Religious Contributions in Public Deliberation

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I

In 1986, the National Conference of Catholic Bishops published a "Pastoral Letter on Catholic Social Teaching and the U.S. Economy" entitled Economic Justice for All.† They addressed the letter to "Brothers and Sisters in Christ," and began as follows:

We are believers called to follow Our Lord Jesus Christ and proclaim his Gospel in the midst of a complex and powerful economy. This reality poses both opportunities and responsibilities for Catholics in the United States... This letter is a personal invitation to Catholics to use the resources of our faith, the strength of our economy, and the opportunities of our democracy to shape a society that better protects the dignity and basic rights of our sisters and brothers both in this land and around the world.

The bishops emphasized that they wrote "as pastors, not public officials,"‡ but they addressed their congregation as "Catholics in the United States seeking to live their faith in the marketplace - in homes, offices, factories, and schools; on farms and ranches; in board rooms and union halls; in service agencies and legislative chambers."§ Their "call to action" was intended to affect individual Catholics' "economic decisions to buy, sell, invest, divest, hire or fire" and also their decisions "in public life".¶

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1. NATIONAL CONFERENCE OF CATHOLIC BISHOPS, ECONOMIC JUSTICE FOR ALL (1986) [hereinafter THE LETTER]. In the text, I shall often refer to this work as "the Pastoral Letter" or the "Letter."
2. Id. at vii.
3. Id. at vi.
4. Id. at xiii.
The pursuit of economic justice takes believers into the public arena, testing the policies of government by the principles of our teaching. We ask you to become more informed and active citizens, using your voices and votes to speak for the voiceless, to defend the poor and the vulnerable and to advance the common good. We are called to shape a community of conscience, measuring every policy by how it touches the least, the lost, and the left-out among us.5

This excerpt gives an indication of the contents of the Pastoral Letter (though the detail will not concern us here). The letter calls for economic rights or what are sometimes called welfare rights: “the creation of an order that guarantees the minimum conditions of human dignity in the economic sphere for every person.”6 The bishops “recommend that the nation make a major new commitment to achieve full employment . . . [with] expansion of job-training and apprenticeship programs in the private sector administered and supported jointly by business, labor unions and government.”7 They recommend “a thorough reform of the nation’s welfare and income support programs,” including an increase in payments under the Aid to Families with Dependent Children program (AFDC), so that the level of assistance at least reaches the officially defined poverty line. Moreover, the bishops say, the federal government should remedy disparities in welfare provisions among the various states, and make AFDC available to two-parent as well as one-parent families.8 The recommendations are not just confined to domestic issues: the bishops also call “for a U.S. international economic policy designed to empower people everywhere and enable them to continue to develop a sense of their own worth, improve the quality of their lives, and ensure that the benefits of economic growth are shared equitably.”

These and other recommendations are argued for on the basis of familiar principles about community, social justice, private property, compassion, and the relation between rights and responsibilities. In the Pastoral Letter, however, such principles do not stand by themselves as premises. Rather, they serve a mediating role between the particular policy recommendations and a number of specifically religious and biblical doctrines on which the principles — and thus ultimately the recommendations — are taken to be based. For example, the bishops cite a number of Old Testament texts that testify to the existence of “a biblical vision of economic justice”:

Every human person is created as an image of God, and the denial of dignity to a person is a blot on this image. Creation is a gift to all men and women, not to be appropriated for the benefit of a few; . . . The same

5. Id. at xv.
6. Id. at 49 (this and other policy recommendations that I quote are in italics in the original).
7. Id. at 78-79.
8. Id. at 102-05.
9. Id. at 142.
God who came to the aid of an oppressed people and formed them into a covenant community continues to hear the cries of the oppressed and to create communities which are responsive to God's word.\textsuperscript{10}

The bishops also cite the teachings of Jesus Christ, warning against attempts to lay up treasures on earth and attacking the use of religion to avoid the demands of charity and justice.\textsuperscript{11} They retell the parable of the Good Samaritan,\textsuperscript{12} emphasizing that it was Christ's gloss on his second great commandment: "Thou shalt love thy neighbor as thyself."\textsuperscript{13} They invoke Christ's vivid picture of the Son of Man coming to judge the nations of the world:\textsuperscript{14}

Then He will also say to those on the left hand, "Depart from Me, you cursed, into the everlasting fire prepared for the devil and his angels: For I was hungry and you gave Me no food; I was thirsty and you gave Me no drink; I was a stranger and you did not take Me in, naked and you did not clothe Me, sick and in prison and you did not visit Me." Then they also will answer Him, saying, "Lord, when did we see You hungry or thirsty or a stranger or naked or sick or in prison, and did not minister to You?" Then He will answer them, saying, "Assuredly, I say to you, inasmuch as you did not do it to one of the least of these, you did not do it to Me." And these will go away into eternal punishment, but the righteous into eternal life.\textsuperscript{15}

Thus, the Pastoral Letter is no ordinary social justice polemic. It offers, as a contribution to public debate, a vision of government and society that is pervasively and explicitly based on a vision of God and of His purposes with mankind.

II

Such a document raises an interesting issue for political philosophy. What part should doctrines and arguments rooted in religious beliefs play in political debate? Is there not something inappropriate or, so to speak, uncivil about presenting such arguments in the public forum in a society that exhibits an enormous variety of religious commitments among its members, and in which citizens have committed themselves collectively and fundamentally, in their constitution, to a doctrine of separation between church and state?

The question is not easily avoided. It might be thought that the Pastoral Letter is intended only to be used by Catholics in their conversations with other Catholics, but that is not the case. The bishops

\begin{itemize}
  \item \textsuperscript{10} Id. at 22.
  \item \textsuperscript{11} Id. at 23 (citing Matthew 6:19 and Mark 7:9-13).
  \item \textsuperscript{12} Luke 10:29-37.
  \item \textsuperscript{13} Luke 10:27.
  \item \textsuperscript{14} The Letter, supra note 1, at 24.
  \item \textsuperscript{15} Matthew 25:41-46.
\end{itemize}
evidently expect the teachings and arguments of the document to be deployed by Catholics as they participate in the political life of the nation, alongside fellow citizens of other denominations. As we have seen, Catholics are called on to use the resources of their faith as they vote, deliberate, and interact with others in their capacity as legislators and officials if they happen to hold positions of special power, and certainly in their capacity as participants in the democratic political system.

It might be thought that the Pastoral Letter offers only bland platitudes of the “motherhood and apple pie” variety, sentiments that will have a broad and inoffensive nonsectarian appeal. That is also not the case. The authors clearly believe that the Christian faith, as understood by the Catholic Church, has a distinct perspective to offer on the great issues facing the United States: “We should not be surprised if we find Catholic social teaching to be demanding. The Gospel is demanding.” The Pastoral Letter was written because the bishops thought that if certain things were not said by the church regarding various issues, those things might remain unsaid or unheard. They thought, too, that some existing political and social positions on issues like poverty and global redistribution, if they were not seconded by the church, might attract less support than they deserved.

Far from being bland and noncontroversial, much of the Letter will seem mysterious or meaningless to those who do not adopt a spiritual or Christian or even specifically Roman Catholic perspective. For example, all of the principles underpinning the bishops’ policy recommendations are qualified by their conviction that:

The fulfillment of human needs, we know, is not the final purpose of the creation of the human person. We have been created to share in the divine life through a destiny that goes far beyond our human capabilities and before which we must in all humility stand in awe.

This qualification will be hard for nonbelievers to accept or understand; they may be unwilling to compromise their attention to existing human need in favor of attention to the holy, the divine, or the hereafter. The bishops cite Aquinas as authority for the proposition

16. THE LETTER, supra note 1, at xiii. Compare Matthew 19:16, 21-2:
Now behold, one came and said to Him, ‘Good Teacher, what good thing shall I do that I may have eternal life?’ Jesus said to Him, ‘If you want to be perfect, go, sell what you have and give to the poor, and you will have treasure in heaven; and come, follow Me.’ But when the young man heard that saying, he went away sorrowful, for he had great possessions.

17. THE LETTER, supra note 1, at 182.

18. Compare this with the dispute in Matthew 26:7-11:
A woman came to Him having an alabaster flask of very costly fragrant oil, and she poured it on His head as He sat at the table. But when His disciples saw it, they were indignant, saying, ‘Why this waste? For this fragrant oil might have been sold for much and given to the poor.’ But when Jesus was
that all capital resources are held by firms and individuals “in trust” for others and for the society as a whole. Defenders of absolute property rights may wonder what attention they should give to such specifically theological writings on the subject. The bishops say that because “we profess to be members of a ‘catholic’ or universal Church,” global problems like Third-World debt and sub-Saharan famine become urgent issues for us. Advocates of isolationism and “America-first” may wonder why they should be moved by an appeal to the professed universal character of an organization to which (they believe) they do not belong. The bishops identify the desire for great wealth with the sin of idolatry, which they regard, in turn, as the primal sin of Adam and Eve: “They turned away from God and gave to God’s creation the obedience due to God alone.” An atheist, however, will not grasp at all why idolatry is a sin, if idolatry is defined purely in terms of attention to the things of this world, in contrast to attention to another world or to a transcendent being that the atheist believes does not exist.

The bishops conclude the theological part of their disquisition with an assertion of the distinctive role of Christ in their lives:

A Christian walks in the newness of life and is “a new creation; the old has passed away, the new has come . . . .” Our action on behalf of justice in our world proceeds from the conviction that, despite the power of injustice and violence, life has been fundamentally changed by the entry of the Word made flesh into human history.

This premise about the striking change wrought in history by the Incarnation will be rejected not only by atheists, but by followers of Judaism, Islam, and all other non-Christian religions, in addition to several Christian denominations that have committed themselves to a much less “literal” view of Jesus.

The bishops’ thoughts on social justice, however, would not be

See also the discussion in Michael Ignatieff, The Needs of Strangers 77 (1986): “[T]he great enemy of religion is not science, nor the active profession of unbelief, but rather the silent and pervasive plausibility of earthly need as a metaphysics of ordinary life. In the desires and needs of the body, human life can find all its justification.”

19. The Letter, supra note 1, at 57 (quoting St. Thomas Aquinas, Summa Theologica, Ia, Iae, q.66 (Fathers of the English Dominican Province trans., 1947)).
20. Id. at 181.
21. Id. at 18.
23. 2 Corinthians 5:17.
worth writing about or taking so much trouble to elaborate if they
were not based on premises like these. Their aim is to place at their
audience’s disposal precisely those distinctive resources of faith
which they believe should inform a specifically Catholic or a specifi-
cally Christian perspective on social justice.

The problem, then, is as follows. In calling on Catholics to deploy
these distinctively Christian insights into public life, the bishops
seem to be calling on them to debate, deliberate, and vote in ways
that many of their fellow citizens will not understand. They appear
to be calling on them to participate in public life in a voice other
than the idiom of “public reason” that their fellow participants can
engage with. How, we may ask, do the bishops expect such contribu-
tions by members of their flock to be received in the wider commu-
nity? Do they expect that the views expressed and the arguments
expounded in the Pastoral Letter will be understood by those who
are not themselves Christians? Do they expect that people who do
not believe in Christ or in judgment or in the idea of a covenant
community will be persuaded by opinions about public policy pre-
mised on exactly those ideas? Processes of public debate are sup-
posed to involve genuine engagement, listening, modification of one’s
own views in response to others — a deliberative synthesis, in other
words. Do the bishops expect that Christian ideals, such as those
expounded in this booklet, can contribute anything to a synthesis
that is a well thought-out position in its own right, and not just a
resultant of political vectors?25 Or is the thought simply that the
Letter will enable Catholics to strengthen themselves as a pressure
group or a voting bloc — and never mind about public discussion —
even though the actual bases of their beliefs remain mysterious or
unintelligible to other participants? What role, in short, do the bish-
ops expect (or what role should we expect) this Pastoral Letter to
play in the democratic process?

This is not an issue the authors of the Letter say very much about.
They point out that in a modern society “it is often difficult to find a
common ground among people with different backgrounds and con-
cerns.”26 In context, this is intended as an observation about the
problems of developing a consensus on economic justice given social
fragmentation, the specialist division of labor in an industrialized
economy, and the “increased emphasis on personal goals and private
interests.”27 Certainly the problem of finding a common ground for
justice amidst an array of mutually opposed or indifferent individual

25. For this as a general condition on political positions, see RONALD M. DWOR-
KIN, LAW'S EMPIRE 176-84 (1986): the idea is that even a compromise position in politics
must have the integrity of something which makes sense as a position in its own right.
26. The LETTER, supra note 1, at 11.
27. Id.
interests is an important one. The bishops cite the work of Robert Bellah and his collaborators, *Habits of the Heart*, to emphasize how important this is: “One of our chief hopes in writing this letter is to encourage and contribute to the development of this common ground.” They neglect, however, the difficulty that their own efforts pose — for the tendency of their proposal is to establish “common ground” on a basis that many in society will find themselves unable to accept. In other words, they neglect the possibility that Catholic participation in public debates about economic justice along the lines indicated in the Letter might make matters worse, so far as the achievement of common ground is concerned.

Three other ideas expounded by the bishops contribute in a small way to our understanding of what they take to be the place of the Pastoral Letter in public life.

First, they insist that the Letter is not put forward as a matter of ecclesiastical authority. Though there is constant reference to Papal pronouncements of various sorts, the tone of the booklet is argumentative rather than *ex cathedra*. The authors note that some of their specific recommendations are politically controversial, and they concede that they are matters on which persons of goodwill may disagree.

As bishops, we do not claim to make these prudential judgments with the same kind of authority that marks our declarations of principle. But we feel obliged to teach by example how Christians can undertake concrete analysis and make specific judgments on economic issues. The Church’s teachings cannot be left at the level of appealing generalities.

The second idea is the bishops’ commitment to ecumenism: they say they are writing in a tradition of religiously-based concern about social justice in which thinkers from the Protestant and Jewish communities “have also provided guidance.” Specifically, as they develop the biblical basis of their argument, they say: “We also claim the Hebrew Scriptures as common heritage with our Jewish brothers and sisters, and we join with them in the quest for an economic life worthy of the divine revelation we share.” A little later they say: “We also have much to learn from the strong emphasis in Protestant

28. *Id.* at 11 n.18. For a recent study of the importance and difficulty of achieving such a common language and vision, see ROBERT N. BELLAH ET AL., *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* (1985).


30. *Id.* at xii.

31. *Id.* at 13.

32. *Id.* at 16.
traditions on the vocation of lay people in the world and from ecumenical efforts to develop an economic ethic that addresses newly emergent problems. This ecumenism, however, has its limits. No attempt has been made to engage with religious views outside the Judeo-Christian tradition, and precious little attempt has been made to say anything about the obvious resonances between the Letter's conception of social justice and the conceptions developed by secular academic philosophers such as John Rawls.

The third idea that is relevant in this connection is the universalism of Catholic faith and teaching on social justice. Theologically-based requirements can be divided into three classes: (i) those understood as specific to members of a given congregation; e.g., to be a member of the Mormon community one must be prepared to tithe one's income; (ii) those understood as specific to a given class of persons; e.g., God requires certain things of the Jews as His chosen people; and (iii) those understood to be addressed to all men and women, whether they know or believe that these teachings are of concern to them or not. Categories (ii) and (iii) involve what are sometimes referred to as "ascriptive" characteristics: characteristics important for the purposes of some doctrine that apply to a person whether he has, in any sense, chosen to exhibit that characteristic or not. The "catholicism" of the Roman Church places most of its teachings and requirements in the third category. Even on controversial issues, like abortion and birth control, the Church's teaching is that every person, not just every Catholic or every Christian, should refrain from destroying fetuses and refrain from artificially frustrating what is taken to be the reproductive function of human sexuality. Such doctrines are intended to be universal in their application (though of course the Church does not expect that everyone will take equal notice of them). The same applies, as I understand it, to the Church's teaching on economic justice. The beliefs that the bishops expound, the arguments they develop, are intended as arguments about what humans, as such, owe to one another in the way they use and share the material resources of the world. The rights and duties they set out are universal in scope; that is why they can take themselves to be contributing to modern debates about human rights. Again, as things stand, the bishops may expect members of their own congregation to be more receptive to what they (the bishops) say than outsiders are. What they say, however, is what they believe about the duties and rights of all of us in these areas.

33. Id. at 30.
34. I have in mind the similarities between Rawls' "Difference Principle" in JOHN RAWLS, A THEORY OF JUSTICE §13 (1971) and the concern for "the least, the lost, and the left-out" in THE LETTER, supra note 1, at xv, that characterizes the arguments of the Pastoral Letter.
The bishops are, in other words, in the same game as philosophers who write about justice: they are trying to work out what people owe to one another, not what Catholics or Christians owe to one another.

If anything, their views are more universal in scope than those of secular thinkers like Michael Walzer, more universal, indeed, than the recent views of John Rawls. According to Walzer, social justice is relative to the meanings and understandings implicit in the life of each society. There are, he says, no a priori or universal principles: "Every substantive account of distributive justice is a local account." Walzer infers from this that "[a] given society is just if its substantive life is lived in a certain way - that is, in a way faithful to the shared understandings of the members." He thinks it would be nothing short of tyrannical to oppose the local understandings of caste, gender, or differential status in some society in the name of universal egalitarian ideals. Even John Rawls has toyed with this parochial line of late. We should not, he says, try to find "a conception of justice suitable for all societies regardless of their particular social or historical circumstances." Instead, we should "look to ourselves and to our future, and reflect upon our disputes since, let's say, the Declaration of Independence. How far the conclusions we reach are of interest in a wider context is a separate question." On this account, there is no real or transcendent moral order against which the truth of our judgments can be tested. What justifies a conception of justice is "its congruence with our deeper understanding of ourselves and our aspirations, and our realization that, given our history and the traditions embedded in our public life, it is the most reasonable doctrine for us."

The universalism of the Pastoral Letter — and of course the transcendent faith on which that universalism is based — is thus a direct challenge to the relativism of the modern philosophical retreat into "ourselves and our aspirations" and what is "the most reasonable doctrine for us."

I have emphasized this contrast between the universalism of the

36. Id. at 313.
37. Id. at 313-14.
39. Id.
40. Id. at 519. See, however, the position articulated most recently in John Rawls, Political Liberalism 44 (1993): "We turn to political philosophy when our shared political understandings . . . break down . . . ."
Pastoral Letter and the turn towards relativism in recent political philosophy because it also shows that the problem posed by the Pastoral Letter in the context of public debate is not the problem of how to accommodate those with particular religious preferences. There is a whole set of problems involving things like whether Sikhs may be required to doff their turbans and put on helmets when they ride motorcycles or whether Old Order Amish parents may be required to give their children an education that meets certain publicly defined standards — problems that concern what the rest of us should do about certain citizens' special religious scruples and sensitivities. That is not the issue we are dealing with here. Instead, we are dealing with a body of teaching that purports to address issues of economic justice — which are indisputably issues for and concerning all of us — on exactly the scale (or at least arguably on exactly the scale) that those issues need to be addressed.

Together, this ecumenism and universalism provide a basis for what the bishops take to be the wider appeal of their pamphlet. Though they say they are writing “first of all, to provide guidance for members of our own Church as they seek to form their consciences about economic matters,” they add that they also “seek the cooperation and support of those who do not share our faith or tradition. The common bond of humanity that links all persons is the source of our belief that the country can attain a renewed public moral vision.”

III

I said that the Pastoral Letter is addressed to Catholics, not only in their capacity as economic agents (buyers, sellers, workers and managers, hirers and firers), and not only in their capacity as citizens, but also “in legislative chambers.” The implication is that Catholic Congressmen, Catholic officials, Catholic judges, Catholic governors, even a Catholic President, should bear these specifically biblical and Christian teachings in mind as they exercise the powers entrusted to them by the people.

That implication arouses well-known opposition in liberal constitutional circles inasmuch as it involves some blurring of the line between church and state, a violation of the duty on those who exercise legislative, judicial, and executive power to do so in a way that is, as far as possible, neutral among the various religious professions of the

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42. The Letter, supra note 1, at 13.
43. Id. at 13-14.
44. Id. at vi.
citizens.  

Here is one suggestion that might be offered to meet that opposition. Perhaps some of the sting could be drawn from the issue if the bishops were to address themselves only to Catholics *qua* ordinary citizens, and to refrain from arguing that biblical, papal, and theological teachings should guide the actions and deliberations of those in public office. I think, however, that any such distinction would be hopeless for two reasons.

First, although we are accustomed to distinguishing between ordinary citizens and public officials, part of the ideology of democracy is that such a distinction is ultimately, in the end, misguided. Citizens are not just subjects and observers so far as public political life is concerned. They are (or they are supposed to be) active participants. Indeed, public policies ultimately have whatever legitimacy they possess (and public officials ultimately have whatever authority they possess) only by reference to the wishes and decisions of millions of ordinary people on matters such as those addressed by the Pastoral Letter.

One way of seeing this is to think of the voter as an official, *pro tem*, when he enters the polling booth. As a voter, he is entrusted with a certain amount of power to make public decisions. The way in which he — and the millions of others who are so entrusted — decides to exercise that power will determine how the nation acts on issues of great moment. Of course, the amount of power each voter has is quite small: he has, in the polling booth, no more power than any other voter, and there are, as I said, millions of them. Still, on certain issues, nothing but the individual decisions of voters determine what public policy will be. Voters in California, for example, can make policy decisions directly through referendum; and even in ordinary elections, citizens are determining together, through the aggregation and counting of their individual decisions, who will occupy high office and what their policy orientations will be. Cynics in the political science profession may attempt to minimize what voters can

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45. For the best account of such opposition, see KENT GREENAWALT, RELIGIOUS CONVICTIONS AND POLITICAL CHOICE (1988).

46. On certain other matters, such as civil rights and liberties, public policy secures its legitimacy from the Constitution and from court decisions that bypass or override democratic mandates. The notion that public policy on matters of social and economic justice secures its legitimacy through normal processes of democratic representation and accountability, rather than through interpretations of specific clauses in the Bill of Rights, has long been part of the American political system. In other words, the Pastoral Letter addresses itself to matters that are regarded as properly in the domain of majoritarian decision making.
do. But it is the theory, the aspiration, and occasionally the reality of our political system that power is exercised through the ballot box. This has important consequences for any putative distinction between citizens and officials. Certainly public officials have wide powers and should accept a commensurate level of moral responsibility. But the same applies to citizens. Acting collectively as voters, they can inflict great harm on minorities, or on one another; they can make the difference between peace and war; they can leave needy persons overseas languishing in famine if they make it clear that they will vote out of office anyone who increases foreign aid. They have this power — the theory of democracy requires that they should have it — and they are therefore required, morally, to accept whatever responsibilities go along with its exercise. This is particularly important on issues of social justice and social welfare — for, again, those who depend on the state for food, shelter, and basic well-being depend, in the last analysis, on the voters. Persons such as the homeless, the poor, the sick, the old, the very young, the unemployed, and the hungry are, so to speak, at the mercy of their fellow citizens on election day. Indeed, they are as much at their mercy as they are at the mercy of the professional officials who make ordinary decisions about welfare payments — perhaps more so, because the voters are permitted to make new decisions on their own initiative whereas, in theory at least, the professional officials are not. If the voters decide to roll back property taxes, or to vote out of office anyone who proposes to increase the fiscal demands made upon them, they are in effect deciding that nothing is to be done, or that less is to be done, to assist people in need. So, if an argument can be made in favor of officials not exercising their political power on the basis of their religious convictions, consistency requires that the same argument be applied also to voters.

If you like, voters can be thought of as members of a huge jury. An ordinary person may pick and choose those whom he spends time with, or falls in love with, or gives money to, or goes drinking with, on any criteria that appeal to him. When he is sworn in as a juror, he may pick and choose his fellow jurors, or get new ones if he does not like them, on any criteria that appeal to him. As a juror, he is supposed to set aside his preferences and to judge the case impartially, treating all the members of the community with equal care and concern in everything he does. Dworkin develops this argument with regard to decisions in the economic sphere. Some thinkers — particularly utilitarians — take the view that all our decisions should be guided by impartial criteria of the general good. Most of us do not accept that pervasive responsibility. We think that we are normally free, morally as well as legally, to prefer our own interests and projects, and those of a small number of other people to whom we feel special associative responsibilities and ties, in the day-to-day decisions we make using our own property.

Id. at 292. We do not think that we have any general duty, he says, to treat all other members of the community with equal care and concern in everything we do. Id. at 296. "But we believe our government, the community personified, does have this duty, and we might hope to find in this pervasive public responsibility some explanation of why we as individuals sometimes have that duty as well." Id.
however, those preferences must be left behind. He may not acquit a
defendant simply because he likes the look of him, or convict him
because he is not a member of a race from which he would want his
dughter to select a husband. As a juror he is, for the time being, a
public official, exercising the power of the whole people, and imparti-
ality is a responsibility that is required of him in that “office” which
may not be required of him in ordinary life. Those who believe in a
separation of church and state will say that, as a juror, the ordinary
citizen may not appeal to specifically religious convictions in his de-
liberations — for example, convictions about original sin, predestina-
tion, the nature of guilt, the duty of forgiveness, the exclusive penal
prerogatives of the Lord, or the peculiarly defined heinousness of
certain offenses. He must make his decisions based on the public cri-
terias of law supplied to him, not on the basis of his own religious
faith. I am arguing, then, that the voter too should be restricted, if a
document about the inappropriateness of official appeals to religious
convictions can be sustained. Given such a doctrine, the voter has no
right to engage his specifically religious convictions in the polling
booth. As much as the juror, he is exercising the power of a responsi-
bile office, and he must take care that he does so in a way that is
impartial and responsive to the public character of his decision.

The bishops, of course, do not draw this distinction. In their view,
a Catholic is required to show the equal concern that they recom-
mand for the needs of others whether he is signing a bill in a gover-
nor’s office, or voting in an election, or giving alms at church, or
deciding what sort of automobile to buy. The commitments of the
Christian faith, on their account, are pervasive in a way that the
special duties and responsibilities of public office are not. What I am
arguing, however, is that if we do think special duties and responsi-
bilities pertaining to the exercise of political power exist — as most
liberal theorists do — and if they include anything like a duty of
religious neutrality, then that duty applies to ordinary citizens acting
in their capacity as voters as well.48

So, if Catholics “living their faith” as legislators is a problem,
then Catholics “living their faith” as voters is also a problem. The
question about the place of the Pastoral Letter in public life cannot
be avoided by concentrating the duty of religious neutrality pecu-
liarly on officials. We are all officials in a democracy.

48. Cf. Id. at 295-96.
I said earlier that there were two reasons for doubting that a distinction could be drawn between the role of the citizen and the role of the official so far as appeals to explicitly religious considerations were concerned. The second reason has to do with the character of decision making by officials who have made politics their profession: I have in mind not only professional politicians such as governors, representatives, and presidents, but also nonpartisan officials and, in particular, judges.

Clearly, there ought to be continuity between whatever discourse is appropriate among the people and whatever discourse is appropriate among those whom they elect. We expect elected officials to, in some sense, represent the views of their constituents; we think that in normal politics they should take notice of and be sensitive to what the people are saying; and we believe that they should be made periodically accountable to their constituents for what they have done to determine whether they should continue to hold office.

Political theorists have sometimes naively imagined that representation could be just like delegation. The representative would simply report and act on the views of his constituents, even though he might not hold those views himself. On this approach, there might indeed be a discontinuity between what citizens may permissibly act upon. It might, accordingly, be permissible for citizens to take religious views into account in forming their views on social justice in a way that would not be permissible for representatives. The latter's job would be simply to convey accurate views about what the citizens believe about social justice (including, if necessary, what the citizens believe for religious reasons). Representatives, on this approach, would be simply neutral transmission belts.

But, of course, that vision of representation is hopeless. For one thing, we value a system of representation in which the representatives are not mere hirelings, but are themselves drawn from the active ranks of the very constituency they claim to represent. For another thing, we think representatives should respond sometimes to the wishes and concerns of all their constituents, not just of the largest bloc that can be seen as holding a specific view. Above all, we understand that representing a view is not just reporting it, but working with it, and applying and elaborating it in ways that its original authors may not have foreseen. This is not just Edmund Burke's famous insistence on the autonomy of the representative: "Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to

49. The example most often cited is Karl Marx's vision of the Paris Commune as the forerunner of socialist democracy in The Civil Wars in France (1870) excerpted in Karl Marx: Selected Writings 542 (David McLellan ed., 1977).
your opinion." My point is that one cannot represent a view in the
complex circumstances of modern life, even with the most demo-
cratic will in the world, except by holding it and thinking it through
and interpreting it from the inside, as it were, as though one were
one of its authors — even though one's title to represent it is based
on the fact that the view has been authored, in part, by others. I
cannot represent socialist views simply by parroting the socialist
opinions of my constituents. I can do so only by thinking and dis-
cussing as a socialist; and the same is true for all political creeds.
Once again, therefore, the discontinuity between ordinary citizens
and political officials cannot be sustained. Even as their representa-
tive, indeed especially as their representative, the professional politi-
cian must be able to engage in the same sort of deliberations as the
voters to whom he is accountable.

Not all public officials, however, are supposed to be representa-
tives. What about judges? Surely, it will be said, certain constraints
exist on what a judge may take into account in his decision making
that do not apply to the ordinary citizen. There are such constraints
— but the matter needs to be stated carefully.

The judge in his decision making is constrained by two duties in
particular that do not apply to the voter. He has, first, a certain role
to play in a functionally articulated system: the legislature's duty is
to pass laws, and the judge's duty is to apply those laws to particular
cases as conscientiously as he can. He must think of himself as
bound in his decision making by what the legislature has done in the
way that the ordinary voter need not. Though both, of course, must
obey the law, the ordinary citizen may exercise his power *qua*
.voter in favor of a radical change in legislation, while a judge *qua*
judge may never do this (apart from the exceptional circumstance of legis-
lination he believes to be unconstitutional). Secondly, the judge has an
institutional duty to play his part, along with his brethren on the
bench, in articulating a coherent body of law; he must follow prece-
dent, and he is subject to all the constraints that flow from what
Ronald Dworkin has referred to as the value of "integrity." Once
again, this is not a duty that burdens the ordinary citizen.

Although these constraints indicate ways in which judicial deci-
sion making differs from decision making by other officials, including

50. *The Political Philosophy of Edmund Burke* 109 (Ian Hampsher-Monk
ed., 1987) (quoting Burke's November 1774 speech to the electors of Bristol on being
elected).
voters, they do not add up to a requirement that the judge *qua* judge should never think like an ordinary citizen. In a hard case, the judge may have to make a decision about the rights and responsibilities of the parties facing him, without any determinate guidance from either legislation or precedent. The situation may itself be unprecedented or the legal sources ambiguous. In this case, the judge evidently has no choice but to make his decision in roughly the same way as those to whose decisions he would ordinarily defer should make theirs. If the precedents give him no assistance, he must create a new precedent; if the statutes are ambiguous he must, so to speak, write a more definitive statute to deal with this particular case. He must take his decision, in other words, simply on the basis of what is right and just to do; and in doing so he will be engaged in exactly the sort of enquiry that a responsible citizen should be engaged in when he makes his decision as a voter about what legislative measures would be right and just and thus deserving of his support.

It is, of course, important not to exaggerate the judge's autonomy. As Ronald Dworkin has argued, it will seldom if ever be true that the extant statutes and precedents offer no guidance at all. Even in the hardest case, the predicament will present itself to the judge as one of *interpreting* whatever legal materials have a bearing on the case, rather than as one of utterly untrammelled discretion. But as Dworkin has also argued, interpretation itself involves (though it is not exhausted by) the making of moral judgments about what it would be just and right to do. If two or more competing interpretations of the legal materials exist, and if neither can be disqualified on grounds of either integrity or institutional deference,

> then he [the judge] must choose between eligible interpretations by asking which shows the community's structure of institutions and decisions — its public standards as a whole — in a better light from the standpoint of political morality. His own moral and political convictions are now directly engaged.

In the end, the judge's position is not much different from what we said earlier about the representative. To represent the views of a constituency one must engage with those views as an active participant, extending them, following them where they lead, arguing them through, interpreting them, applying them, and so on. Such a process is inextricably linked with moral judgment: to think that the view one is representing makes most sense when extended *this* way to cover an unanticipated application, is to think that *so extended* it will be a *better* principle than if it were understood in some other way. The judge reasons in a very similar way: in deciding to interpret the legal materials *thus* to dispose of the case before him, he

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52. See RONALD DWORIN, TAKING RIGHTS SERIOUSLY (1977).
53. DWORIN, supra note 25, at 256.
argues that the materials so interpreted look better, from the moral point of view, than they would if given a different interpretation. To that extent, the judge too is reaching a decision about the difference between a good or just society and one that is less good or less just.

When this aspect of Dworkin's jurisprudence is criticized in the literature, he is often represented as saying that judges should become moral philosophers. Mark Tushnet, for example, complains that "Dworkin's methodological prescription simply tells us to rely on moral philosophy [but] does not tell us what moral philosophy to rely on." This is misleading. Dworkin's position, and the position of common sense, is that a point will come in judicial decision making when the judge must simply make a moral judgment of his own, in his own voice, the best way he knows how. He does not eo ipso become a moral philosopher, unless we extend the latter category to cover anyone who tries to think hard about moral problems. It makes more sense to adjust the categories from the other direction: moral and political philosophers are simply doing systematically, professionally, and at leisure what judges and other officials must do under a deadline every day. Neither activity—neither that of the philosopher nor that of the judge—differs, in essence, from the thinking and decision making of the ordinary person addressing matters of civic importance. For all three, a time comes when he must think about and enter a value judgment in his own voice. Unless he does that, he will not be able to complete the task assigned to him, whether it is teaching, interpreting legal sources, or choosing for whom to vote. In all of this I am assuming, of course, that it is incumbent on voters to ask themselves directly what is right and just for their society to do. I am assuming that it is not permissible for them to simply to consult their own interests in exercising the power assigned to them. Once we acknowledge the unavoidable place of moral judgment in the activity of the judge, we must recognize that he is pro tanto in the same game as the ordinary citizen. So, anything appropriate for the citizen to take into account in exercising his political power is appropriate for the judge and for other officials to take into account, to the extent that they face moral choices in the exercise of theirs.  


55. I am obliged to Michael Perry's article in this Symposium for some of the formulations in this paragraph.
Let me circle back, then, to the original problem. We have seen that if ordinary people may properly take documents like the bishops' Pastoral Letter into account as they discharge their civic responsibilities, officials (such as representatives and judges) must be permitted to do so, as well. But the position thus far is a conditional one: if ordinary people may take this into account, then officials may too. We now have to address the issue directly of whether the Pastoral Letter actually is the sort of thing that citizens (or anyone) may take appropriately into account in the responsible exercise of their political decision making.

IV

The first thing to say in answering that question is that it may be a mistake to focus purely on voting and other forms of decision making. It is important that the Pastoral Letter is seen as a fabric of argument and not simply a list of things to do or vote for. The document is intended for “public discussion”; Catholics are called on to use their “voices” as well as their votes; its aim is “to articulate a moral perspective in the general societal and political debate that surrounds these questions.”

One may think that this gives rise to a particular problem. In principle, there is no difficulty in counting a vote cast on grounds of Catholic principle or biblical teaching; there is no problem for weighing such a vote against that of a follower of Islam, a Mormon, or a secular atheistic. If it's a "Yea," it outweighs precisely one “Nay” vote, whether it was inspired by the Gospel, the Koran, *A Theory of Justice*, or John Lennon's *Imagine*. There may be doubts about the appropriateness of a person's deciding on religious grounds how to exercise his vote, but there are no special or technical problems of commensurability at the ballot box.

Public debate, however, is different. One’s aim there is to talk to other people, to convince, persuade, communicate, to open one’s mind to other perspectives, hear what others are saying, remind them of things they may have overlooked, exchange experiences, proverbs, images, and insights. In deliberation people talk and listen: each holds himself ready to change his mind on an issue, in whole or in part, and each expects others to contribute in a similar spirit. The great hope of the democratic ideal is that reason can be exercised publicly in this way.

But how, it may be asked, can this conversation proceed if two

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57. *Id.* at xv.
58. *Id.* at 179 (emphasis added).
people are addressing one another from utterly disparate perspectives? You are arguing, on the one hand, about human rights and needs, about equality and market socialism; I am arguing, on the other hand, about the significance of the Incarnation for our thoughts about the poor, about the Holy Ghost and His presence in the world, and about the needs we have that go beyond the needs of the body. How can we make contact in argument? How can we convince each other? How can my contribution be synthesized with anything you have said? The worry is that if we allow religious views onto the stage of secular politics, we will turn the public forum into a babel of mutually unintelligible and incommensurable metaphysics.

In my opinion, this difficulty is often exaggerated; we should not underestimate the human capacity to conduct conversations even in these unpropitious circumstances. People often surprise us, and an advance warning of mutual incomprehensibility is, in many cases, an enticement and a prelude to fascination with what the other has to say rather than a prelude to unintelligibility. We are too easily scared by what Karl Popper has called "the myth of the framework." We think, along Wittgenstenian lines, that people have to share something before they can converse: "If language is to be a means of communication there must be agreement not only in definitions but also (queer as this may sound) in judgments." Again, though, how thin that necessary background turns out to be is surprising. In any case, it is worth pausing to review some of the models or conceptions of public deliberation that are involved in the democratic tradition to see whether the worry about mutual comprehension is well-grounded.

The earliest well worked-out conception of public deliberation is that of Aristotle, in his discussion of whether political power should be vested in the few citizens of great wisdom and virtue or in the hands of the many:

There is this to be said for the Many. Each of them by himself may not be of a good quality; but when they all come together it is possible that they may surpass - collectively and as a body, although not individually - the ability of the few best. Feasts to which many contribute may excel those provided at one man's expense. In the same way, when there are many [who

59. KARL R. POPPER, OBJECTIVE KNOWLEDGE: AN EVOLUTIONARY APPROACH (1972).
60. LUDWIG WITTGENSTEIN, PHILOSOPHICAL INVESTIGATIONS 88 et seq., ¶ 242 (G.E.M. Anscombe trans., 1953); see also the extensive discussion in SABINA LOVIBOND, REALISM AND IMAGINATION IN ETHICS (1983).
contribute to the process of deliberation], each can bring his share of goodness and moral prudence; and when all meet together the people may thus become something in the nature of a single person who - as he has many feet, many hands, and many senses - may also have many of the qualities of character and intelligence.61

That is why Aristotle takes it as the mark of man's political nature that he has been endowed with the faculty of speech.62 Each can communicate to another experiences and insights that complement those the other already possesses. When this happens in dense interaction throughout a community, the group as a whole can attain a degree of wisdom and practical knowledge that surpasses even that of the most excellent individual member.

In order for this model to work, each contribution must be made in a way that is, so to speak, apt to be received by other members of the community. As Thucydides put it, "One who forms a judgment on any point, but cannot explain himself clearly to the people, might as well have never thought at all on the subject."63 When a speaker makes his contribution, listeners must be able to understand it, and relate it to their own views, in such a way that they can either examine the critical confrontation that it poses and work out what side to come down on, or synthesize into a modified view the grain of truth or insight that it offers. Thus, there is a connection between the Aristotelian model of public deliberation and the idea of shared modes of reasoning, a common matrix of public understanding on which various views of various people can be laid out, compared, contrasted, and synthesized.

A second slightly different model of public deliberation is presented by John Stuart Mill:

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.64

Here, the suggestion is that people simply fling their views and opinions into the public forum of ideas and, whether others understand them precisely or not, they will have their effect, and the truth will emerge by a sort of invisible-hand process, analogous to that by which Adam Smith thought efficiency and prosperity would emerge from the operation of the market.65 The difference between Mill's

62. Id. at 5, bk. I, ch. 2, 1253a.
64. J.S. MILL, ON LIBERTY 58 (Curran V. Shields ed., 1956).
65. Those who use the "market" analogy never explain, of course, why truth is analogous to a value like efficiency which can, in principle, be secured by invisible-hand processes, rather than to a value like justice, which everyone agrees cannot be secured in
model and Aristotle's is that Mill does not assume that each contribution is being carefully taken on board by each person and brought by him into relation with his own view before he sends his modified opinion out to engage with the views of others in a similar way. For Mill's model to work, it is less important that the competing ideas be intellectually commensurable. Who cares if a specifically biblical doctrine is flung up against the secular views of, say, a Robert Nozick or a P.J. O'Rourke? The ideas will have their effect on one another, and something better will (or may) emerge in the clash, even though the "adjustment" between the two views has not been made by any "single mind."

Those who have expressed concern about the role of specifically religious views in public debate have, I think, rightly assumed that the first model, rather than the second, is the model we should be interested in. Even if Mill's approach better represents the chaotic reality of post-modern "debate" in a society like our own, the Aristotelian model captures at least some of the aspirations for public reason that have been the hallmark of liberal democratic thought. Even if public debate does take place "by the rough process of a struggle between combatants fighting under hostile banners," still, as they participate, people often make their contributions as though they expected others to listen to them, to compare them calmly with their own views, and to make the adjustments that are necessary to accommodate whatever grain of truth they involve. Respecting this aspiration is important, even if it is honored more in the breach than in the observance.

Still, Mill's model is worth bearing in mind, if only to alert us against too narrow a view of what must be the case, if public deliberation is to take place. John Rawls offers what, in my opinion, is an overly narrow conception of the matrix of public reason, suggesting that it must always proceed from some consensus — "from premises that we and others recognize as true, or as reasonable for the purpose of reaching a working agreement." He suggests that public deliberation be limited to "the shared methods of, and the public

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knowledge available to, common sense, and the procedures and conclusions of science when these are not controversial.\footnote{68} What this conception seems to rule out is the novel or disconcerting move in political argumentation: the premise that no one has ever thought of before, but which, once stated, sounds plausible or interesting. Rawls' conception seems to assume an inherent limit in the human capacity for imagination and creativity in politics, implying as it does that something counts as a legitimate move in public reasoning only to the extent that it latches onto existing premises that everybody already shares.

In responding to that view, we need not go as far as Mill in opening up the parameters of public debate; we need not say that something counts as a respectable contribution just in case it is likely to have an effect on the existing consensus. We may want to insist that citizens address one another as thinkers and reasoners, not merely as conscious or subliminal recipients of post-modern culture. Still it is a mistake to suppose, as Rawls does, that I can engage with another as a thinker only if we share some major premise and some mode of reasoning from it.

I believe that it is this overly cautious approach to public reason that has led Rawls into the rather narrow relativism of some of his recent work in political philosophy:

We assume, then, that public justification on questions of political and social justice rests on some public consensus, that is, on an agreement in citizens' shared beliefs . . . and in their considered judgments of justice (more generally, their considered judgments relating to all the political values the political conception expresses). Justification is always addressed to some particular group of persons . . . . What constitutes the most reasonable basis of public justification for one society may not be a basis of justification for another; and [the] same holds for the same society at different times.\footnote{69}

This is too cautious. It suggests that justificatory moves must always connect with an existent consensus, with the stock of ideas already "implicit in the political culture" of our society.\footnote{70} In fact, justificatory consensus may be invented in or constituted by a political discourse that does not presuppose or assume its existence. Moves may be made in political argument that bear no relation to existing conventions or commonly held opinions, but which nevertheless gain a foothold as soon as they are considered and discussed by persons with open minds.

If we assume, moreover, that a creative openness to new ideas, and

\footnote{68. Id. at 8.  
a willingness to come to terms with the unfamiliar, are universal human traits, this possibility may actually contradict (not just mitigate) the relativism of Rawls' appeal to consensus. From this perspective, we might want to take seriously Mill's opinion that people actually have an interest in having their most cherished and considered judgments challenged, and in being disconcerted and discomfited by the new and the unfamiliar — or even by the clearly wrong — in public debate.\(^7\)

The other point to note in this regard is that any putative consensus is always going to be partial and indeterminate in an actually existing society. The most familiar deliverance of common sense will be denied by some; the best-established scientific results (particularly social scientific results) will be contested. If we want to stick with the idea of a consensus as the grounding of public reason — and whether we can is not at all clear once we see that there is no proposition comprised in any putative consensus that is not contradicted by someone — still, if we want to stick with that idea, we are going to have to loosen it a little. Either the extent of what counts as a consensus among the population (everyone? a majority?), or the notion of what makes something a consensus (agreement on details? agreement only on the basics?), will have to be relaxed — and probably both. We are likely to end up talking about views that are shared by "many" or "most," rather than "all." Furthermore, sharing a view is more likely to be understood in terms of some loose relation like Wittgensteinian "family resemblance" than in terms of the rigid specification of a set of agreed propositions. Rawls talks often of "overlapping consensus" — some common ground between rival philosophical, ideological, and religious world views.\(^2\) But any such specification of common ground, is likely to be, at best, indeterminate, for several sets of views may exist, each of which has a claim to be regarded as "the public consensus," if anything is to be so regarded.

With all this in mind, it may be harder to rule something out as a possible or as an appropriate contribution to public debate than the Rawlsian picture supposes. We therefore have reason to be cautious about Rawls' insistence that the idea of public reason "excludes comprehensive religious and philosophical doctrines" in favor of "the


\(^2\) See RAWLS, supra note 40, at 133-73.
Much of what Rawls and others say about the exigencies of public reason is based on concerns about the possibility of public debate. That is what I have been focusing on: what does a view or an opinion or a reason have to be like — how must it relate to views that people already hold — in order to work as a contribution to public debate? A second issue he raises, though, concerns not the possibility of genuine debate, but the fairness or (in his sense) the reasonableness of a particular contribution.74

For example, in A Theory of Justice, he argues that any limitations that are imposed on liberty of conscience must be based on a “reasonable expectation” that failing to impose the limit will be detrimental to public order. “This expectation,” Rawls says, “must be based on evidence and ways of reasoning acceptable to all. It must be supported by ordinary observations and modes of thought (including the methods of rational scientific inquiry where these are not controversial) which are generally recognized as correct.”75

Now this reliance on what can be established and known by everyone is itself founded on the principles of justice. It implies no particular metaphysical doctrine or theory of knowledge . . . . It represents an agreement to limit liberty only by reference to a common knowledge and understanding of the world . . . . On the other hand, a departure from generally recognized ways of reasoning would involve a privileged place for the views of some over others . . . .76

This argument, too, will run into difficulties if what is required is an appeal to views that are shared literally by everyone in a society. We will all be silenced if we are to say nothing or appeal to no consideration in politics unless we are sure that the view is “common knowledge” in this literal sense.

The requirement of fairness, however, need not be so exacting. Instead of saying positively that we must be sure that a reason is part of an existing consensus before we can appeal to it, we may phrase the doctrine as a narrower, negative claim. We must not appeal to considerations which we know, or have good reason to believe, are not shared in the society. Religious considerations fall into this category, for it is common knowledge in our society that no agreement may reasonably be expected on matters of religion. We must, Rawls says, take into account what he calls the “burdens of reason” — the

73. Rawls, supra note 69 (manuscript at 65-66).
74. See Rawls, supra note 38, at 528 for his definition of reasonableness.
75. Rawls, supra note 34, at 213.
76. Id.
features of mind and inquiry that make disagreement about comprehensive world views more or less unavoidable. Any appeal to a religious point in public argument is thus an appeal to a consideration which inevitably, and in the nature of things, we cannot expect others to accept.

Thus, if it is said that outside the church there is no salvation, and hence a constitutional regime cannot be accepted unless it is unavoidable, . . . the appropriate reply is that the doctrine is unreasonable: it proposes to use the public's political power — a power in which all citizens have an equal share — forcibly to impose a view affecting constitutional essentials about which many citizens as reasonable persons, given what we may call the burdens of reason . . . , are bound to differ uncompromisingly in judgment. 77

The image in this passage, though, is misleading. Rawls writes as if each comment that is made in public debate is nothing more than a proposal to use public power to forcibly impose something on everyone else so that what we have to evaluate, in each case, an immediate coercive proposal. That is seldom what we are faced with. Instead, a religious doctrine is likely to be put forward as one contribution among others in a debate on how political power is to be used. In that context, it is much less clear whether there is anything unfair or unreasonable about such an intervention. A contribution may be put forward as something for one's fellow citizens to ponder and consider along with the other views that they are listening to, something for them to take into account. What they make of it may be left up to them.

In any case, we think it part of the point of public deliberation to expose citizens and other decision makers to perspectives and experiences with which they are initially unfamiliar. Only on the basis of such exposure is there any reason to believe — on either Aristotelian or Mill-ian grounds — that the decision which results at the end of the deliberations will be any improvement over the prejudices with which the people went into the forum. 78 Only on this basis can we expect the participants in dialogue themselves to be improved by the exposure. 79

Even if people are exposed in argument to ideas over which they are bound to disagree — and how could any doctrine of public deliberation preclude that? — it does not follow that such exposure is pointless or oppressive. For one thing, it is important for people to be

77. Rawls, supra note 70 (manuscript at 133).
78. See supra notes 61 & 64 and accompanying text.
acquainted with the views that others hold. Even more important, however, is the possibility that my own view may be improved, in its subtlety and depth, by exposure to a religion or a metaphysics that I am initially inclined to reject. I do not mean, now, Mill’s point about the bracing benefits of vigorously combatting error.\(^{80}\) I mean to draw attention to an experience we all have had at one time or another, of having argued with someone whose world view was quite at odds with our own, and of having come away thinking, “I’m sure he’s wrong, and I can’t follow much of it, but, still, it makes you think \ldots .” The prospect of losing that sort of effect in public discourse is, frankly, frightening — terrifying, even, if we are to imagine it being replaced by a form of “deliberation” that, in the name of “fairness” or “reasonableness” (or worse still, “balance”) consists of bland appeals to harmless nostrums that are accepted without question on all sides. That is to imagine open-ended public debate reduced to the formal trivia of American television networks.

VI

What was said in the previous sections might apply to any religious or other philosophically contentious intervention. We do not have (and we should not have) so secure a notion of public consensus, or such stringent requirements of fairness in debate, as to exclude any view from having its effect in the marketplace of ideas.

But there are also some quite specific reasons for not excluding from our deliberations on economic justice religious ideas that hail from the particular tradition embodied in the Catholic bishops’ Letter. Much of what passes for disciplined secular thought about the morality of private property and economic justice stems from a tradition of political thought that has its roots in ideas of natural right, natural law, and the sanctity of the human person. Those of us who have lost our faith properly seek formulations for these ideas that eschew phrases like “sanctity” and references, explicit or implicit, to a divine creator and law-giver. It is possible that we shall not succeed in that enterprise. Perhaps it would be wiser to replace the whole apparatus of that philosophical tradition with something that is secular in its provenance, as well as its phraseology, than to persevere with an ethic of natural law that has lost its law-giver, or a teleology that has lost its telos. This is a suggestion made by G.E.M. Anscombe and Alasdair MacIntyre, among others.\(^{81}\) But even if we

\(^{80}\) MILL, supra note 64, at 43-55.

\(^{81}\) ALASDAIR MACINTYRE, AFTER VIRTUE: A STUDY IN MORAL THEORY 1-21 (1981) and G.E.M. Anscombe, Modern Moral Philosophy, 33 Phil. 1 (1958). Their claim is a radical one and goes to the heart of our moral concepts — including the elementary concept of a “moral requirement” — as well as to the content of particular views in the natural law tradition. We know, for example, that the notion of a moral
reject that suggestion and persevere with what is broadly a secular philosophy of social justice based on natural rights, still we should be more modest than we often are about our ability to (re)construct such a theory and to work out what, exactly, in its depths and its implications, it should involve.

To take one well-known example: such a theory will need a conception of the value of human life and a way of determining whether beings such as human fetuses are to be regarded as persons for the purpose of attributing human rights. If the abortion debate has shown anything, it has shown that we both need, and have not yet secured, such a conception for the purposes of secular political argumentation. I am not suggesting that we just take over some better-worked-out religious conception. But the idea that we can afford simply to ignore the contents of all religious conceptions of the person, the idea that we should abandon any hope of deriving clues or intimations from those traditions as to how to construct a secular conception and how to relate it to other ideas about virtue, value, and duty — and that we should do so because those sources of clues are controversial and, indeed, implicated in the very controversy (about abortion) that we are addressing — all this strikes me as the opposite of wisdom. The work of writers like John Finnis, Germain Grisez, and Charles Larmore is indicative of evidence of the value — to all of us — of certain philosophers’ being able to bridge the gap between secular and religious argumentation. This kind of value has little to do with whether we agree with either their premises or their conclusions, and everything to do with the way in which engagement with their thoughts helps to deepen our own.

Personhood and abortion are obvious issues to talk about in this regard. However, I want to illustrate the point more extensively and more aptly — in the light of the issues on which the Pastoral Letter requirement used to be linked to the notion of a requirer, and that while, “it is a natural result that the concepts of ‘obligation,’ of being bound or required as by a law, should remain though they had lost their root,” (Anscombe at 6) still we should not expect that such a hangover will not pose certain perplexities for us in our philosophizing about ethics. “Moral requirement” is like the grin left after the Cheshire cat has disappeared. It is, as Anscombe points out, “as if the notion ‘criminal’ were to remain when criminal law and criminal courts had been abolished and forgotten.” Id.

82. For an engaging account of the role of religious thought in the abortion controversy, see RONALD DWORFIN, LIFE’S DOMINION: AN ARGUMENT ABOUT ABORTION, EUTHANASIA AND INDIVIDUAL FREEDOM 68-101 (1993).

is focused — by referring to the current state of the modern discussion of property in liberal political thought.

Alan Ryan begins his book *Property and Political Theory* by saying “[s]tudents of theories of property rightly spend a lot of time in the company of Locke.”84 The widespread discussion of property entitlement in recent years initiated by Robert Nozick85 constantly and obsessively returns to Chapter Five of Locke’s *Second Treatise of Government*. The currency of phrases like “Lockean proviso” and “mixing one’s labor” bears witness to the centrality of Locke’s discussion in modern debates about these matters.

Yet Locke’s discussion begins in terms that should be quite problematic from the point of view of Rawlsian public reason: “God, who hath given the world to men in common, hath also given them reason to make use of it to the best advantage of life, and convenience.”86 His account is full of assertions like “[n]othing was made by God for Man to spoil or destroy,”87 and “[i]f such a consent as that was necessary, Man had starved, notwithstanding the plenty God had given him.”88 As Alasdair MacIntyre once remarked, the *Second Treatise* — usually taken as the foundation of modern liberal thought — is so riddled with theological argumentation as to make it arguably unteachable on constitutional grounds in the public schools of the United States.89

It is tempting to dismiss the references to God in Locke’s discussion of property as a theological veneer, easily removable, without loss, from the central arguments of the Chapter. Indeed, the theological references do, in fact, fade out after paragraph thirty-five, and whole chunks of the argument (e.g., paragraphs thirty-six through fifty-one) are conducted in purely secular terms. But it is a mistake to think that we can translate the theological conceptions simply or straightforwardly out of the Lockean theory and replace them everywhere with secularized versions.

Consider, for example, the issue of whether property owners are obliged by natural law to share their wealth with the poor. Locke’s position on this is well-known:

[W]e know God hath not left one Man so to the Mercy of another, that he may starve him if he please: God the Lord and Father of all, has given no one of his Children such a Property, in his peculiar Portion of the things of

87. *Id.* ¶ 31, at 290.
88. *Id.* ¶ 28, at 288.
89. Alasdair MacIntyre, Carlyle Lectures at the University of Oxford (1982) (this citation is based on my memory of the lectures that I attended).
this World, but that he has given his needy Brother a Right to the Surplus-
age of his Goods; so that it cannot justly be denied him, when his pressing Wants call for it. 90

We might rephrase this as follows: "A needy person has a right to the surplus goods of a rich person if they are necessary to keep him from perishing." If we do, however, someone is likely to ask us for an argument to support this controversial proposition. In Locke, the argument is based on the seminal fact of God's creating the world for the sustenance of all men:

God made Man, and planted in him, as in all other Animals, a strong desire of Self-preservation, and furnished the World with things fit for Food and Rayment and other Necessaries of Life, Subservient to His design, that Man should live and abide for some time upon the Face of the Earth, and not that so curious and wonderful a piece of Workmanship by its own Negligence, or want of Necessaries, should perish again presently after a few moments continuance . . . 91

Once again, we might, at a pinch, translate that into secular language: "That people have a right to make use of the goods that may help them to survive is common sense." It loses a little in the translation, though. Keeping hold of the idea that we were meant to survive, and that being denied access to the naturally available resources that we need is offensive to the fact of our existence is difficult in a secular tradition.

One of the dominant issues in property theory — from the seventeenth to the twentieth century — has been how to conceive of the original commons, before a division of resources into individual private property took place. Are we to think of the original postulation of land and natural resources as a negative community — meaning that no one so far has any rights in the resources — or as a positive community — meaning that everyone has, by virtue of their humanity, some positive claim on the resources that exist? 92 The issue is important, because if we adopt the latter perspective, an individual's private acquisition must be constrained by respect for the rights that the rest of us have in the common, whereas if we adopt the former view that is not the case. That this remains an issue was brought home to me some months ago, when I read a review by the Canadian libertarian philosopher, Jan Narveson, of my own book on property. 93 At one point, attacking my critique of Lockean-Nozickian

90. Locke, supra note 86, I, ¶ 42, at 170.
91. Id. ¶ 86, at 204-05.
principles of acquisition, Narveson writes:

Here he [Waldron] assumes prior common status of resources. But what if there is no such status? What if natural resources are originally nobody's, but are just there? As Nozick has pointed out, the familiar idea that society in general owns natural resources requires justification just as much as the idea that some individual owns some. In Locke's case, a theological story is supposed to provide this; if we discard the theology — as we plainly should — then what are we left with? A "rights-vacuum awaiting acts of acquisition," to use Waldron's phrase, seems an entirely plausible answer.

The point is not to draw the reader's attention to a rather unfavorable review of my book, but to notice how difficult or tendentious it may be to translate out of the theological language that Locke uses. If we “discard the theology,” as Narveson puts it, does that mean we are required to adopt the negative view of the original commons? Or are we entitled to assert some suitably secularized version of Locke's positive view? Clearly, the exigencies of public debate in a secular environment do not tell us which translation we should choose.

In a way, of course, it does not matter. Who cares what John Locke would have said had he been constrained to put his account in secular terms? He is our sparring partner in all of this, not our prophet. The question is, which is the most plausible premise with which to begin our own (secular) discussion of property?

Here, though, the problem points to a general issue in liberal philosophy. Our theories of basic rights, of property and justice, of the respect due to the human person, are all rooted historically in theories of natural law and in conceptions that were specifically theistic and, indeed, Christian in approach. We are now engaged in the business of developing ways of thinking about politics and justice that abandon that orientation. As we do that, we — or, I should say, many of us — are determined to maintain as rich a sense as possible of the dignity of the human individual, the equality of worth of all men and women, and the urgency and priority of justice.

To pretend that we are already in possession of secular conceptions that enable us to do that would be foolish. On the contrary, what is striking about foundational writing in modern secular liberal thought is its dryness and relative inarticulacy. We talk about agents, and the requirements of agency; we talk about equal moral capacities; and we simply assert the priority of justice, while reducing it in our discussions to a matter of social policy and keeping faith with local understandings. It all sounds flat and monochromatic. In a number of ways the Christian conceptions out of which modern liberalism originated remain richer and deeper than their secular offspring. For that reason — and this is my point — they continue to

94. Id. at 155.
offer themselves as resources and clusters of clues for the modern political debate.

What and how much we want to translate out of that heritage into a secular understanding remains open. For the time being, the sort of religious conceptions that underlie works like Locke's *Second Treatise* remain available to us as rich sources of intimation for the development of our theories of man and society, justice and economy, equality, freedom, and dignity. As the latest episode initiated by Nozick's work demonstrates, we recur periodically to that source for inspiration, or to trace the cross-cutting texture of various strands of argument, or for a new specification of a problem, or just for a new angle on old material. We may not do so because of its theological character, but nor do we return to the Lockean material grudgingly, as it were, despite the God-talk. We go back to writers in the Christian tradition of natural law and natural rights, because that is the heritage from which we are in the process of extricating a body of secular theory, and by no means is it clear that we have completed that task (or, indeed, that there is only one way to complete it).

I have argued elsewhere that liberals must be prepared to stand up for the distinctive features of their conception of the human person: they cannot be neutral about everything. But if our distinctive conception is still in the process of being formed, we must be prepared to have recourse to its provenance, to the various sources from which we might obtain the materials for its continued construction, even if that too taints us with the brush of partisanship or non-neutrality.

In the meantime, the heritage of Christian and natural law thought on these matters is not itself standing still, waiting to be redeemed by the secular promise of liberalism. It, too, is in process, being a lively tradition that is continually worked over by those who remain faithful to its premises. That — I take it — is what is going on in the Catholic bishops' Pastoral Letter. Because we have no reason to doubt the intellectual credentials of the authors of that letter, we should be as interested in what they have made of the natural law tradition that Locke, for example, appealed to — what they have made of it from the inside, so to speak — as we are in what

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96. A wonderful discussion of this question may be found in CHARLES TAYLOR, SOURCES OF THE SELF (1990).
Locke himself made of it, and in what Rawls and Nozick made of that. Again, the point is not that we should abandon the enterprise of developing secular modes of liberal thought in favor of joining the bishops in their exposition of Christian social doctrine. Our interest is that we might reasonably expect to find further clues to a rich and adequate conception of persons, equality, justice, and rights in what is currently being made of the Christ-centered tradition by those who remain centered in Christ.

VII

If all this makes sense, then we may want to say that something like the Pastoral Letter has a natural place in public deliberation, even when public deliberation is conceived in a secular liberal spirit and even when many or most participants in that debate do not accept the premises on which the bishops construct their arguments. We will miss its potential relevance if we insist that all contributions to such debate must connect syllogistically with premises that are already part of a public consensus. If, on the other hand, we see the value of rethinking the structure of our premises, or of being disconcerted in our allegiance to them, or of having to confront the relatively dry inarticulacy of our secular conceptions with the richness of their Christian provenance, or if, in general, we see the value of an open, challenging, and indeterminate form of public deliberation in which nothing is taken for granted — if we loosen our conception of public reason in these or other ways — then we may be less uncomfortable about the deployment of religious ideas, even explicitly and unashamedly theological ideas, in what we may still regard as ultimately a matter for secular politics.