative to it) is the most common way of imposing upon it that "false necessity" that makes social change so difficult to envision or effect.16 For polit-
cicians to identify their own program with the will of God is

16. On the concept of false necessity, see R. Unger, False Necessity:
ordinarily as blasphemous as it is tempting. Decent politicians will always appreciate the fallible, tentative, provisional nature of their proposals, and demagogues will always disguise just those aspects of theirs. This gives us all every reason to be as suspicious of those politicians who wrap themselves in the mantle of religion as of those who wrap themselves in the flag. It does not, however, justify an embargo on religious discourse in the public domain. Such an embargo denies all of us access to modes of discourse that, if I am correct, must be available to us if we are to overcome the split between ourselves as persons and as political actors that now characterizes our lives.

The first two articles in this symposium, and the commentaries on those articles, pursue themes akin to those developed in this forward. The balance of the symposium is, however, devoted to more recognizably constitutional questions. Our hope is that this double issue of our Journal proves to be thought-provoking both at the doctrinal level at which most constitutional debate occurs and at the more theoretical level at which I have been operating here. We hope too that the interplay between doctrine and theory will itself prove instructive, as it did for those who participated in the conference at which these papers were first presented. That conference took place at the Notre Dame Law School from March thirtieth through April first of 1989. I would like to take this occasion to thank David T. Link, the Dean of the Law School, for playing host to the conference. I would also like to thank Metroconomy and its director, Thomas Vitullo-Martin, for making it possible for us to film the conference. I would finally like to thank the several scholars who traveled to Notre Dame this past spring to share with us their most recent contributions to contemporary religion clauses jurisprudence. To them we are indebted both for the liveliness of the exchanges that we had last spring and for the quality of the articles that appear in these issues of our Journal.\textsuperscript{17} If these articles capture some of the vitality of those earlier exchanges, they should make for stimulating reading, even where they challenge the reader’s most deeply-held views

\textsuperscript{17} In some cases the articles that appear here have been reworked to take account of the criticisms made of them by those who commented on them. As a result there will be some situations in which it will appear that commentary misses the point being made in the principal paper. We trust that the reader will tolerate these apparent misjoinders of issue. For the most part the articles and the commentaries on them do reflect what was actually said at the conference.
on the proper relation between law and religion in American life today. 18

18. To accompany the two issues that comprise this symposium, we have inserted an extensive bibliography on recent work in the Religion Clauses area and on how to gain access to that work. We are grateful to Lucy Payne, a member of the Notre Dame Law Library staff, for assembling this bibliography for us. We trust that it will be of some research value to scholars in this field.