SOME

TWENTIETH-CENTURY CHRISTIAN INTERPRETATIONS

OF

LIBERAL POLITICAL THOUGHT

by

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Abstract

A study of Christian interpretations of liberalism is important for social theology for two reasons: first, liberalism is the dominant political ideology of modernity, and (especially in the form "liberal democracy") is the most prominent form of public self-definition in the West, its claims often being taken to be self-evidently true. Second, liberalism is historically indebted to Christianity, and the two are susceptible of mutual confusion. A critical theological analysis of liberalism is necessary to ensure the authentically Christian nature of contemporary political theology.

This analysis is conducted principally through a discussion of the criticisms of liberalism made by three Christian thinkers of the twentieth century, the American Reinhold Niebuhr (1892-1971), the French Jacques Maritain (1882-1973), and the Canadian George Grant (1918-1988).

After an introductory chapter, chapter two presents an interpretation of liberalism, mapping the historical contours and varieties of liberalism from five liberal writers, and elaborating a loose framework of the conceptual structure of liberal thought. Chapter three examines Reinhold Niebuhr's criticisms of liberalism's alleged facile progressivism and optimistic conceptions of human nature and reason, and chapter four looks at George Grant's claim that John Rawls' liberal theory fails to provide the ontological affirmations necessary to defend human beings and liberal values against the dynamics of technology. Jacques Maritain's account of pluralism and the ideal of the secular state, and the contribution he can make to the current debate between liberals and communitarians, are the subjects of chapter five, while chapter six attempts to secure some theological purchase on the issues of Bills of Rights, judicial review, and the constitutional restraint of democratic majorities, with special reference to the British context. In the concluding chapter it is argued that the liberal account of justice is impossible to realize, and that central insights must be borrowed from the Augustinian tradition.

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Abstract

A study of Christian interpretations of liberalism is important for two reasons. First, liberalism - notably in the form "liberal democracy" - is the dominant form of public self-definition in the West, and its ideals possess considerable moral cogency elsewhere. Because its claims are often taken to be self-evidently true, a Christian understanding of the contemporary world cannot afford to neglect it. Second, liberalism has historically been significantly indebted to Christian thought, and the two are susceptible of mutual confusion. A careful critical examination of liberal foundational principles, political values and general dispositional attitudes is therefore required in order to ensure the authentically Christian nature of contemporary social theology.

This examination of liberalism is carried out through an evaluation of the criticisms of it by three twentieth-century theologians. Attention is focussed on, first, two thinkers writing in the middle decades of the century about the questions posed to liberalism as a result of the two world wars and the rise of "totalitarian" regimes: **Reinhold Niebuhr** (in Moral Man and Immoral Society, The Nature and Destiny of Man, The Children of Light and the Children of Darkness, Faith and History, etc.), who was particularly significant in forming the chastened liberalism of the post-war United States; and **Jacques Maritain** (in Integral Humanism, The Rights of Man and Natural Law, Christianity and Democracy, Man and the State, etc.), whose vision of the "new Christendom" inspired many Catholic thinkers and activists and made an important contribution to the modernizing movement which culminated in the Second Vatican Council. Second, we consider **George Grant**, a lesser-known Canadian thinker writing in the 1960s and 1970s (e.g. in Technology and Empire, Time as History, and English-Speaking Justice), who is more pessimistic about the future of liberalism in the light of the apparent human inability to control technological development. The political thought of several other Christian writers, such as Yves Simon, John Courtney Murray, John Finnis, Stanley Hauerwas, Oliver O'Donovan and Paul Ramsey, is touched upon, and there is also the necessary reference to past writers in the Christian tradition, particularly Augustine and Aquinas.

The first chapter introduces and outlines the project of the thesis, noting that liberalism is interpreted as the political aspect of the Enlightenment and the dominant political ideology of "modernity", and stressing that neither liberal theology nor liberation theology will be discussed in detail.

The second chapter presents an interpretation of liberalism. The historical contours of liberalism are mapped by taking representative soundings from the history and pre-history of the liberal tradition: John Locke (constitutionalism), Immanuel Kant (the ethics of impartiality),

John Stuart Mill (individuality), L. T. Hobhouse (welfare liberalism), and F. A. Hayek (economic liberalism). A suggested plan of the conceptual structure of liberalism is then expounded: this starts from its foundations in a voluntarist conception of the human subject, in constructivist meta-ethics, in an abstract, individualist and universalist mode of thought, and in a broadly progressivist philosophy of history; onto this basis other features are built - the liberal approach to rationality, power and authority, the state, property, democracy and the supreme values of neutrality, equality and liberty. While the element of caricature in such a portrait of liberalism is recognized, it is argued of this historically and conceptually complex phenomenon that there are sufficiently many family resemblances between its numerous varieties to warrant treating it as a whole. Moreover, because liberalism is treated in the main part of the thesis indirectly through the perceptions of it of the various Christian writers, the credibility of the argument does not depend on there being one thing denoted by the term.

The subsequent chapters form the bulk of the argument. Any political theory has an implicit philosophy of history: chapter three examines Niebuhr's criticisms of liberalism's alleged facile progressivism and optimistic conceptions of human nature and reason. Combining a particular interpretation of the direction of Niebuhr's career with an analysis of his epistemological and ontological objections to the belief in the immanent meaningfulness of history, the chapter attempts to show how his idiosyncratic understanding of liberalism was crucial both in sustaining the apologetic strategy of his social theology and in generating his paradoxical identity as a liberal with the self-image of a scourge of liberals. In addition to a criticism of his intepretation of liberalism, it is argued that although Niebuhr's conclusions about the nature of history are correct, his largely unreconstructed idealist theology, together with its existentialist and mythological treatment of religious doctrine and symbolism, fails to provide the justification he rightly seeks for the significance of historical existence.

Chapter four considers the basis of liberal values, through an examination of Grant's attack on John Rawls' liberalism. Grant claims that Rawls fails to provide the ontological affirmations necessary to defend human beings against the predations of technology, and indeed encourages a conception of the self that serves to legitimate the hegemony of technology. It is argued that Grant importantly misinterprets Rawls' device of the "original position" and that Rawls' more recent work escapes some of Grant's strictures; but that nevertheless his arguments may be adapted to show how Rawls' account of the basis of value and of the distinction of private and public identities may in practice result in the subversion of liberal values.

Chapter five questions, through Maritain, whether the liberal ideal of the secular state, which is neutral with respect to the ideals of its citizens and which cultivates only the minimal virtues necessary for the survival of the society, is morally desirable. Starting with an account of Maritain's ideal of the "new Christendom" and his defence of religious toleration, which turns out to depend on an unacceptable historicism, the chapter proceeds to develop through his work a tertium quid answer to the current debate between "liberals" and "communitarians": in his Thomist anthropology and his liberal "Democratic Charter", he shows how the social constitution of the self and a public commitment to substantive values need not preclude a considerable degree of pluralism in political society. Finally, some criticisms of Maritain are shown to be answerable if his thought is placed in an Augustinian framework.

In chapter six an attempt is made to secure some theological

purchase on the issues raised by the trend towards qualifying the power of elected governments in favour of the judiciary through the constitutional incorporation of **Bills of Rights**, a development which is often thought to set the liberal demand for individual freedom in conflict with the democratic principle of majority rule. After an outline of the precise problem and an account of some failed resolutions of it, aspects of probably the most important general theoretical defence of judicial review, that of Ronald Dworkin, are presented. John Finnis' criticisms of Dworkin are discussed, and it is shown that these need supplementing in order to produce a general theological analysis of the relation of legislature and judiciary. This analysis proceeds by contrasting two theological approaches to the relation between popular consent and political authority, the conferral model and the confirmation model, and shows that they both conclude with a presumption, albeit rebuttable, in favour of elected assemblies deciding publicly-controverted moral issues. Finally, some brief guidelines are offered in relation to the present situation in Britain.

The concluding chapter draws together and develops themes which have been to this point only implicit or inchoate. It starts from an argument that the liberal theories of neither John Rawls nor Thomas Nagel can satisfactorily accommodate non-consenters to the liberal system as a whole within their theories, and connects this with an incipient utopianism and a denial that power is of the <u>esse</u> of politics as we know it. The roots of this are traced back to the "turn to the subject" at the centre of liberalism, identified here with, first, the movement of thought which finds the seat of agency in the will, and, second, the loss of transcendence. These two themes are then correlated with two levels of revelation in public life, those things which are, and those which are not, in principle susceptible of public reasoning, and an outline of the suggested theological response to liberalism at each of these levels is then given. The chapter concludes, and with it the thesis, by allusion to Augustine's thoughts on the Eternal City.

It is hoped that, in addition to offering an analysis of liberalism from the special point of vantage afforded by theological suppositions, the thesis will make a substantial contribution towards a social theology whose distinctiveness and critical power is not lost through a lack of moral and political self-awareness.

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CHAPTER ONE

INTRODUCTION

Ever since Karl Barth's inversion of nineteenth-century culture-Protestantism in the early decades of this century, the predominant theological attitude to society and culture has been one of critical distance rather than uncritical legitimation. Barth showed how Protestant theology had been fettered by its allegiance to the demands of its intellectual and cultural environment, and in doing so freed it to be faithful to its proper object of study, the self-revelation of God in Jesus Christ. The same task of vindicating theology and ensuring its authenticity in the face of its cultured despisers (whether they be inside or outside the church) confronts all theologians, those of the present generation as much as those of former times. In systematic theology to seek this genuineness is a two-fold responsibility, at once to eliminate unwanted intrusions and to secure a properly Christian manner of thought. Likewise in social thought, to seek an adequate political theology is at once the negative task of critically analyzing political ideologies, and the positive undertaking of initiating a theology of political society.

Liberalism is the dominant political ideology of modernity. If the primary negative responsibility of theology in relation to its surrounding intellectual culture is taken to be the criticism of modernity (whatever that may be), the primary negative responsibility of political theology

must be the critical analysis of liberalism (whatever that may be). If it is true that the ascendant classes of our society do not see the reality of modernity because they see reality with modern eyes, it is as true that they do not see the reality of liberalism because they view political reality with liberal eyes. Liberalism, especially in the form 'liberal democracy', articulates the dominant form of public self-understanding in Western societies of the North Atlantic type, and the ostensible assent granted to its values by spokesmen for non-liberal societies suggests the degree of cogency liberal rhetoric possesses elsewhere. When it is also added that historically liberalism has been significantly indebted to Christianity, and that the two are susceptible of mutual confusion, the case for engaging in a theological interpretation and analysis of liberal society, as a necessary negative element in the ultimately constructive project of a social theology, is overwhelmingly evident.

Indeed the importance of such an endeavour becomes even clearer if we attend to certain other features of the contemporary world. At one level there are the range of questions of morality and public policy which cluster around the issues of religious belief in a pluralist society: the relation between religion and tolerance (including the possibility of participation by "fundamentalist" religions in public debate, the content and desirability of blasphemy laws, etc.); the justification of an established church; the case for state funding of religious schools or of confessional theology faculties (as against phenomenologically-oriented religious studies faculties) in universities; the involvement of religious bodies in politics; the debates over multiculturalism and "our Christian heritage"; and so on. At another level there are the problems raised by the modernizing process: increasing (if not inevitable) secularization, and the deposition of religion from its previous governing role both in society's public commitments and in the recesses of personal subjectivity;

the confinement of religion to the private life, the realm of family and leisure; the pluralization of belief and the consequent sense that choice of ultimate beliefs is unimportant; and, amongst these, the bewilderment of the churches in knowing how to respond. At a third level, there is the intellectual context of the rise of "critiques of modernity"; of a profound questioning of the set of positions associated with the Enlightenment (with its stress on science and the objectivity of knowledge, on the centred self, and so on); and therewith the problem of the cognitive status of religion, and the number and types of publics it may claim to address.

A full theological interpretation of liberal political thought should be able to take into account each of these contexts and respond to the questions which they pose. That is, it should be able to address the issues of public policy and morality and indicate the first principles of a casuistry; it should be able to guide the church in the way of faithfulness amidst present cultural configurations; and it should be able to contribute towards an authentically theological post-modernity which neither lapses back into an uncritical pre-modernity nor indulges in a self-consuming and (despite itself) ultimately conservative deconstruct-ionism. And in doing so, it would make a contribution not only to political theology, but also, because of the mutually implicating nature of the different elements of the theological enterprise, to theology itself.

The present essay is not that work. As will be evident from the undefended assumptions (of both substance and method), the ungrounded empirical and theoretical generalizations, and the insufficiently precise conceptual analyses that pervade it, the present effort cannot claim to do more than shadow the much grander general project. Nevertheless, within

the bounds afforded by the genre, it is hoped that the approach adopted will enable us to address at least in outline some of the issues that a proper treatment would consider in depth.

Our method of theologically interpreting political liberalism is intended on the one hand to give the work a strong exegetical base, and on the other to enable us to make our own positive suggestions. It achieves this principally through the procedure of critically examining the analyses of liberalism made by three twentieth-century theologians, who are chosen largely for the complementary nature and constructive potential of their thought. Of the three theologians, two wrote their most important works and enjoyed their greatest influence between the mid-1930s and the early 1960s: on the one hand, the American Protestant of German descent, Reinhold Niebuhr, who made a particularly significant contribution to the formation of a chastened liberalism that had learned from the experience of the First World War and the rise of Communist and Fascist regimes; and, on the other, the French Catholic with American sympathies, Jacques Maritain, whose vision of the "new Christendom" - secular and liberal rather than sacral and intolerant - inspired many Catholic thinkers and politicians, and helped advance the modernizing movement in the Roman Catholic church which culminated in the Second Vatican Council. The third theologian, George Grant, an Anglican born into the Canadian ruling class, is a generation younger: virtually unknown outside his native country, his prominence in Canada between the mid-1960s and his death in 1988 was owed primarily to his powerful meditations on those driving forces behind liberal modernity which had led to the loss of Canadian national identity and to the establishment of the cultural hegemony of the United States.

A prior task, however, before considering each of these writers in more detail, is that of getting a handle on the term 'liberalism'. In chapter two, therefore, we present an interpretation of liberalism. First,

the history and varieties of liberalism are indicated through a discussion of five writers often associated with the liberal tradition, and then a loose but broadly recognizable plan of the conceptual structure of liberal beliefs is outlined. Although such a picture of liberalism will unavoidably be reductive to a degree, it can still be argued that there are sufficiently many family resemblances between the different kinds of liberalism to justify at least the initial posture of treating it as a whole. Nevertheless, it will become clear that a theological interpretation of liberalism will wish to distinguish between the various liberal positions and arguments, rejecting some and provisionally accepting others.

The subsequent chapters form the bulk of the argument, drawing on specific features of the analysis of liberalism by each of the three Christian writers. Any political theory has an implicit philosophy of history: in chapter three we consider Niebuhr's criticisms of liberalism's alleged facile progressivism and optimistic conceptions of human nature and reason, together with the theory of salvation such accounts suggest. In chapter four we discuss Grant's understanding of the relation between liberalism, modernity and technology, and give an indication of the profound civilizational contradiction to which liberalism is party: the problems this engenders for many accounts of the basis of liberal values are then examined with special reference to John Rawls' work, widely regarded as a seminal contribution to Anglo-American political theory and one which no criticism of contemporary liberalism could afford to neglect. This discussion touches on the problems of pluralism, a theme more fully treated in chapter five's account of Maritain: here in particular we advert to the current debate between "liberals" and "communitarians", which centres on the issue of the nature of agency and freedom and has implications for questions of the enforcement of morals; and we show how

Maritain may show the way to a more satisfactory resolution of the dispute than those often suggested.

In each of these cases the theologian's arguments are analysed and criticized, particularly in relation to their theological adequacy and the understanding of liberalism they involve. Although a positive intent should be apparent in the chapters on Niebuhr and Grant, they are primarily negative: that is, they concentrate on the dangers of a liberalism which seeks to impose goodness on reality. In the chapter on Maritain, however, the weight shifts (albeit inperspicuously) onto the other foot, and the positive aspects of liberalism from a theological perspective come to be emphasized. The constructive role of a good political theology is extended further in chapter six, where an attempt is made to secure some theological purchase on the issues raised by the trend towards qualifying the power of elected governments in favour of the judiciary through the constitutional incorporation of Bills of Rights and the right of judicial review. The argument here is more discursive and makes no primary reference to theological treatments of the issue, principally because (to this writer's knowledge) no explicitly theological work has been done on it. It is however an important subject for discussion, not only because it is perhaps the central problem of current liberal constitutional theory and appears to many to engender a conflict between the values of liberalism and democracy, but also because it relates the theoretical debate to a practical issue of considerable topicality and importance.

Although the chapters deal with different writers and with different (but overlapping) sets of themes, and superficially do not appear to cohere with each other in the form of a developing narrative, there are several underlying preoccupations which unite the thesis. These are explicitly drawn out in the concluding chapter, which also seeks both

to show how contemporary liberal theorists have profound affinities with earlier writers in the tradition, and to draw more general conclusions for the terms of Christian engagement with political society.

Two subjects should be noted which will not at any point occupy the centre of our attention in this thesis. First, theological liberalism as contrasted with political liberalism: although the relations between the two are of considerable interest, we make no pretense at defining or treating of the former; nor is our object in the first place to attempt a critical analysis of its varieties, though it would be disingenuous (and methodologically misguided) to deny that, if there are any conceptual connections between the two at all, a criticism of the latter might have implications for our understanding and evaluation of the former. Second, although we are employed in a form of ideological critique, the present enterprise does not readily fall into the categories of what in theological circles commonly goes under the name 'liberation theology': it does not overtly refer to the canonical writers of the liberationist school(s) or seek to address their characteristic anxieties. Nevertheless, it should not be assumed that the exercise in political theology undertaken here is merely a form of "regional" theology (to use Charles Davis' term) done in a "humanistic" mode, a theology of politics alongside a theology of culture or art or economics which simply applies the timelessly derived truths of theology to a particular area of human life. The reasons for the rejection of such a construal of the present work cannot be entered into here, although they are fleetingly touched upon in the final chapter.

We do not purport, therefore, to have reviewed all the issues that might plausibly appear under the rubric of a theological interpretation of

liberal political thought, or even to have investigated to their rightful extent all those which we have addressed. But we do tender that the questions are at least important, and that serious attempts, beyond the measure of this thesis, should continue to be made to answer them.

CHAPTER TWO

AN INTERPRETATION OF LIBERALISM

1 Introduction

"Liberalism has been, in the last four centuries, the outstanding doctrine of Western civilization" (H. J. Laski).[1] "To attempt to write the history of liberalism before the 1820s is ... akin to attempting to write the history of the eighteenth-century motor car" (J. C. D. Clark).[2] Such divergent estimates of the history of liberalism not only suggest the range of historiographical paradigms under which liberalism has been treated: they also raise suspicions that the two writers are hardly referring to the same set of phenomena at all. Similar doubts are raised by the unhesitating application of the term by different writers variously to economic non-interventionism as well as social interventionism; to belief in natural rights as well as scepticism about a natural order of morality; to unclouded optimism and rationalism as well as to more circumspect and cautious gradualism. Perhaps to talk of liberalism (in the singular) rather than liberalisms (in the plural) is to have been deceived into deducing the identity of object from the identity of title.

In this chapter I will argue, against such scepticism, that, although this historically and conceptually complex phenomenon cannot be defined in terms of necessary and sufficient conditions, there are enough family resemblances between its three main varieties to warrant the

elaboration of a plan of the conceptual structure of liberalism. This structure has its foundations in a voluntarist conception of the human subject, in constructivist meta-ethics, in an abstract, universalist and individualist mode of thought, and in a broadly progressivist philosophy of history; onto this basis other features are built - the liberal approach to rationality, power and authority, the state, property, democracy, and the supreme values of liberty and equality. While the inevitable element of caricature in such a composite portrait of liberalism is recognized - for example, I do not suppose that any individual can be found who subscribes to every one of these positions, nor that there are no deep tensions between different writers in the broad stream of the tradition - it is nevertheless possible to argue that the liberalism thus portrayed is a family of beliefs that is to some extent distinct from other families of beliefs which overlap it, such as socialism and conservatism. More importantly for the general argument of the thesis, the ultimate aim of which is to contribute towards a theological "critique of modernity", one can distinguish this family of beliefs from the pre-liberal political thought of the classical and mediaeval periods and the post-liberal writings of Marx and Nietzsche.

After a short section on method, the historical contours of liberalism are mapped by taking representative soundings from the history and pre-history of liberalism: John Locke (constitutionalism), Immanuel Kant (the ethics of impartiality), John Stuart Mill (individuality), L. T. Hobhouse (welfare liberalism), and F. A. Hayek (economic liberalism). It is then briefly shown how these relate to the three broad types of liberalism, namely constitutional, classical or <u>laissez-faire</u>, and twentieth-century liberalisms. Finally the suggested plan of the conceptual structure of liberalism is expounded.

2 On interpreting liberalism: a methodological preliminary

There is no eternal form of liberalism whose essence could be intuited and captured in a real definition. Any interpretation of liberalism must therefore be empirically informed. The difficulties in such an enterprise are well-known, and too numerous and complex to canvass fully in the present context. The sketchy methodological remarks which follow thus have the character and status of a creed rather than an argument.[3]

The term 'liberalism' is used as a heuristic device within descriptive historiography. Like other similar broad category-terms, its function is to illuminate historical material, and it purports, when its content is expounded, to provide a better description of its historical object than alternatives. Its use is constrained and so ultimately legitimated by the historical evidence. However the nature of history-writing demands that there be abridgement of the facts, and the requirements of generalization imply that the range of material to be subsumed under broad category-terms will be governed by the historian's purposes in writing. Thus in the case of liberalism, the purposes of the historian of English society may be such as to justify him in claiming that liberalism came to be in the particular circumstances of the 1820s. But it does not follow that it is illegitimate for an interpreter with other interests to use 'liberalism' to apply to the political aspect of a broader movement of thought characteristic of "modernity", and to treat nineteenth-century liberalism as a moment in that wider movement. That is, since there is no one entity named 'liberalism' which is given in the order of things, the range of historical material which is to be subsumed under the description 'liberalism' has to be (explicitly or implicitly) stipulated by each interpreter.

It might be thought that this threatens to make the present account arbitrary and irrelevant to anybody other than the writer of the present essay. To avoid such a sceptical inference, and in order to lend public plausibility to the account of liberalism given below, liberalism has to be interpreted in the present context in a way that makes it recognizable to a broader constituency. This does not imply that it will be straightforwardly identical with the interpretation of liberalism given by any others amongst that broader constituency, but only that there will be some consensus that a roughly equivalent set of phenomena are under discussion. Nor does it imply that these discussion partners be contemporaries: while the relation of contemporary self-interpretation to contemporary understandings of liberalism is interesting and important, the present essay is intended as more than an exercise in illuminating present-day consciousness.

By explicitly purposing to interpret liberalism in a publicly intelligible way, this approach also avoids the nominalist scepticism that denies that any one interpretation is better than any other, with 'liberalism' merely referring to that set of ideas which the interpreter chooses. While that affirms the truism that there is no necessary connection between the term 'liberalism' and a particular set of beliefs, it prevents any rational discussion of liberalism. For example, it precludes the possibility of an <u>insight</u> into the nature of liberalism which revises earlier understandings: both new and old understandings just become, on that account, definitionally correct interpretations of different things.

What purpose is appropriate for the present essay? The central intuitive idea of the essay, as intimated in chapter one, is that of liberalism as the political aspect of the Enlightenment, and thus as a

central and characteristic feature of modernity. Wider than a set of political values, and deeper than a range of political policies, it includes beliefs about the nature of human agency, the nature of rationality, the basis of value, and the direction of history, as well as characteristic attitudes towards power, property, the state, and so on. Subordinate to this central idea are two other general intuitions. First, liberalism should be broadly distinguishable from other broad political traditions, notably conservatism and socialism. Second, any tradition, thinker or belief which has been or is widely thought to be liberal should be included: this interpretation would not, for example, ignore economic liberalism, as one survey does.[4]

This guiding purpose rules out certain interpretations. One approach that is excluded is that whereby liberalism is defined, ahistorically, by one or more values (such as liberty, equality, or the rights of the individual), which become the canonical standard. These values might be discovered from what has been held by all who have generally been considered liberal; as, for example, it has been claimed that "the belief in freedom and the belief in conscience [are] the twin foundations of Liberal philosophy and the element of continuity in its historical development".[5] Such an ahistorical approach through value-definition can allow in advance no historical limits to liberalism, and may find itself acknowledging Pericles or Socrates as liberals, despite the profound differences between their intellectual-historical context and that of liberalism proper. Moreover values are not randomly thrown together, but are part of a wider world-view, and it is the relative weighting of different values as determined by these more general commitments which distinguishes liberalism from, say, socialism, which shares many of the same values.[6]

Again, such a purpose in selecting material shows why certain more

general uses of the term 'liberal' are of peripheral interest to the present enquiry. The word was first used as a term of social distinction referring to the class of free men; its use in 'liberal arts' derives from this, referring to those pursuits appropriate to such a class, though it was later detached from a specific class reference. It also carried from early on the sense of generosity and, conversely, of lack of restraint.[7] In modern usage it tends to imply open-mindedness, tolerance and reasonableness, central virtues of a liberal society: "a Liberal is anyone who is perfectly sensible" (J. M. Keynes).[8] The relation of these common usages to the specific sense of liberalism here required is interesting and would have a place in a full treatment of the theme, but is too broad to be useful in this context.[9,10]

However, it may still turn out that there are several things denoted by the term 'liberalism'. The question is then whether it is right to be sceptical about the existence of liberalism, just as A. O. Lovejoy maintained, in the course of defending a nominalist thesis in the light of the several movements termed 'Romantic', that "[the] fact that the same name has been given by different scholars to all of these episodes is no evidence, and scarcely even establishes a presumption, that they are identical in essentials."[11] Historically, more than one tradition of thought, and, conceptually, more than one structure of beliefs, have been labelled liberal. This suggests either that some arbitrary decision will have to be taken to privilege one tradition or set of beliefs, denying the title to others; or that the approach to definition by stipulating necessary and sufficient conditions must be dropped. An example of the former alternative would be the designation of a particular era as exemplifying "true" or "pure" or "classical" liberalism. Periods or thinkers outside of this would be judged liberal to the extent that they

matched up to this standard. Thus, for example, the laissez-faire liberalism of nineteenth-century Britain might be taken to be liberalism proper. An analysis of the ideas held by the dominant thinkers would reveal what was canonically liberal: from this it could be decided when liberalism started, whether it still exists, and so on. Such an approach has the virtue of relatively tight control over the range of legitimate meanings of liberalism, but to the extent that it may be tempted to refuse the title to certain other movements widely called liberal (say, welfare liberalism), it clashes with the principle of interpretation (outlined below) that a reasonable interpretation of liberalism will not exclude traditions with a wide tradition of support as liberal.

It seems more reasonable to adopt the latter approach and drop the belief that there is a "core" or "essence" to liberalism which can be defined through a set of necessary and sufficient conditions. Instead the notion of a family resemblance of beliefs should be adopted, such that there is a limited number of identifiable beliefs which are liberal, a certain (though undefined) number of which it is necessary to hold in order to be counted a liberal, but none of which is individually necessary. This approach would remove the need to find a period (whether nineteenth-century Britain, or Revolutionary France or America, say) pure enough to be elevated to paradigmatic status. Again, its stress on the open-textured nature of liberal thought would admit the intuition that individual thinkers can hold certain liberal beliefs and yet not be liberals (and conversely); yet it would also give room for certain permutations of beliefs to have at least a prima facie internal consistency, and thus account for the observation that sets of liberal beliefs are often broadly accepted or rejected as a whole. Moreover it would allow for the possibility both of characteristic irrationalities in liberal thought and yet of insights into it. And, finally, it could accept

that certain positions are liberal, even if their proponents or opponents have never applied that label: this is important in as much as 'liberalism' is a term with high emotive or dynamic force, being an emblem fought over in political debate, and not just a descriptive term for use by the "detached" historian.

It might be argued that using family resemblance as the means of identification allows indefinite extension of liberalism, since it appears to provide no fixed limits. Such an argument has some force: liberalism does shade into anarchism (in libertarianism), into socialism (in welfare liberalism), into conservatism (in Cold War liberalism), for example. Three points can be made in reply. First, it is the argument of the bulk of this chapter that the structure of liberal beliefs is, though admittedly very loose and broad in scope, nevertheless sufficiently coherent to warrant outlining a structure of liberal beliefs. Second, even if this case were not thought to be made out, since in the body of the thesis liberalism is approached through some of its twentieth-century theological critics, it is <u>their</u> perceptions that liberalism is a unity which give at least initial credibility to criticizing liberalism as a whole. And finally, the very diversity of liberalisms within that general structure of liberalism makes it plausible that much theological critique will take place between the varieties of liberalism, rather than for or against liberalism <u>tout court</u>.[12]

In order to give historical depth to the outline structure of liberal thought, and to demonstrate the variety of positions which the label has included, we begin by discussing five writers whose position in the liberal "canon" is relatively undisputed.

3 Five Writers from the Liberal Canon

(a) John Locke

The traditional liberal understanding of the place of John Locke in the history of liberalism has come under significant criticism, most notably in the work of John Dunn. Locke did not influence Jefferson, and thus the Declaration of Independence, as much as was formerly supposed.[13] Nor did he provide the political ideology of the alleged (and anyway not particularly liberal) Whig dominance in England: there is little evidence that the Two Treatises were used in political debate in the early eighteenth century, and he was probably known principally for the Essay concerning Human Understanding and the Epistola de Tolerantia. "It seems likely that Locke's chief impact in eighteenth-century England was not to import contractarianism into politics, but Arianism into religion ... this in itself raised formidable barriers against the acceptance of his political analysis."[14] Moreover it is not clear that the liberal interpretation of the Two Treatises, which treats the work as an exposition of the ideals of constitutionalism, is sufficient to make intelligible Locke's purpose in writing it.[15] Finally, his liberalism - if it is to be termed such - is of a rather restrained and unadventurous breed: "There is no reason to believe that Locke ever enjoyed any authentic vision of a more libertarian and egalitarian political structure, still less social structure."[16]

If the liberal understanding of Locke is unsatisfactory, two interpretations by non-liberals, which analyze his thought in the same terms as they analyze liberalism as a whole, have fared little better. C. B. Macpherson's Marxist analysis[17] places Locke within the context of seventeenth-century market society and the "possessive individualism"

espoused by the rising bourgeoisie. Thus Locke adopts the Hobbesian view of the individual as made in the image of "market man". However he differs from Hobbes in that his greater sociological perception leads to a refusal to accept the reduction of all moral reasoning to market rationality: he is aware that the formal possession of equal natural rights is necessary to the justification of market society, even though the class structuring of society denies the possibility of equally effective use of those rights. The Straussian picture[18] takes Locke to be following Hobbes in subordinating natural duty to the desire for and pursuit of happiness, and thus in making natural rights the foundation of the law of nature. The rule of nature is replaced by the rule of convention, and man and his subjectively-derived aspirations become the centre of the moral world. Both Strauss and Macpherson think that Locke attempts to justify unlimited material acquisition through his theory of property, and both see him as heralding a new understanding of the relation of man to the world.

However, in the light of Dunn's more thorough and more historically-informed work, it is clear that neither of these interpretations are satisfactory. Neither of them takes into account the theological structure which Locke presupposed. Locke assumes an ordered cosmos in which nothing was created in vain (hence there could be no wastage), and in which everything must serve the purpose of God implicit in its creation. Thus, in respect of moral and political behaviour, rights are exercised in virtue of and within the limitation of this order.[19] Within this framework of natural law, Locke sets out a claim about the limits of political right, attempting to demonstrate in theory the ultimate right to overthrow the monarch. Such a demonstration was necessary as part of the Whig effort in the Exclusion crisis, as a response to the "most socially plausible, though not intellectually most rigorous" defence of absolutist theory, Filmer's Patriarcha, published in 1680.[20] Locke's work revolves around a

refutation of this; constitutional matters were included because he believed at the time of publication (after the Revolution) that there should be included an understanding of the contemporary constitution and the rationale for it.[21]

The Marxist interpretation at least surpasses the liberal interpretation in explaining why Locke has inconvenient non-liberal aspects, such as his attitudes to the idle poor. But it has difficulties itself: in general, it is not clear that Macpherson can explain in terms of Locke's biography why it should be he in particular that served this role of ideologist of the ascending class. In fact, many of the features that this interpretation picks out to show that Locke was fundamentally committed to justifying capitalism can be understood in the framework of his understanding of the Puritan notion of the calling.[22] His adherence to this doctrine explains his acceptance of the existing social structures; amongst other things, it also explains his feelings that no human authority should be allowed to interfere with individual religious belief, to treat human beings as means to its own ends, or to prevent access to the physical necessities for health in one's calling. Because Locke rejects the ecclesiology in which the individualism of the call was balanced by church discipline, for him the necessity of individual religious knowledge becomes a postulate, and human authority comes to be treated instrumentally.[23]

Against Strauss's claim that Locke's theory is based on a right to self-preservation before any duty, there should be noted the much larger number of occasions on which self-preservation is understood as a duty to God, one which can be rationally discovered.[24] Moreover Locke was not a Hobbist, and Leviathan was irrelevant to his intentions in the Two Treatises. Both happen to disagree with Filmer, but it is only in retrospect that they could have seemed to be part of the same movement.[25]

Again (and this against Macpherson as well), wealth is a good not because Locke is trying to justify the exploitative attitudes of man-centred and happiness-oriented human beings, but because it makes available the resources which God has given for enjoyment.[26]

If the effect of Locke's political writings on the development of Whig ideology was rather more limited than previously supposed, and if it was not his intention to provide a detached justification of the verities of constitutional liberalism, it is not clear in what sense Locke may properly be called a liberal. Nevertheless, even if strictly he should be put in the line of neo-Thomist natural law contractarians and Calvinist revolutionaries, it can still be urged that there are themes in his writings that have led to his retrospectively being appropriated as a liberal. And it is this that is interesting and relevant to the present purposes. That current historiography may regard as problematic his position near the beginning of the liberal canon does not finally matter, for Locke <u>does</u> articulate what will later be regarded as shibboleths of liberal constitutionalism: government by consent; the supreme power of the people to remove or alter the legislative when it acts contrary to trust; the executive as subordinate and accountable to the legislative; the need for established, promulgated, and consistently applied law; representation of the people; and the rights of the majority to conclude for the whole. And there are other features: his belief that coercing religion involves a category mistake;[27] his granting the right to resist even to a single man; and the reshaping in his earlier career of the fundamental political question from what the subjects are obliged to do to what the ruler is justified in exacting, and thus to an instrumental account of political authority.[28]

(b) Immanuel Kant

That Kant's political thought verged on the radical can be seen from the historical context of his writing. Unlike Britain at that time, Germany in the latter part of the eighteenth century was still largely feudal or semi-feudal. The division into little backwater principalities, the continued poverty, the tradition of absolute monarchies, and the slow growth of the non-emancipated bourgeoisie had not encouraged the practical, calculating empiricism of mercantilist, Calvinist England. Thus German religion had an inward, pietistic leaning, and German philosophy tended to be more abstract and remote than its English counterpart. Again, there was little room for political freedom: in Frederick the Great's Prussia, according to Lessing, freedom of speech extended only to the criticism of religion, not of the government.[29] Within political thought, the tradition which most influenced Kant, namely the natural law school which descended from Grotius and Pufendorf, was not angled towards the justification of revolution or the legitimation of political rule; this was despite the radical implications that similar doctrines had had elsewhere through their stress on equality. Therefore for Kant to celebrate in Theory and Practice, four years after the French Revolution, the values of freedom, equality, and the independence of citizens as co-legislators was tantamount to subversion. And he only allayed suspicion of this by his deferential refusal to allow rebellion and, two years later, his ironic disclaimer to political relevance included at the beginning of Perpetual Peace.[30]

His political thought must be seen in the light of his philosophy of history. For only if history is progressive, he claims, is it rational to act: action has little value if there is no guarantee that it will result in improvement. His interpretation of history also provides an

argument against rebellion: because history is advancing towards republicanism and world peace anyway, the goals of greater freedom and concord of mankind will be achieved in time without violent revolution.[31] This optimistic view of history is defended in a number of ways.[32] First, nature, which is the world of necessity, is also the work of Providence: although the material and phenomenal world is determined by mechanical laws, in giving men the instinct for survival and self-interest it has also worked to promote the good of the whole species. Second, men's actions are subject to patterning: though each acts freely, statistics over large populations on marriages or births show predictability. Third, it would seem impertinent to suppose that nature has assigned a function to bodily organs, but not to the human race as a whole. World peace, he holds, will be achieved because of the gains from international trade and universal republican freedom, and because survival will be preferred to destruction by increasingly horrendous weapons. However, his belief in progress is ultimately governed by moral rather than theoretical motivations: regarded empirically, history is a mechanical development; but regarded morally, to deny progress is to allow the possibility of regress to barbarism, which is unacceptable. This paradox is resolved in terms of his epistemology: that history <u>is</u> not teleologically ordered does not imply that we cannot <u>understand</u> it in teleological terms.

The specific context of Kant's political philosophy belongs to his moral philosophy: for him a theory of politics amounts to a metaphysics of justice, itself a part of the metaphysic of morals.[33] Man can be seen from two standpoints, the phenomenal and the noumenal, the worlds of nature and of freedom. Corresponding to these, there are two types of duty. First, there is duty imposed by internal legislation, addressed to oneself as a noumenal being, and for which the moral law is the incentive to obedience. This law governs motives rather than actions: an action performed in

accordance with this law but with a heteronomous maxim may be moral, but the agent can only be called moral or virtuous if the motive is correct, i.e. if the law is treated as in itself a sufficient incentive of the will. Second, there is duty imposed by the external legislation of the political authority, addressed to human beings considered both noumenally and phenomenally; the incentive to obey is not only the moral law, but also the threat of coercion. The ideal is the Kingdom of Ends outlined in the Groundwork; but people do not always act morally, and so the theory of right must attend to the constraints required to ensure the settlement of conflicts of interest. However, external law has jurisdiction over actions alone: though as a noumenal being someone can see that positive laws are morally necessary, and therefore should be obeyed as prescribed by the moral law, they cannot oblige him to have that motive for obedience.

Morality therefore is concerned only with motives; politics and juridical law with actions. Further, just as maxims of the good will must be universalizable according to the categorical imperative, so actions must conform to the universal principle of right (Recht) to be legal: "every action which by itself or by its maxim enables the freedom of each individual's will to co-exist with the freedom of everyone else in accordance with a universal law is right".[34] Thus political freedom is the freedom from any constraint save legal coercion: such freedom is justified because it allows the expression of autonomy, because it treats people as ends rather than means, and because we do not know the inner life of another (and therefore the motives from which they act). Although Kant's notion of moral autonomy resembles Berlin's positive liberty, it is clear that he understands political freedom as a negative liberty.[35]

From this principle of external human right are derived a number of a priori principles which are necessary for a lawful civil state. First, the freedom of every member of the commonwealth to be happy in

accordance with his own conception of happiness, "so long as he does not infringe upon the freedom of others to pursue a similar end which can be reconciled with the freedom of everyone else within a workable general law."[36] Paternalism, which suspends the freedom and denies the rights of subjects, is the greatest imaginable tyranny. Nevertheless, Kant argues, a patriotic attitude is necessary, one "where everyone in the state, not excepting its head, regards the commonwealth as a maternal womb, or the land as the paternal ground from which he himself sprang and which he must leave to his descendants as a treasured pledge."[37] Second, the equality of all as subjects: that is, the right of coercion of each against all others, except the head of state, through whom this right is exercised on behalf of everyone. This equality is quite consistent with great inequalities of possessions: for all are equal as subjects before the law, which concerns only "the form of right and not the material or object in relation to which I possess rights",[38] and all have equal opportunities in the sense that careers are open to "talent, industry and good fortune".[39] Third, the independence of members of the commonwealth as citizens and co-legislators. Not all, however, have the rights to full citizenship, even though all are obliged to obey the laws. Everyone has the right to attempt to gain property, but only those who own property and are masters of themselves, and therefore free to serve the commonwealth alone, are entitled to participate in legislation. Fourth, the principle of "publicness".[40] Citizens are allowed freedom of expression, to criticize the government, so long as it is exercised tactfully. This freedom does not permit outright rebellion: subjects have no right of rebellion against the head of state, since public law is derived from the <u>a priori</u> and infallible standard of the idea of an original contract and is thus beyond reproach; moreover, if there were rebellion, there could be no judge to decide between the sides.[41] Nevertheless, the people have the "freedom of

the pen" as the protection of their rights, "although it must not transcend the bounds of respect and devotion towards the existing constitution."[42]

Kant's major contribution to the liberal tradition lies in his moral philosophy: the transcendental conception of the self and the justification it provides for treating people as ends rather than means are presupposed by many modern rights-based versions of liberalism.[43] Again, his account of morality as rational willing has generated the ethics of impartiality that now does service for objectivity.[44] But his political thought also - aside from his discountenancing of rebellion - reflects many typically liberal themes: a progressivist philosophy of history, a belief in the power of reason, a universalizing mode of thought (which for him led to an internationalism), the use of a hypothetical original contract, and the values of freedom, equality and independence. In these, as well as in other respects - such as the limitation of full citizenship to the propertied - Kant is fully representative of what may be called eighteenth-century constitutional liberalism.

(c) John Stuart Mill

By comparison with the radical liberalism of the Revolutionary era English liberalism of the first half of the nineteenth century was a moderate political creed. Philosophically, it rejected the doctrine of natural rights and its underlying rationalist epistemology in favour of the native empiricism and associationist psychology. Socially and politically, it was sustained by a middle class whose increasingly assured position abrogated the need for violent revolution. Two overlapping intellectual traditions articulated the beliefs which served the needs and

expressed the ideals of this section of society. The Political Economists, notably Smith and Ricardo, had argued for laissez-faire and free trade. Arguing from the assumption of the mutual independence of government and economy, they held that the market was self-sufficient, and left alone would come closer to economic equilibrium than systems of intervention. State interference was pointless: those advocating poor relief or trade unions, Ricardo alleged in Malthusian vein, "might as well attempt to regulate the tides by force".[45] In respect of foreign trade it was believed that the mercantilist accumulation of wealth prevented the enjoyment of the gains from trade, and that restrictions should be lifted: indeed the removal of tariffs on corn imports was the principal aim of the free traders. The second group of theorists, the Philosophical Radicals or Benthamites, also shared this goal, though they concentrated on political and judicial reform. Rejecting all sources of value other than sensation, and adopting an ontology that denied any appeal to collectivities that covertly served to resist change, Bentham used the principle of greatest happiness and the felicific calculus to justify sweeping changes in industry, the penal system, and the constitution.

John Stuart Mill absorbed many of the ideals of his father and Jeremy Bentham: the education described in the Autobiography was intended for a future leader of the Philosophical Radical movement. His Principles of Political Economy, arguing for a qualified laissez-faire, was an update of Smith's Wealth of Nations; and Considerations on Representative Government defended a constitutional government that ensured the rights of all citizens and, through proportional representation, allowed minorities to have a role in government. However, the feature of liberalism that is especially associated with Mill, and on which attention will be focussed, is his doctrine of liberty, and the theory of happiness, freedom and human

nature on which it is founded.

The most powerful contemporary reconstruction of Mill's doctrine of liberty (that of John Gray)[46] claims that Mill defends a theory of rights within a utilitarian framework. A chapter in A System of Logic[47] is the starting-point for this reconciliation of Utilitarianism and On Liberty: according to this passage, the several principles and conclusions of the practical arts form a body of doctrine called the Art of Life, which governs all conduct. The supreme principle of the Art of Life, the one which judges all others if they conflict, is the principle of utility: this is not practical, but axiological, and states that happiness (understood in terms of pleasure and pain) is the only valuable end. This principle can only become action-guiding if it is complemented by the (not always explicit) principle of expediency; according to this an expedient act is that which produces a net increase in utility, and a maximally expedient act is that which produces as much utility as any other. However, it is argued for Mill, direct recourse to utility, whether to decide social rules or particular acts, is liable to be self-defeating. There are three reasons for this: first, there is only limited information concerning probable consequences; second, happiness cannot be directly aimed at, but is epiphenomenal to participation in activities which are chosen in themselves; third, happiness can only be achieved within a stable set of social and political conditions and the reliable expectations that these provide - they should not be defeasible by particular utilitarian calculations. Utility-maximisation is more likely to be served, not by continually allowing direct appeals to utility, but by adopting side-constraint principles that prevent such direct appeals. Though the principle of utility is useful for judging codes of conduct (i.e. for critical morality), it will tend to be self-defeating in settling questions of practical morality, and should only be consulted if

the precepts of the Art of Life conflict. Mill thus has neither an act- nor a rule-utilitarianism, but an indirect utilitarianism.[48]

The side-constraint principle which performs this function of protecting rights against the ravages of unfettered utility is the principle of liberty: this is expressed in the two maxims which "form the entire doctrine" of On Liberty, that "the individual is not accountable to society for his actions, in so far as these concern the interests of no person but himself", but only for "such actions as are prejudicial to the interests of others".[49] Not all interests, however, seem to give rise to rights (else any whimsical desire could be claimed to be an interest),[50] but only the "vital" or "essential" interests of security and autonomy. Security, i.e. the freedom from arbitrary government, the right to have promises and contracts kept, and the other conditions of stable society, is necessary, "since nothing but the gratification of the instant could be of any worth to us, if we could be deprived of anything the next instant by whoever was momentarily stronger than ourselves."[51] Autonomy (which is autarchy - the possession of negative freedom and rational self-direction - plus the freedom of an agent to be detached from social habits and conventions and from the pressure to conform) is a vital interest because it is a necessary ingredient of and not just a means to happiness. Harm to these two interests alone justifies limiting liberty.[52]

Mill's general doctrine of liberty, then, including the principles of utility, expediency, and liberty, and also an implicit principle of equity, is characterized by its separation of critical and practical morality, its sophisticated justification of rights from utilitarian premisses, and its granting of special status to the interests of autonomy and security. His defence of security as a vital interest is reasonable, but that of autonomy requires further justification. For this it is necessary to turn to his theory of human nature and happiness.

His theory of human nature is radically historicist: though he believes that the only way to make human behaviour intelligible is to subsume it under law-like principles, he does not think that human nature is constant. Rather it is susceptible of indefinite change and improvement, because of the indeterminacy engendered by the faculty of choice. However, although Mill has this basically non-essentialist conception of human nature, he does share the Romantic belief that each individual has his or her own unique nature, difficult though this may be to square with his official empiricism. Discovery of this nature is a matter of self-knowledge, and may be assisted by the "experiments in living" Mill advocates. Connected with this notion of individual human nature is a pluralistic conception of happiness: pleasures will differ between people. Happiness is also hierarchical. There are higher pleasures, which express the individual nature of the person experiencing the pleasure. However they must also be chosen after trying out a selection of alternatives appropriate to that particular nature. This is because the making of choices is for Mill central to the good life: those who have experienced the freedom to choose always prefer having it, ceteris paribus, to not having it. It is this capacity to make choices between the alternative ways of life compatible with the individual nature of each that constitutes autonomy. Such a conception of autonomy is not to be taken to imply that Mill has an ideal-regarding moral theory: it is as much because the presence of autonomy is very widely regarded as preferable to its absence that it is treated as an essential interest, as it is that Mill thinks that all ought to prefer the freedom of choice. Similarly liberty is not defended by him because it will lead to a free society; rather, autonomy is only possible if there is liberty.[53]

"If anyone has ever been a true liberal, it was John Stuart Mill" (Gray).[54] Such a sentiment goes virtually unchallenged, at least among

English-speaking writers. For Gray, Mill's liberalism is most prominent in two areas. First, in his commitment to a regulative neutrality between different understandings of the human good: Mill, it is claimed, may have preferred self-chosen to customary lives, "but this is a procedural perfectionism rather than a full theory of the good life."[55] Second, Gray points to Mill's belief in the near irreversibility of the condition of freedom: this is not merely the claim that those who have tasted liberty and non-liberty will always prefer the former, but also that, were democracy to stop increasing in influence (about which Mill is doubtful), human history would progress towards increasing freedom for individuals. In addition to these aspects named by Gray, two other characteristically liberal features are to be found. The first is his belief in the role of reason in the discovery of truth and the settling of disputes. The second centres around his concern for the individual: not only did he defend the individual against social coercion and demand a private realm free from social interference, which was the purpose of writing On Liberty, but he also recognized the contribution of individuals to the progress of society - a liberal-romantic appreciation of the individual genius. In all of these respects Mill's claim to inclusion in the liberal canon must remain undisputed.

(d) L. T. Hobhouse

Towards the end of the nineteenth century many of the traditional liberal ideals - constitutional government, universal suffrage (at least for male ratepayers), freedom of opinion and expression, and others - had been realized in Britain. Liberalism seemed to have served its purpose, and was destined to be a fading political force for the very reason of its

success. Political attention had turned to the need for social reform, to rectify the injustices perceived to stem largely from inhumane industrial practices and the economic liberalism which in effect justified them. If liberalism was to remain the dominant political movement, it would have to find a rationale for greater government intervention, so that it could justify industrial and sanitary reform, state education and health service, unemployment benefit and free labour exchanges. That it was made relevant again to the mood of the age was the work of a group of intellectuals who, during the four decades that straddled the turn of the century, fashioned a political theory which significantly influenced policy and which (although it failed to revive the Liberal Party) still - to some minds - represents a viable and attractive set of beliefs.

The New Liberalism like other contemporary doctrines was heir to many intellectual movements of the nineteenth century.[56] Political economy was no longer regarded as the supreme science of mankind, a theoretical enterprise devoted to the abstract structure of a perfectly functioning society; as a result of the reactionaries who had complained against unfeeling industrialization that there is no wealth but life, economics began to be treated instead as a means to relieving suffering; likewise, the role of community displaced the ideal of competition. Utilitarianism continued to provide the motivation for social reform, and encouraged liberals to drop their traditional hostility to the state. It too had changed, letting go of the greatest happiness principle, the felicific calculus and the aggregative approach to society, adopting instead a social conception of utility and the goals of liberty and welfare. From positivism the new liberals took up the evolutionary outlook, the sense that the whole social system was worthy of attention, and the beliefs that there could be a unified social science and that the environment could be controlled rationally; however they rejected the value-free approach to

the study of man, quantificational analyses of behaviour and the reduction of ethics to science. The influence of idealism was less great than text-book accounts usually suggest, and was only one element in the general progressive movement: "[had] Green not existed, liberalism would still have become collectivist and favourably oriented to progressive social reform."[57] Similarly in the case of biology, which was the dominant scientific influence on contemporary social thought, the organicist conception of society was more influential than the better-known Social Darwinism. Again, the role of evangelicalism should not be exaggerated: by the time of the New Liberals, non-conformist moral vigour probably provided little more than the "ethical overtones of reform".[58]

Perhaps the most important of the New Liberals was L. T. Hobhouse, who attempted the refashioning of liberalism through changes in its conceptions of freedom and of the relation of individual to society. Against the Manchester School he pointed up the hypocrisy of supporting unlimited freedom and opposition to coercion: while traditional economic liberalism had defended the right to complete freedom from force in (for example) the making of contracts, it had neglected to note that not all consent is free, nor all coercion overt and physical. True consent, he argued with Green,[59] requires equality of both parties to the transaction, unlike forced bargains in which "[the] weaker man consents as one slipping over a precipice might consent to give all his fortune to one who will throw him a rope on no other terms."[60] Freedom always depends on the restraint of those who threaten it, and thus complements rather than opposes coercion.

Behind this lies a rejection of the traditional liberal conception of individual person separate from society, with unassailable rights over his life, liberty and estate, who enters into society by contract. By the time of Hobhouse's Liberalism the organic conception of society, derived

from biology and idealism, had become commonplace. Hobhouse's version of it holds that something is called 'organic' when "it is made up of parts which are quite distinct from one another, but which are destroyed or vitally altered when they are removed from the whole."[61] Human beings are much more than their opinions and actions: "[the] real man is something more than is ever adequately expressed in terms which his fellows can understand": it is the sense of ultimate oneness which is the "real meaning of equality" and the "foundation of social solidarity".[62] From this notion of society as an organic unity it follows that the individual would be "something utterly different if he could be separated from society ... By language, by training, by simply living with others, each of us absorbs into his system the social atmosphere that surrounds us."[63] The individual, that is, is by nature social. This results in a fundamental recasting of the notion of a right: it is not something which cannot be "trumped" by considerations of the common good; indeed for Hobhouse it cannot conflict with or exist apart from the common good. For a right must not be grounded merely in a claim, but in a claim that is reasonable to an impartial observer; and such an observer will consider not only the good of particular individuals but also the common good: thus rights and the common good will always coincide. Moreover since (on this understanding of the common good) the good of each is part of the good of all, it seems that each has a concern for the interests of all others: Hobhouse agrees with Mill that the correct response to error is not indifference but argument for the truth; again, "[if] we refrain from coercing a man for his own good, it is not because his good is indifferent to us, but because it cannot be furthered by coercion."[64]

This raises the question of the role that Hobhouse allots to the individual. Individuals do not remain unaffected by association. Yet this does not imply that society is in itself a whole which is opposed to the

sum of individuals, or in which the identity of individuals is lost.[65] Hobhouse therefore rejects the ideas of a "real will" of society, and of a concrete universalism in which every particular is a moment in the systematic totality that is the state. He could never countenance the kind of coercion that some have detected in Hegel or parts of Rousseau, in which freedom is compulsion to do the good.[66] Nevertheless, Hobhouse does adopt a notion of freedom as rational self-direction that resembles superficially that of Mill, but which denied the want-regarding elements in Mill's conception. For

> liberty is necessary to the development of personality. And since personality consists in rational determination by clear-sighted purpose as against the role of impulse on the one side or external compulsion on the other, it follows that liberty of choice is the condition of its development.[67]

For Mill autonomy was a good because people preferred it to its absence, but for Hobhouse it is regarded as itself a good, since it contributes to the growth of personality which is the human ideal.[68]

Hobhouse's organic conception of society is ultimately justified by his doctrine of progress. He believes, indeed, that "[every] constructive social doctrine rests on the conception of social progress."[69] Although such a process does depend on choosing the course that makes for social harmony out of the possible forms of disorder, it only seems likely that he would have been as optimistic as he was (and as disillusioned by the First World War)[70] if he believed that progress was likely. And indeed the metaphysical ground for such a belief is to be found in the quasi-idealism and teleological conception of reality, with its concentration on potential harmony rather than actual conflict, that he absorbed from the British idealists[71] and his Greats lectures on Aristotle.

Was Hobhouse a liberal, or is he better termed a social democrat

or even socialist? In usage of the time Socialism could refer to several things: a new society without the family, religion, etc.; a society based on co-operation, not competition; proletarian revolution; nationalization of basic industries; and distributive justice.[72] Of these only the last is plausibly ascribed to Hobhouse. But such a doctrine about redistribution is compatible with a wide range of liberal beliefs: indeed much of this kind of socialist thinking - that which had descended from heaven to political relevance - took place within the Liberal movement. Hobhouse could find the Labour Party too sectional;[73] he could condemn Mechanical Socialism, i.e. the various Marxisms, and Official Socialism, i.e. the elitist, eugenist, standardizing Fabianism; and yet he could toy with the idea of a Liberal Socialism, which would be democratic (expressive of and responsive to the desires of the mass) and protective of individual liberty as necessary to the development of personality.[74] It is best to perceive him (as in practice it is best to perceive Mill) as a liberal with socialist, or at least social democratic, aspects.[75]

(e) F. A. Hayek

The interest of Hayek for the historian of liberalism lies in two areas: first, through his The Road to Serfdom he helped create the post-war climate of liberal consensus, fuelling the cautious gradualism and opposition to "totalitarianism" that characterized the time of the Cold War and beyond. Second, he has been the most important defender of the revived classical economics adopted by several right-wing governments of the present decade. Both his brand of conservative liberalism and his advocacy of laissez-faire are grounded in a distinctive epistemology and theory of society, to which attention must be paid.

Hayek's epistemology is a modified Kantianism.[76] From Kant he takes a scepticism about objective knowledge, maintaining that there are no discernible essences and that all experience is theory-laden. To this he adds several features. From Polanyi he accepts that tacit knowledge is central, and thus that practical knowledge is prior to theoretical knowledge. He anticipates the later Popper in adopting an evolutionary epistemology, and agrees with the Wittgenstein of the Philosophical Investigations about the shaping role of language on thought and the function of social rules in the communication of practical knowledge. This general pessimism about knowledge is reinforced by the belief that there are meta-conscious rules of the mind which are in principle unidentifiable: although the mind is governed by rules, the most fundamental of these can never be known, so that there is rule-following without fully-articulated knowledge.

Because we know more than we can say, the social order cannot be the result of a directing intelligence. The problem with economic or social planning is not just that knowledge is too complex, but that the directing mind is governed by rules to which it has no access. Therefore, if there is apparent order in society, this cannot be due to design (to claim which would be to commit what Hayek calls the "constructivist" fallacy), but to the ability of a spontaneous order to solve the problem of knowledge involved in achieving a satisfactory and balanced society or economy. Such a balance is attained through the rules developed in the natural self-regulation of the evolutionary process; thus Hayek attacks the dichotomy, found in some traditional explanations of social phenomena, into unchangeable instinct (the Sophists' phusis) and intentional contrivance (nomos).[77]

This notion of a spontaneous social order (which he calls a "catallaxy") therefore comprises three elements: first, the

"invisible-hand" thesis, that social arrangements are due to human action, but not ultimately to human rational design; second, the belief in the priority of tacit knowledge; and third, the thesis that cultures evolve through the natural selection of conflicting traditions.[78] The general conception is applied in most detail to the economic order, with the conclusion that unrestrained economic activity will lead to equilibrium. The market solves the basic epistemological problem implicit in distributing a limited quantity of resources between an indefinitely large number of agents; this problem is that of gathering up data, widely scattered and constantly changing, about individual preferences and demand for goods and about available supplies. Complete knowledge of this sort is unavailable either to individuals or to groups of economic agents, but it is embodied by the fluctuations of prices in the open market. Thus no rationally planned economy will achieve the same economic use of resources and satisfaction of consumers as an unfettered price system.[79] Moreover, because of this problem of knowledge, it is inappropriate to criticize economic systems on moral grounds: rather, they should be judged in terms of their ability to solve a central economic question, namely that of the efficient distribution of scarce resources.[80]

Hayek's claims about the limited role of reason lead to some conservative tendencies in his thought. He holds that conservatives correctly emphasize the spontaneous development of phenomena such as language, law, and morality.[81] And he criticizes those who think that a rich cult of individuality is viable without strong moral conventions, as well as those who fail to see that individuality is an historical growth and not a timeless natural given.[82] He holds that traditional morality must be accepted. This is because morality evolves and is thus relative to an age; however, nobody knows to what aspects of an age morality is relative, and therefore it cannot be safely tampered with. Moreover its

future cannot be predicted, and so arguments that appeal to future trends cannot be used to defend deliberate moral innovations.[83]

But Hayek is not a conservative. Among the reasons he lists in "Why I Am Not a Conservative"[84], he mentions that conservatives are afraid of the future, whereas he believes that it should be faced with courage and confidence. Moreover, they are fond of authority in a way incompatible with liberty; they do not understand economic forces; they have no principles by which they can work together politically with those who disagree and so build a peaceful society with the minimum of coercion; and they tend towards regarding moral and religious beliefs as the proper objects of coercion. Although he holds to the doctrine of tacit knowledge, he is opposed to mystification: "I am simply an unrepentant Old Whig - with the stress on the 'Old'".[85]

His liberalism extends much further than opposition to economic interventionism. For there are also limitations on the knowledge of how civilization grows. Since innovation cannot be predicted, progress cannot be planned but happens through the independent and anonymous workings of lots of individuals. This requires freedom for all, so that opportunity is provided at least for the unknown few to make beneficial contributions to society.[86] This freedom he interprets in a traditional liberal manner: the state of liberty is "that condition of men in which coercion of some by others is reduced as much as is possible in society",[87] and coercion is "such control of the environment or circumstances of a person by another that, in order to avoid greater evil, he is forced to act not according to a coherent plan of his own but to serve the ends of another."[88]

This stress on liberty has two implications for Hayek. First, it justifies equality before the law and equality in the rules that govern moral and social conduct, for these genuinely extend freedom. No other kinds of equality are similarly compatible with liberty: resources-

egalitarianism is anti-liberal (as well as being necessarily inaccurate in its results because of the inherent epistemological problem), since it requires differential treatment of people, and this conflicts with the prior liberal principle of equality before the law. Moreover such distributivism requires the imposition of an allocative pattern chosen because of a particular theory of individual merit; such a theory is in principle unjustifiable because nobody has "the capacity to determine conclusively the potentialities of other human beings."[89] People should enjoy advantages in proportion to the benefits (as evaluated by the market) which accrue from their activities rather than in proportion to other men's opinions of the moral character of their actions.[90]

Second, Hayek's emphasis on liberty has results for legislation. If legislation is not limited by more general principles, freedom is likely to be eroded by piecemeal legislation enacted in response to the immediate demands of expediency.[91] These principles Hayek finds in a Kantian universalizability. Like Hare, he holds that this will lead to the formal criterion of consistency, and yet also to impartiality between agents and moral neutrality between versions of the good life, and thus to a concern for the general welfare. Therefore, when he accepts from Hume that certain rules of justice are indispensible to human welfare (namely the artificial but not arbitrary principles of the rights of property, of transfer by consent and of promise-keeping), his ultimate ground is not utilitarianism but Kantianism. Moreover, though this is not Kantian, this test of universalizability shows, he thinks, that law is not positive but a matter of rational discovery - a claim which he holds in tension with his beliefs about the importance of tradition.[92]

Freedom is important, Hayek says, because it promotes progress. But progress is not a good because of the goal it leads to; indeed "[the] question whether, if we had to stop at our present stage of development,

we would in any significant sense be better off or happier than if we had stopped a hundred or a thousand years ago is probably unanswerable."[93] Rather, the process itself is valuable, the "successful striving for what at each moment seems attainable ... movement for movement's sake."[94] Nevertheless its value seems to be at least ambiguous. Since the majority of the world's population have become accustomed to the expectation of increase in material possessions, failure to satisfy this would probably lead to international war: human beings are "not only the creatures but also the captives of progress". Freedom is a necessity, for it fuels progress; progress is a necessity, for "even a small decline in our rate of advance might be fatal to us."[95]

4 An interpretation of liberalism

These five writers illustrate some of the diversity of philosophical styles and political concerns, as well as more obvious differences of belief, that may be found within the roomy confines of liberalism.[96] Their distinctive emphases and downright disagreements should not however obscure their resemblances or proscribe the attempt to elaborate a (loose) conceptual structure of liberal beliefs. Before proceeding to that task, however, we should first observe the three broad types of liberalism that the five writers just discussed can be shown to exemplify.

Each of these kinds of liberalism can be related to different chronological periods and different political concerns. [1] The first is the retrospectively titled "constitutional liberalism". This was discussed above in connection with Locke and Kant; it is the supposed liberalism of the American and French Revolutions, whose characteristic presuppositions

are traditionally thought to have been assembled in the seventeenth and eighteenth centuries. This kind of liberalism is opposed to arbitrary, personal or unlimited power, to the possession of privileges by a few, and to the cramping demands of the feudal order. It centres its demands on a government limited in the extent of its interference, whose powers are constitutionally defined, on equality before the law and the rights of property, and on certain civil liberties. Typically it argues from the idea of the possession by individuals of natural rights independent of society, and justifies social and political relations in terms of a social contract and contract of government.[97] The status in the West of the political values of this liberalism, though not of any specific defence of them, may fairly be described as hegemonic. [2] The second type of liberalism, laissez-faire or classical liberalism, was alluded to above in connection with Mill and Hayek. It is primarily a set of economic rather than political doctrines, given theoretical underpinning in the last quarter of the eighteenth century, but never uncompromisingly practised (though mid-nineteenth century Britain was the closest). In this century it has been resuscitated under Hayek and others,[98] with some important changes, notably the introduction of the Austrian subjective theory of economic value. The main target of this species of liberalism has been what it regards as misguided government intervention. In this it is opposed to [3a] welfare liberalism, which is one of two elements in the third type of liberalism, namely twentieth-century liberalism. Welfare or revisionist liberalism was discussed above in connection with Hobhouse and the New Liberals; stressing the importance of social justice and equitable material distribution within a political framework that guarantees civil liberties and the rights of minorities, it is the liberalism of Beveridge and Keynes, of Roosevelt's New Deal, of Rawls and the left-liberal intellectual "establishment". [3b] The second important element in

twentieth-century liberalism is the "Cold War" liberalism of Hayek, Popper, Talmon and others, that was mentioned above, characterized by its opposition to totalitarianism and sometimes associated with a fallibilist epistemology.

This categorization, while scarcely exhaustive, will help as a rule-of-thumb guide to the range of beliefs and tensions within liberalism of which any interpretation of liberalism must take account. Despite their differences, there are mutual resemblances amongst them, and these are sufficient to formulate a structure of the different levels of questions to which liberalism finds answers.[99,100]

Perhaps the deepest level in the structure of liberal beliefs is its conception of the human subject. This has two aspects. The first concerns the relation of the individual to his ends and obligations. The self is fundamentally detached from contingencies, being related to them (if at all) through choice or consent: whether or not this is raised to an explicit metaphysical claim, it generally implies that the individual is taken to be a sovereign chooser, bound by nothing to which he has not consented, the ultimate authority on how his life should be led. In one form this may just be the claim that every individual must answer to God, and therefore that each has the responsibility to decide his religion; in another form it may be a claim about the value of self-chosen lives; in a strong form, it may engender the belief that it is reasonable and possible to give satisfactory value to one's own life, and thus that meaning in life does not require extrinsic support.[101] The second aspect of the liberal conception of the human subject concerns its necessarily irreducible individuality. Every major strand of liberalism assumes (i) that there are criteria by which individuals can be distinguished from each other. The individual has usually been identified, by appeal to

common sense, as the possessor of an individual body. However the empiricist failure to provide a philosophical justification for this raises the question whether (outside of a theistic context) the liberal notion of individuality depends ultimately on resort to the Kantian solution, namely the transcendental ego. Liberalism also requires (ii) that the individual can be distinguished from an unindividuated whole. The individual cannot properly be wholly explained in supra- or extra-individualistic terms, as an expression of the Zeitgeist or of the stage of the development in productive forces, as reducible to structural relations or functional roles, in general as the product of any cultural, linguistic or social determinism. Liberalism is therefore usually associated with methodological individualism in social and economic explanation.

At the level of meta-ethics liberalism has been dominated by acceptance of the fact-value distinction and the changed human self-understanding implied in this. Though this distinction does not itself imply an individualistic ethic, the circumstances of its arising (Protestantism, capitalism, breakdown of traditional forms of authority, increased social mobility, the rise of affective individualism, etc.) ensured that within the liberal tradition the distinction would be construed in terms of individual moral autonomy. This autonomy is asserted (i) against any possible description of "the facts": thus liberalism has often been regarded as a most eligible partner for value-free natural and social science. It is also asserted (ii) against institutional or collective attempts to control individual decision-making. From this comes the rejection of coercion in matters of belief or behaviour, which may be justified on the grounds of scepticism about there being correct ways to act beyond adherence to "formal" rules, or (non-sceptically) on the grounds that it can be no part of the best life that individuals be forced

to live it.

The typically liberal mode of thought is individualist, universalist, and abstract. Its individualism[102] includes ethical individualism, individualism in the choice of religion and the good life, in equal and non-corporate consent to government and political representation, and in economic arrangements. But it has often also been associated with epistemological individualism with its characteristic root problem of arguing itself out of solipsism, its attempt to discover knowledge by reducing wholes to parts, and its dispositional opposition to claims about the social construction of experience; and to metaphysical individualism with its stress on substances rather than relations and its atomistic or monadic understanding of matter. The universalism of the liberal mode of thought is shown, first, in the broadening scope of the features of persons that it counts as morally irrelevant: hence doctrines of equality before the law, and in later economic circumstances equality of resource distribution, and, more radically, of equality of welfare or of want-satisfaction. Second, its universalism is shown in the belief that its generalizations hold for all times and places regardless of historical or cultural contingencies: this has led to the charge (amongst others) that it rationalizes the pressures towards the levelling conformities created by and suited to mass production and economies of scale. The abstractness of the typical liberal mode of thought is one aspect of its universalism: seized on by Marxists, this is usually taken to refer to the narrow-sighted tendency to universalize conditions that are merely temporary or local, to derive general truths from the capitalist phase of social evolution.

Fourth, the liberal philosophy of history should be noted. Some doctrine of progress was indicated earlier as being central, even essential, to the the theories of Kant, Hobhouse, Hayek, and perhaps Mill.

Indeed it is plausible that some notion of improvement in moral and political understanding and behaviour is fundamental to any form of liberalism.[103] By no means all agree with Condorcet that "[the] real advantages that should result from this progress, of which we can entertain a hope that is almost a certainty, can have no other term than that of the absolute perfection of the human race".[104] Neither Condorcet's certainty nor his belief in perfectibility have been shared by all liberals; moreover the liberal ideal is perhaps better regarded as a pluralistic "meta-utopia" which co-ordinates the optimised wants of individuals severally, not as the achievement of some externally-defined human perfection.

From these four foundational features of the liberal structure of beliefs may be derived most other liberal values. Thus from its characteristic mode of thought and from its meta-ethics come the two facets of its approach to rationality. Reason is widely taken, first, to be the appropriate instrument for the discovery of truth and for the settlement of disputes. This does not commit liberalism to philosophical rationalism, but it does signal its dispositional preference for diplomacy to war, and its opposition to special or privileged knowledge, to revelation to initiates, and to appeals to tradition. Liberals tend therefore to underestimate irrational factors in knowledge, to disregard the sociology of knowledge, to be rationalist in politics, and to talk of ignorance rather than false consciousness. Second, reason is also often construed as the calculation of individual advantage, instrumental in the pursuit of the goals generated by the passions: it is not a speculative faculty fitted for scanning the world order for guidance concerning the good life. Moral rationality in contemporary thought is therefore often taken to be the combination of self-interest and technological means-end

reasoning (together with logical consistency), i.e. the maximisation of individual utility. These two understandings of reason do conflict to some extent: the first allows moral truth to be discoverable by reason, the second denies this. This is a genuine tension in the liberal tradition: for some, moral value will be found (if at all) by reason, not by submission to tradition or institution; for others, it will not be found outside of the individual agent.

Liberal political values also derive from these presuppositions. Towards the state, for example, most liberals (until this century) were hostile or suspicious, regarding it as best as a necessary evil. Nevertheless it has always been regarded as the proper political authority, a governmental apparatus separate from the persons of the office-holders. The state has more often been regarded as held in trust for or delegated by the people (Locke and the republican tradition); rather than as separate from them also, as a consequence of transferral or alienation of rights (Hobbes). As regards the extent of state activity, liberal economists and the majority of the tradition have advocated limited government and not the minimum "night-watchman" state, in recognition of the importance of the service functions provided by the state. The New Liberals stressed most the positive role of the state, although (it was hoped) never at the expense of individual freedom: "[the] only rational liberty was that conducive to the welfare of all; the only true welfare was the one that acknowledged individual liberty as its indispensible ingredient".[105] Mill, by contrast, illustrates liberal anti-paternalism in arguing that the purpose of sanitary laws (for example) is not to make individuals into better people, but to protect others from disease.[106]

The liberal suspicion of the state is reflected in its views on power and authority. The dominant liberal view from all periods is that

authority is based on convention derived from consent and is exercised over conduct alone, never over belief. It is not maintained by an illusory legitimacy that depends on cloaking the use of power, nor is it derived from tradition, special knowledge, superior ability, or power of personality. Power is regarded as asymmetric and coercive, rather than as a function of the collective will of the community.[107] Liberals tend to avoid the topic of power, either ignoring it or regarding its exercise as a necessary evil. In line with their optimism about rationality, they have often seen coercion as physical: again it was the New Liberals that were alert to this short-sightedness.

Concerning property, the dominant strand of opinion is that absolute private property is necessary to individual freedom. This is argued (especially in classical liberalism) from the right of every individual to self-ownership (i.e. the right to control the use of his or her talents) to ensure liberty. By extension it is usually claimed that the effective exercise of self-possession requires private property, since under communal ownership the veto of other members of the community would inevitably hamper individual self-directed development. In the Whig tradition it was often taken as a corollary of this that the vote should be limited to those with property, since only they could be guaranteed to be independent and responsible solely to the nation. Such an assignment of political rights to property rather than to human beings is now, in democratic hindsight, considered one of the blind spots of English Whiggery.

This last point raises the question of the relation of liberalism and democracy. Some distinguish the two by definition: "Liberalism is a doctrine about what the law ought to be, democracy a doctrine about the manner of determining what will be the law."[108] Nevertheless political history has ensured that the two are connected as a matter of reflex:

"democratic theory is the unthinking normative political theory of the modern West and ... liberalism is its painfully precarious reflective normative theory."[109] Historically liberalism has usually been suspicious of democracy, (revealing here as clearly as anywhere its middle-class associations), in the belief that majority rule would compromise the rights of minorities, that the mob would interfere with privacy, and that popular sovereignty usually degenerates quickly into popular tyranny. Thus, although liberal democracy has become a closely intertwined unity in Western self-understanding, it is evident that the nature of the relationship between them is such that "the adjective Liberal has the force of a qualification".[110]

Finally, there are grounded on these foundations the two central values of liberalism, equality and liberty. Equality as a liberal value can be derived (in terms of the structure of liberal beliefs) from the liberal respect for human beings and its commitment to universalism in its individualism; these may be derived in turn (in terms of the history of ideas) from the Christian and natural law traditions. As regards the relation of equality and liberty, liberals have often been criticized, most naturally by Marxists and other socialists, for emphasizing the latter at the expense of the former. However, equality always has been a feature of the liberal tradition, at least at the level of its formal commitments:[111] contractarianism posits that individuals are equal in the state of nature, and utilitarianism assumes that each counts for one and nobody for more than one in its calculation of utilities. Nevertheless it is the case, historically, that liberals have been more willing to advance liberty rather than equality, pressing (for example) for equality of rights long before they were willing to give substance to such equality: similarly with equality of opportunity. Moreover it is possible (granted the framework of liberal constitutional rights) for a liberal to recommend

inequalities, for the reason, for example, that they are necessary to economic growth. But it would not be possible conversely for a liberal to urge egalitarian measures without any regard for the loss in liberty involved.

Liberty is the principal value of liberalism. With the contentless ideals of happiness and democracy left aside, freedom is plausibly regarded as the supreme value available to the moral and political vocabulary of the modern West. "Our central conception is still a debilitated form of Mill's equation: happiness equals freedom equals personality."[112] The quest for the enlargement of liberty has been extended by liberals to every department of social existence: Hobhouse lists civil liberty, fiscal liberty (i.e. no taxation without representation), personal liberty, social liberty (i.e. no class restraints), economic liberty, domestic liberty (i.e. rights for women and for children, and contract as a sufficient legal basis for marriage), local, racial, and national liberty, international liberty and political liberty.[113]

If the distinction between positive and negative aspects of liberty is helpful, most of these applications of liberty seem to stress its negative aspect: that is, a private space of free action in which non-interference by state or others is guaranteed. Indeed many interpretations of its positive aspect are unacceptable to liberals. Thus, (i), if it means a right to joint participation in decision-making, whether directly or by representation, not all liberals have assented to it, as was said above in connection with democracy. Again, (ii), liberals have widely rejected any identification of freedom with self-realization or the fulfilment of a "real will" detachable from the "empirical self", on the grounds of possibility of forced freedom. Isaiah Berlin attempts to distinguish illegitimate and legitimate government intervention by noting

that it is one thing "to say that I may be coerced for my own good which I am too blind to see", but that it is another "to say that if it is my good, then I am not being coerced, for I have willed it, whether I know this or not".[114] However (iii), there is a sense of the positive aspect of freedom which, given that it can be distinguished from that in (ii), certainly is not incompatible with liberalism: namely, freedom as self-control and the ability to pursue long-term goals unhindered by the passions. Indeed this is one of the three elements in the ideal of autonomy, as Mill seems to have understood that notion, the others being negative freedom and detachment from circumstances. Concerning this, two questions are debated between liberals. The first concerns the extent to which this justifies the demand for public provision of the resources necessary for the attainment of this autonomy which is a precondition of the pursuit of the individual's understanding of the good life. The second concerns the extent to which the ground of the value of autonomy is want-regarding or ideal-regarding: schematically and slightly inaccurately, Mill took it to be the former, Hobhouse the latter. Though Mill is perhaps nearer the heart of liberalism in this respect, the liberal tradition has not always carefully distinguished the two defences of the value of individual rational autonomy.

5 Conclusion

It has been argued in this chapter that there are sufficiently many family resemblances between the varieties of liberalism to warrant the conceptual structure just elaborated. The method of argument has primarily been that of showing, simply by producing the structure, that it can be produced. Of course it is open to an objector to claim that the

case has not been made out: that, for example, the differing attitudes of the welfare and classical liberals to state intervention are great enough to deny that they are part of the same movement of thought, and that the title of liberalism should be refused to one or other of them. But, as was argued above, there are no prior constraints on the historian about what level of generalisation is appropriate for a particular term: it is a matter of stipulation by the interpreter. The purposes that guide the present writer primarily turn on liberalism as the political aspect of the broader movement of thought known as the Enlightenment; and, it is believed, the account of liberalism that results has considerable public plausibility as an interpretation. Although it is open-textured, it is coherent enough to be distinguishable from conservatism and socialism, from the pre-liberal thought of classical antiquity and the middle ages, and from the "post-liberal" thought of writers such as Marx and Nietzsche. This is not at all to say that no significant distinctions can be found within liberalism: indeed subsequent chapters will show that a theological critique of liberalism will wish to make precisely such distinctions.

CHAPTER THREE

REINHOLD NIEBUHR AND THE LIBERAL PHILOSOPHY OF HISTORY

1 Introduction

Reinhold Niebuhr's wrestle with liberalism was amongst the most prominent features of his intellectual career. Indeed the changing phases of his thought can be characterized precisely in terms of the varying positions he took up in relation to liberalism.[1] In his mature writings, which are the principal focus of this chapter,[2] his attitude is largely critical, although in the later writings of the 1950s and 1960s he began to recognize the inordinacy of some of his earlier posturing and to admit to himself how much of liberalism he owned, albeit under a different name.

Niebuhr's criticisms of liberalism in his mature "neo-orthodox"[3] period centre on its intertwined views of human nature and history. In liberalism, in common with all modern culture, it is believed that history itself is the Christ, the occasion but also the means of redemption. This sense that liberalism comprised an alternative and disastrously false attempt to secure salvation - ultimately through human virtue - explains the pungency and incisiveness of his criticism, and it is because of this that his writings form a peculiarly suitable platform from which to discuss theologically the liberal conception of history.

However, since much of this chapter will be concerned with

Niebuhr's criticisms of liberalism, it should be remembered from the outset that Niebuhr recognized many virtues in the general liberal movement in history. Thus, for example, modern society had served to free the church from the civilization which it had fostered and with which it had become identified. In its opposition to literalism and its demand for tolerance it had released society from the ecclesiastical dogmatism and obscurantism that had led to injustice.[4] As the Christian faith had been used in the Middle Ages to sanctify oppression, so had the Age of Reason recognized the need for critical intelligence to provide just arbitration between conflicting interests.[5] Moreover liberalism was right to see that the use of reason in morality leads to the affirmation of more inclusive purposes and extends sympathies: indeed, Niebuhr held, it is reasonable to hold that "growing rationality is a guarantee of man's growing morality".[6] The great virtue of the Social Gospel (as a species of liberalism) was its belief that the law of love was relevant to economics and politics.[7] But, above all, "the great achievement" of liberalism was democracy: it was this that Niebuhr sought to vindicate against its traditional liberal defenders.[8]

That he felt greatly indebted to much in liberalism is undoubted: what might be suggested is that he took much more than he realized. In this chapter it will be argued that, although he is right to attack progressivism, both his account of liberalism and the theological basis of his attack on it are misplaced. The sources of both of these difficulties are traced back to his approach to theology through apologetics (to criticize which is not at all to deny the value of apologetics), and an alternative approach is very briefly indicated. The groundwork for these criticisms is laid first, in an account of his theological method, his understanding of liberalism, and his attack on the liberal philosophy of history.

2 Niebuhr's theological method

The structure of Niebuhr's thought turns formally on his understanding of the "circular relation between faith and experience".[9] According to this, no empirical enquiry is possible without a framework of controlling presuppositions which are not themselves derived from experience. Although these presuppositions partly shape the evidence gained from experience, the evidence is not merely a projection from them: in principle therefore, a piece of evidence might occur which showed them to be untenable. Such a set of presuppositions may thus be validated by, though not derived from, experience.[10] If taken with a principle of procedure by the exclusion of alternatives and an implicit belief in the limited number of those alternatives, it is possible for this understanding of the relation between form and content to serve as the epistemological ground of an apologetic. For, on the one hand, a system of meaning can be refuted by the facts. Yet, on the other, every conceptual framework with which experience is approached, in as much as it points beyond itself to a level of meaning "which cannot be simply identified with rational coherence", requires faith: natural science, for example, presumes the orderliness of the universe.[11] This approach is sufficiently realist to allow conversation between different frameworks, yet relativist enough to ground an attack on rationalism and to reveal the place of "mystery" in any system of meaning. The role of faith, and indeed repentance, traditionally demanded by Christianity is therefore assured.

Niebuhr had come to his own position through such an approach.[12] He had, for example, found the presuppositions of liberalism and Marxism to be incapable of explaining the facts of twentieth-century history. Christianity however, while undeniably and inescapably an interpretation

of the evidence, was yet the best explanation of that evidence and did not, he believed, face similar counter-evidence. A faithfulness to the facts supported an understanding of human nature and history which dovetailed with the findings of Biblical faith. Because of this matching it was possible for Niebuhr to reach conclusions argued either from a consideration of the facts or from the premisses of theology. Thus, to continue the previous example, it was possible for him later to question whether his better understanding of the Christian faith or the evidence of the totalitarianisms and world wars had led him to reject liberalism and Marxism.[13] Viewed from one direction this dovetailing could serve as the basis for an apologetic; viewed from the other, as the foundation of a theological critique of other frameworks of meaning.

Provided that the epistemology can be substantiated, clearly it is a powerful method. Nevertheless it holds dangers for an authentically theological approach which, it will be argued, Niebuhr (who moved biographically from social imperatives to their theological basis and whose "mythical" treatment of theological doctrines rendered him open to significantly distorting them) did not wholly avoid.

Such dangers are compounded by his manner of treating theological material. For Niebuhr the subject matter of theology is traditional Christian doctrine interpreted "mythically" or "symbolically". It is the value of myth to "suggest the dimension of depth in reality and to point to a realm of essence which transcends the surface of history",[14] that is, an ultimate ground of the meaning of existence. Myth is thus "trans-scientific" and points to a realm of mystery which prevents approaches towards rational intelligibility that are too simple and lead to pantheism or dualism.[15] But Christian doctrine must use symbols in talking about God since they are the only finite resources available for pointing to the ultimate from the conditioned. They must therefore be treated "seriously

but not literally". They must not, with Christian orthodoxy, be taken literally, since obscurantism results. But nor, with Bultmann, must they be "demythologized", since they are permanently valid symbols: deliteralization is necessary, but not demythologization.[16] Nor, as non-cognitivists argue, must they be assumed to be content-free: there has been revelation, and faith expects that "ultimately all mystery will be resolved in the perfect knowledge of God";[17] though we see through a glass darkly, we do see. Nor, finally, with rationalism, can their content be analyzed out without destroying religion.[18] Niebuhr offers here, clearly, the groundwork for an important approach to the questions of the nature of doctrine and of religious language. But the potential danger in founding it in an understanding of religion as the dimension of depth in human existence is that the symbols may gain existential purchase at the expense of referential content: the content may become subordinated to the requirements of consciousness, which may themselves be derived from an analysis insufficiently controlled by the objective source of theological knowledge.

This is not to deny that Niebuhr has a role for revelation. Indeed for him the source of Christian teaching is found in revelation, although a precise delineation of his method was of little interest to him. Revelation, he argues, is of two kinds, general and special. General or private revelation is necessary to give credence to special revelation: it is obtained from an examination of experience, and comprises those experiences which defy immanent explanation in that they point to a reality beyond the empirical, namely, i), the sense of reverence and dependence, ii), the sense of moral obligation, and iii), the longing for forgiveness.[19] Special revelation is in turn necessary to clarify the content of general revelation. Thus correlating to each of the three elements of general revelation are the forms of special revelation: to the

sense of moral obligation corresponds the covenant relation of God and Israel, and to the longing for forgiveness corresponds the life and death of Christ; these are derived from social-historical experience and define God as respectively Judge and Redeemer.[20] Related to the first element of general revelation, the experienced sense of dependence, is the Biblical idea of God as Creator; this occupies an anomalous position in that, on the one hand, it is only available to faith but, on the other, unlike the history of Israel and of Jesus, it is not one of "those events in history in which faith discerns the self-disclosure of God".[21] It is these events that take place in history which are the clue to the meaning of history, with their culmination in "the climax of revelation in the life, death, and resurrection of Christ".[22]

For Niebuhr, therefore, there is revelation, and above all the Christ-event serves as the final disclosure of the whole meaning of history.[23] Because of his commitment in this way to the language of disclosure and revelation, it would be mistaken to charge Niebuhr with simply deriving his theology from anthropology.[24] But Niebuhr's innocence of that charge is not sufficient to remove the possible danger that, because of his symbolic method of using doctrines, the ultimate referential locus of theological discourse will be found within rather than beyond the circle of human experience.

3 Niebuhr's understanding of liberalism

Niebuhr's typological method of characterizing and criticizing broad historical movements leads him often to describe aspects of, but rarely to define, those movements. It affords him a looseness in his treatment of historical material that sometimes borders on the outrageous,

but also an acuity in his perception of common features that is only possible by adopting a synoptic approach.[25] Broadness in the use of terms cannot be equated with vacuity of their content, however, and on at least one occasion he takes care to elucidate his understanding of liberalism.[26]

In its most general sense secular liberalism for Niebuhr may be associated with the growth of political and economic institutions that opposed mediaeval aristocratic feudalism. Thus it seeks the freedom of the individual from restrictions of traditional authority, the establishment of government by popular consent, the abolition of privilege, and the social mobility and freedom of opportunity that characterize liberal society. "Liberalism in the broadest sense is therefore synonymous with democracy."[27] However the term has two narrower usages also. First, it denotes two opposed streams of specifically political thought deriving from the history of the middle classes. On the one hand it refers to the philosophy that demands the elimination of economic constraints in the belief that natural balances will ensure the general welfare: such ideas were held by those with sufficient personal power (or wit) to prefer liberty to security. On the other hand liberalism is the political programme that tries in the name of social justice to ensure governmental control of the economic process for the sake of guaranteed welfare for all.[28] Second, the word signifies a "total philosophy of life" that was rooted in the Renaissance and flowered in the French Enlightenment. Typically this is optimistic about human nature, believes in historical progress, and is utopian in its social and moral expectations.[29]

Liberal Christianity is taken to be an historical outgrowth of secular liberalism. It adds sentimentality to optimism, replaces the truth of the Gospel with the doctrine of progress, and invests the relative moral standards of a commercial age with an aura of sanctity and ultimacy.[30] Such modernizing reinterpretation of Christianity is found in,

for example, Herder, Ritschl, Lessing, Hegel, Wellhausen,[31] and Schleiermacher.[32] However, for Niebuhr it was represented most relevantly in the moralizing rationalism of American liberal Protestantism that culminated in the Social Gospel of, for example, Walter Rauschenbusch, Washington Gladden, Francis Peabody and Shailer Mathews. While ostensibly an effort to reunite the Renaissance and Reformation elements of the mediaeval synthesis,[33] in effect it had become a degenerate belief that redemption was possible through combining secular intelligence and Christian piety. It was beguiled by its rationalism into thinking that the recognition of sins would lead to their elimination, and by its naivety into regarding transcendent love as a simple possibility for politics. Thus it treated love as the force in history that would overcome evil:[34] typically it expressed this belief in terms of pacifism, though Niebuhr concedes that "it was usually realistic enough to know that justice in the social order could only be achieved by political means".[35]

Although Niebuhr is able to distinguish these variants of liberalism, he believes that all of them - secular and religious liberalism, liberal political thought, and the wider liberal philosophy of life - share essential features. Thus there is "a pretty sharply defined credo which holds all liberalism together"; amongst its articles are:

a. That injustice is caused by ignorance and will yield to education and greater intelligence.

b. That civilization is becoming gradually more moral and that it is a sin to challenge either the inevitability or the efficacy of gradualness.

c. That the character of individuals rather than social systems and arrangements is the guarantee of justice in society.

d. That appeals to love, justice, good-will and brotherhood

are bound to be efficacious in the end. If they have not been so to date we must have more appeals to love, justice, good-will and brotherhood.

e. That goodness makes for happiness and that the increasing knowledge of this fact will overcome human selfishness and greed.

f. That wars are stupid and can therefore only be caused by people who are more stupid than those who recognize the stupidity of war.[36]

Underlying all these claims are beliefs about the nature of man and of history. "The faith of modern man contains two related articles: the idea of progress and the idea of the perfectibility of man."[37] Perhaps the central feature of the liberal philosophy of man is the denial of sin. Human deviancy is therefore ascribed to factors such as ignorance, finiteness, residual entanglement in nature, or social institutions, which are external to the reasoning, willing self.[38] Reason can transcend nature and therefore subdue it: this nature includes human nature, and so it is thought possible to model the human sciences on the natural sciences.[39] Whether man's essential goodness is to be realized by a romantic return to nature or by escape to the life of reason, liberal man is fundamentally a harmless individual.[40]

Optimism about human nature is naturally connected to optimism about history. Liberalism here is typical of modernity as a whole. From the correct observation that there is not cyclical repetition as was believed by classical conceptions of time and history, but rather historical novelty, and indeed progress in for example, scientific knowledge or social organization, modernity has inferred that all problems and insecurities will be resolved by history.[41] No longer (as for classical thought) the <u>explanandum</u>, history has become the <u>explanans</u>.[42]

> Though there are minor dissonances the whole chorus of modern culture learned to sing the new song of hope in remarkable harmony. The redemption of mankind, by whatever means, was assured for the future. It was, in fact, assured by the future.[43]

In this category Niebuhr includes the early Italian Renaissance, Cartesian rationalism, the French Enlightenment, liberal progressivism, Marxist catastrophism, sectarian perfectionism and secular utopianism.[44] While he rarely troubles to distinguish liberalism from other elements in modernity, Marxism as "hard utopianism" (claiming to embody perfection and thus justified in eliminating imperfection) is separated from liberal "soft utopianism" which merely believes that perfection will evolve from the process of history.[45] Again, while liberalism is divided between naturalists who believe that nature guarantees progress and rationalists whose faith lies in disengagement from the partial impulses of nature, it still shares with all modern culture a belief in an indefinite increase in human power and freedom and thus in mastery over human destiny.[46]

4 Niebuhr's criticisms of the liberal conception of history

The fundamental structure of Niebuhr's attack on the liberal idea of history was in place by the time of his first exposition of the mythical conception of religion in 1935.[47] This conception of religion and of theological doctrine formed, he held, the world-view of the Hebrew prophetic tradition, and enabled it to "enjoy the pleasures of this life without becoming engrossed in them, and to affirm the significance of human history without undue reverence for the merely human".[48] The mystical conception of religion, with which he contrasts the mythical

conception, is inferior in that it either degenerates into a pessimistic other-worldly dualism, or, in some more rationalistic forms, into an optimistic philosophical monism, in each case destroying the essential tension.

In his treatment of these two contrasting conceptions may be discerned the two movements of his dialectical understanding of the nature of history. On the one hand he opposes naturalistic philosophies to the extent that they regard the temporal process as self-explanatory and self-fulfilling; on the other, paradoxically, he affirms the meaningfulness of history. The weight of Niebuhr's criticism of the liberal conception of history falls under the former movement; nevertheless the latter is necessary for a balanced understanding of his position. Each must be treated in turn.

(A) Against progress as a belief in the immanent meaningfulness of history

Niebuhr never makes explicit a distinction which is essential for understanding his theology of history. For him 'meaning in history' refers to two different things. First, it refers to the existence of a story which can be drawn out of the historical process, in terms of (for example) laws of development or stages of progress. Second, it refers to human fulfilment (that is, whatever is connoted by 'salvation' in its theological usage) in history. Liberalism believed in meaning in history in both senses. Niebuhr, it will transpire, also believed in at least the possibility of meaning in history in each of these senses (and this is connected below with a third meaning of 'meaning in history'): what he denied was that either could be immanently derived.

Corresponding to each of these senses, Niebuhr's attack on the beliefs that the meaning of history is discerned without reference to a

transcendent order of being, and that progress to historical perfection is possible, falls into two parts. First, epistemologically, human finiteness implies that the pattern of the whole of history is inscrutable. Second, ontologically, human sin forestalls such historical fulfilment as is possible.

(i) He asserts first the given limits of human rational understanding of the temporal process. Natural science does not, it seems, have such limits; although his awareness of the depths of human self-deception leads him to be cautious about being indiscriminate in his ascriptions of objectivity to the conclusions of scientific research, he has no doubts about the basic rationality of science. Human understanding of history, however, has very definite limits. The main reason for this is that history is the realm of freedom, of the self's transcendence over the coherences of nature. Such freedom, although enough to ensure the non-predictability of human behaviour, is not so absolute as to break the organic relation of mind and body or the combination of "freedom and necessity" in all human action. But it is sufficient to show that the sequences of natural causation cannot form an adequate basis for understanding the ultimate coherence of history.[49] He also has other reasons for thinking that the meaning of history is not amenable to reason. History, like other Geisteswissenschaften, is not assimilable to the methods of natural science, because of the "secret motivations of men"; because every human action takes place in several dimensions and thus multiplies enormously the problems of underdetermination of theory; and because of the ideological effects of the involvement of the whole self in the observation of historical events.[50] There are difficulties therefore even for the conventional historian, let alone the speculative philosopher of history. This does not imply that nothing can be known from history: Niebuhr willingly (though somewhat anomalously) asserts that

"history is actually the story of man's developing freedom".[51] But it does imply that a complete understanding of the overall movement of history is impossible. For such an undertaking must be from a viewpoint, but those viewpoints accessible to finite human beings do not transcend history: in particular, reason bears no intrinsic relation to the eternal, and efforts to use it to gain a transcendent perspective will necessarily be interested and inadequate.

This belief in the limits of the rational intelligibility of history has a theological as well as a "public" foundation. It lies in those doctrines that stress the otherness of God and the distinction of derived and underived, such as the doctrines of creation, and of the sovereignty and grace of God. Thus time, as the "stage" of history,[52] while it receives its significance from its divine creation, by the same token has limits to its rational intelligibility: the concept of creation "agrees with classical, as against modern, thought that the temporal process is not self-derived, self-explanatory or self-fulfilling".[53] It should be noted that Niebuhr does not base this ignorance of the meaning of history on the fall: the fall for him is used to describe the human response to finitude; it is a misuse of freedom rather than the loss of any kind of eternity or transcendent perspective.[54,55]

There is therefore a theologically-grounded factual impossibility of obtaining any immanently-derived comprehensive account of history. This has several consequences. It explains how, while some appear to discern hints of a framework of meaning in parts of history, the whole appears to be on a scale inconceivable to the human mind. Again it becomes possible to see how the correlations employed by historians and speculative philosophers of history to show its unity fail to do history justice. In particular it follows that it cannot be shown that, even if there is progress in some areas, the whole of history is moving towards perfection.

And so the bourgeois liberal account of progress, according to which "an unconditioned fulfilment in terms of infinite duration"[56] is projected, cannot in principle be justified.

(ii) Second, ontologically, Niebuhr argues that self-derived human fulfilment in history is impossible, since the inevitability of sin prevents the resolution of all historical contradictions. His understanding of sin is derived from his analysis of the self. Man's "amphibious" position in the universe, as finite but free, part of nature but partly freed from it, places him in ambiguity. This does not directly cause sin - living at the junction of nature and spirit, man sins "inevitably though not necessarily".[57] But it is the occasion of sin, for it leads to anxiety, which is "the internal description of the state of temptation",[58] the basis of creativity as well as the precondition of sin. While the ideal response to temptation, and one possible at every moment, is freedom from anxiety through faith in the security of God's love, the universal response is that of unbelief, which is thus rightly held in the Christian tradition to be the root of sin. Unbelief compensates for the insecurity of the human condition in two ways: either through sinful self-assertion, a will-to-power trying to overreach the limits of creatureliness, or through sensuality, an attempt to escape self-love through deification of another and then through immersion in unconsciousness.[59] In practice, at least in respect of his theology of history, he rarely mentions sensuality: the central human sin is hubris or pride.[60]

Liberalism, it follows, has the wrong understanding of man. It shares in the error of optimism, namely "a too-simple confidence in man, particularly in rational man, and ... a too-simple hope in the progressive achievement of virtue in history, by reason of the progressive extension of intelligence".[61] Thus, on the one hand, it treats man as "essentially a

harmless animal",[62] rejecting the idea of original sin. It sometimes attributes evil to social institutions;[63] more commonly to ignorance,[64] or else to nature: sharing essentially classical views of human nature, liberalism is thus a form of Pelagianism.[65] On the other hand, it disregards the message of the doctrine of the Antichrist, that because of the pervasiveness of sin, historical advance leads to new perils as well as new promises: new power and freedom will not emancipate from historical ambiguity.[66]

Liberalism also fails to see that it is itself an example of man's hubristic attempt in search of security and redemption to turn the finite into the infinite. While denying the fact of sin, it yet commits the greatest sin. Evil is not, as liberalism often supposes, due to finiteness: rather the incarnation demonstrates that "what seems to be an inherent defect in life itself is really a contingent defect in the soul of each man, the defect of the sin which he commits in his freedom";[67] and the doctrine of Christ as Judge shows that sin rather than finiteness will be judged.[68] Evil flows from sin, particularly from pride. Such pride is manifested in the denial of historical relativism in an effort to uncondition the inevitably conditioned, or in the attempts of tribes or nations to assert an ultimate validity for their values.[69] But it is also found in the elevation of bourgeois ideals to the status of timeless universals, or in the optimist's constructing of little worlds of meaning, the illusions of which are eventually revealed by circumstances.[70]

This understanding of sin as pride shapes Niebuhr's theology of history as well as his theological anthropology. It is ascribed to the liberal view of progress:

> The belief that man could solve his problem ... by the historical process itself is a mistake which is partly prompted by the most universal of all "ideological"

> taints: the pride, not of particular men and cultures, but of man as man.[71]

Such Hubris inevitably leads to destructiveness: the experience of the twentieth century is a Nemesis. From such immanent schemes of redemption come the grossest evils: liberal universalism, for example, led to nationalistic fanaticism, since the unwillingness of some to accept the universal liberal values constituted evidence that they must be subhuman.[72] But these terms of Greek tragedy are also interpreted theologically: God's power, revealed in the structures of existence, executes His judgement on human sin.[73] The tower of Babel is thus symbolic of human history.[74]

> The most obvious meaning of history is that every nation, culture and civilization brings destruction upon itself by exceeding the bounds of creatureliness which God has set upon all human enterprises.[75]

It is clear from this how Niebuhr criticizes the liberal conception of history. On the one hand it pretends to an understanding of history that is unattainable by finite beings. As the realm of free action, unlike the object of study of natural science, history cannot be known as a unity by finite beings; as finite, its meaning is not self-derived but transcendent. The belief that history is the story of progress towards perfection cannot therefore be justified even in principle. On the other hand, the view of human nature entertained by liberalism, in which evil is ascribed to nature, ignorance, finitude, or other sources outside of the self, prevents it from comprehending that the sinful use of man's necessary freedom implies that the capacity for creativity also becomes the basis of destructiveness; progress towards improved technology or "more inclusive harmonies" has led also to the

possibility of greater evil. Thus immanently-derived fulfilment or salvation is impossible. Like its professed universalism, the liberal belief in progress is fundamentally an expression of human pride, an attempt at self-redemption.

(B) In defence of the meaningfulness of history

Although Niebuhr was better known for his negative attack on progressivist theories of history, he does also present a positive theory. The meaning of history is not self-derived; but this does not imply that history has no meaning. Again, finite human beings cannot grasp of themselves the story of history; but this does not imply that history has no story. Moreover, history is not the source of human fulfilment; but this does not imply that history is not the locus of that fulfilment. It is tragic that human beings constantly transgress the laws of their creaturely being; but tragedy does not imply meaninglessness. For beyond tragedy the grace of the God that transcends history and redeems as well as judges is revealed in Christ. "Our most reliable understanding [of human destiny] is the fruit of 'grace' in which faith completes our ignorance without pretending to possess its certainties as knowledge; and in which contrition mitigates our pride without destroying our hope."[76] Against cynics and nihilists on the one side and dualists on the other, then, he defends the meaningfulness of historical existence in a theology of history which undergirds his own revised liberalism.

According to Niebuhr, it was shown above, neither is the narrative of history immanently discernible, nor is salvation in history self-derived. Yet, he holds, there is a transcendent source of meaning. As always, this is argued from two directions. First, in the public realm, he

claims - with regard to the interpretation of history - that there is judgement (which points to the existence of a meaning), although it is imperfect (which points to the need for a final judgement). With regard to meaning understood as human fulfilment, he mentions the "provisional meanings in history, capable of being recognized and fulfilled by individuals and cultures".[77] Second, theologically, the transcendent nature of historical meaning is illustrated for Niebuhr in the relation of eternity to time. This has two dimensions, reflecting the two aspects of meaning in history. On the one hand eternity stands over time, not as a separate order of being but as the source of temporal existence and the basis of the indeterminate possibilities open at each moment. This dimension shows "those qualities and meanings of history which seem to have absolute significance without reference to their relation to the continuum of history", such as martyrdom or sacrifice.[78] On the other hand, eternity stands at the end of time in that, unlike time, it cannot be conceived as having a finis: this is connected with the claim that any historical action or event can only be understood in the light of the whole temporal process, which is possible only at the "end" of history in a "last judgement".[79] Both claims are necessary for the transcendent nature of historical meaning. If merely the vertical were held, the historical and social meaning of life would be denied, Niebuhr argues. Thus Barthian eschatology "pays little attention to a possible meaning of history as a continuum and speaks of eschatology in terms of the eternity which impinges upon every moment of time".[80] But opposition to such "other-worldliness", though it might stress the temporally extended nature of history, runs the opposite danger of trying to fulfil meaning within history.

The meaning of history must be derived from beyond history, therefore. But if so, how is the content of history's meaning discovered?

And how are the contradictions of history resolved? To answer these questions Niebuhr turns to the claims at the centre of the Christian faith.

> The Christian faith begins with, and is founded upon, the affirmation that the life, death, and resurrection of Christ represent an event in history, in and through which a disclosure of the whole meaning of history occurs[.][81]

The Incarnation is essentially a revelation of the reconciliation between God and man. The content of this revelation is that God has taken into Himself the sins of the world, in that he has laid upon Himself the suffering which is the consequence of His wrath against sin, as that wrath is expressed in the structures of the world which react against creaturely attempts to transcend them. Christ, as the Suffering Servant guiltlessly suffering for the sins of the guilty, reveals the character of the divine as one who is involved in the world and "vicariously suffers" for man's iniquity. Thus in the death of Christ it becomes clear that judgement is not God's final word to man: rather it reveals that God "overcomes in His own heart what cannot be overcome in human life", since human life always remains prone to Hubris. In this way Christianity provides what Greek tragedy never could, namely escape from Nemesis.[82] On the cross God shows that beyond judgement there is love: that is, God is power beyond the structures of history in which judgement necessarily follows transgression, and His merciful involvement in history is an expression of His transcendence over its forms and necessities.[83]

This revelation serves as the principle of interpretation for the whole meaning of history. It achieves this in three ways. First, it completes the incomplete knowledge drawn from the tangents of meaning in history that point beyond history, by showing the content of the transcendent source of meaning. Second, it clarifies obscurities and

contradictions in history by showing that the execution of judgement is not the final word on history. Third, it corrects the false interpretations of history which human egoism has adopted, but which only result in the comprehension of history from a finite viewpoint.[84] From this ultimate perspective it becomes clear that history is the story, not of continual progress, but of judgement upon sin and of the possibility through grace of renewal and rebirth. At the level of civilizations, history from this standpoint is meaningful "because eternal principles are vindicated in both the life which overcomes death in rising civilizations, and in the death which overtakes proud life in dying ones."[85]

But revelation in Christ is not only the source of principles for the interpretation of history. The Gospel also offers power to redeem sinners from the continual propensity to aggravate the human predicament by immanent and partial efforts to escape it.[86] Such power is only available to the faith that responds to the revelation of God. For this revelation necessarily involves for Biblical religion the "scandal of particularity", and cannot be apprehended except by faith. But faith cannot be reduced to the intellectual acceptance of metaphysical truths, such as those of traditional Christologies:

> The relation between "power" and "wisdom" is thereby destroyed because the final truth about life is not apprehended in such a way that the "existing individual" (Kierkegaard) is shattered in his self-esteem at the very centre of his being; his insecurity as a finite individual in the flux of time is not robbed of all false securities of power or pride; his anxiety is not heightened until it reaches despair. Out of such despair contrition is born; and of contrition faith is conceived; and in that faith there is "newness of life", which is to say "power".[87]

In Christ a new beginning - power - is available for those who repent, whether they be individuals, nations, or civilizations. And in the "longsuffering" of the divine mercy there are many such opportunities for repentance:

> According to the degree with which civilizations and cultures accept these possibilities of renewal, they may extend their life indeterminately. But at some point or other they make the fatal mistake, or a whole series of fatal mistakes. Then they perish; and the divine majesty is vindicated in that destruction.[88]

In the revelation of Christ centrally, then, the meaningfulness of history - in respect of both interpretation and the possibility of human fulfilment - is affirmed. Taken with the earlier negative movement, this implies a dialectical approach to history. Grace both contradicts and completes nature in that it shows by its possibility the fulfilment of the structure of meaning, and by its necessity the judgement on all human attempts at such fulfilment. Immanently-derived accounts of the course of history fail, yet the revelation of Christ shows history to be the story of judgement and the possibility of rebirth. Human attempts to find fulfilment in history merely aggravate the human condition, yet the power in the Cross provides the possibility of a new beginning to those who repent.

It is at this stage that the two senses of 'meaning in history', which have so far been distinguished in this account, may be seen to be two dimensions of the one 'meaning in history', when that meaning is understood in a third sense to refer to the meaningfulness of historical existence: that is, to the point or value of acting in history. Such meaningfulness of historical action was denied by cynics for whom no

historical goal is more valuable than any other, and by other-worldly dualists for whom this world is of no significance. But if we know how history is properly interpreted, and if we have access to the power not to misdirect it, action in history becomes intelligible. Thus for Niebuhr historical good and evil do matter: the resurrection of the body shows that history is fulfilled and not annulled by eternity;[89] moreover, although no life can fully justify itself in the sight of God and there is need for the ultimate mercy, the distinction of good and evil is not erased by the Atonement.[90] Social and political involvement is therefore intelligible and justified.

If historical existence is meaningful, it follows for Niebuhr that there is always reason for hope, since the intelligibility of action presumes a hopefulness about the outcome. Hope is not to be understood as preferential treatment for the believer, but as an awareness that the Kingdom is relevant at each moment.

> The participation of individuals of all ages in the age of fulfilment is implausible when taken literally; but it is symbolically profound. It relates the eternity which stands over each moment of time to the eternity in which the time process is fulfilled.[91]

Eternity - the Kingdom, perfection - serves at every point of history as a principle of judgement, but, by the same token, as an indication of higher possibilities. There are indeterminately greater potentialities for any decision or action than are actually achieved: hence there is room for a duly contrite hopefulness.

But the narrative of history also sustains hope. For it turns out for Niebuhr that history is not just the story of cycles of death and renewal. There is increasing freedom in history: in so far as the narrative of history can be discerned, it is that of the development of

freedom (through technology) and of the tendency towards more geographically inclusive harmonies.[92] The recognition of this progress in technology and geographical unification was the virtue of the modern sense of history, but modernity wrongly deduced from this that time was the stage of inevitable progress. The burden of Niebuhr's attack on the liberal understanding of history centred on its belief that increasing freedom guaranteed the simple achievement of these wider goals. But liberal self-deception in that regard does not invalidate the residual truth in progressivism.

Niebuhr's dialectical approach to history, according to which meaning in history is transcendently but not immanently derived, leads, therefore, to a justification of the meaningfulness of historical action. By combining this with an account of hope as the potential fulfilment of ever higher possibilities, supported by a narrative of history which bespeaks a chastened progressivism, Niebuhr provides a justification of and motivation for political and ethical action, which avoids the difficulties he finds in liberalism.

5 Criticism

Niebuhr restores the broadly Augustinian perspective on history, and therefore on politics, which had been largely lost by American Protestant modernism and the Social Gospel. In so doing he provides a profound analysis of some of the deepest pretensions of secular liberalism, in which he discerns the ultimately religious ground-motive

for the belief in progress, namely a hubristic attempt at human self-justification.[93] Nevertheless two general criticisms of his position must be raised: the first concerns the plausibility of his understanding of liberalism; the second questions whether the fundamentally dualist basis of his theology finally prevents him from treating history seriously, despite his own protestations.

(a) Is Niebuhr's progressivist interpretation of the liberal philosophy of history plausible?

It is not the present concern to consider what truth there is in Niebuhr's claim that progress is the characteristically modern view of history. While R. H. Stone is surely right to claim that the object of Niebuhr's polemic was ultimately not liberalism but optimism (amongst exponents of which he finds Leibniz, Herder, Kant, Hegel, Condorcet, Comte, Marx, Mill, Spencer, Darwin, Wells, McConnell, and Dewey), and that he often attacked optimism wrongly termed as liberalism,[94] it is also clear that Niebuhr regarded liberalism as a species of optimism. The difficulty is that he seems to be guilty of exaggeration.

Clearly there are some examples of the massively optimistic view of history and human nature that Niebuhr pillories. Condorcet, for example, wrote (while hiding from the Jacobins) that "nature has set no term to the perfection of human faculties; that the perfectibility of man is truly indefinite; and that the progress of this perfectibility ... has no other limit than the duration of the globe upon which nature has cast us";[95] again that "the moral goodness of man, the necessary consequence of his constitution, is capable of indefinite perfection like all his other faculties, and that nature has linked together in an unbreakable chain truth, happiness and virtue".[96] This extended to the hope that, even if

immortality was beyond human power, the span between birth and death might be of indefinite length.[97] This widespread contemporary belief in progress was also expressed by his contemporary Turgot.[98] Again, for the liberally-inspired Godwin, "every perfection or excellence that human beings are competent to conceive, human beings, unless in cases that are palpably and unequivocally excluded by the structure of their frame, are competent to attain".[99]

However, the five liberal writers discussed in chapter two, even though all but Locke were seen to hold some doctrine of progress, represent a problem for Niebuhr's characterization. This can be seen by separating out some of the constituent elements in the various progressivisms. Amongst these are the beliefs in (i) technological progress, (ii) the possibility of universal history and the eventual unity of humankind, (iii) human perfectibility , and (iv) moral progress.[100] Now, as mentioned above, Niebuhr believes in technological progress as a statement of historical fact: part of his criticism of modern views of history is that they wrongly deduce the other three strands from this. But of the four liberal writers discussed earlier who did believe in progress, none believed in all of (ii)-(iv). Kant believed in perpetual peace and the unity of mankind, but was relatively pessimistic about human perfectibility. Mill, while he thought that "the general tendency is, and will continue to be, saving occasional and temporary exceptions, one of improvement ... a tendency towards a better and happier state",[101] and while being dispositionally a perfectibilist,[102] still feared the coming of democracy and hardly owned to a massive historical idealism. Hobhouse again undergirded his liberalism with a belief in the ideal of social progress: yet he recognized that moral progress was not guaranteed and depended on continued vigilance, and was of sufficiently empirical temperament not to indulge fantasies about universal history. Finally

Hayek's conception of progress turns out to be merely in terms of the growth of scientific knowledge and the standard of living. None of them, that is, hold to the combination of highly implausible conceptions of human nature and the possibilities of human history that Niebuhr's account of liberalism suggests.

The same conclusion may be drawn even from those that Niebuhr regarded as paradigmatic liberals. Many preachers of the Social Gospel were caricatured by his account of the movement. Walter Rauschenbusch, for example, although capable of saying silly things, could confess that "in actual life there is no case of complete Christian transformation"[103] and that "[by] our very nature we are involved in tragedy",[104] so that "there is no perfection for man in this life ... there is only growth towards perfection".[105] Admittedly for Niebuhr he was the "most brilliant and generally satisfying exponent to the present day" of social Christianity,[106] but many others were similar. Willard Sperry and Harry Emerson Fosdick, for example, still believed in progress after the Great War, yet recognized that it was not simply attainable and that loyalties to groups had to be sacrificially transcended.[107] Indeed later Niebuhr felt embarrassment when asked to "name names" of those who fitted his account of the Social Gospel.[108]

Likewise for Niebuhr's former colleague on the executive of the League for Independent Political Action, John Dewey. Dewey clearly was optimistic, valued education, and tended to attribute evil to ignorance or "cultural lag". His epistemology, stressing experimentation rather than reflection, demands public and self-corrective inquiry for knowledge to flourish: this in turn requires a free and courageous democratic community, employing intelligence and scientific method to reconstruct its self-understanding and so to adjust "that body of traditions which constitute the actual mind of man to scientific tendencies and political

aspirations which are novel and incompatible with received authorities".[109] This is connected with a theory of the self as social in nature, so that social modifications are "the only means of the creation of changed personalities;[110] and in particular as malleable by education, which was "the fundamental method of social progress and reform" and "the deepest and best guaranty of a larger society which is worthy, lovely and harmonious".[111] But Dewey was also aware of human limitations, that there is disappointment and loss: although hopeful and reformist, he was never utopian.[112] Thus in 1944 he could grant that the events of the previous fifty years had destroyed the general faith in the abolition of war, in the growth of rationality and enlightenment through increased scientific knowledge,[113] and that democracy was in the present circumstances difficult to realize:

> Democracy is not an easy road to take and follow. On the contrary, it is as far as its realization is concerned in the complex conditions of the contemporary world, a supremely difficult one.[114]

In treating liberalism as a perfectibilist utopianism committed to moral progress and the immanent development of history, then, Niebuhr seems seriously to caricature it, failing to see its more plausible and pragmatic elements. This misrepresentation might appear purely accidental, the consequence of a tendency to schematize that is, as was seen earlier, not without value. But there is surely a more important explanation, little emphasized by Niebuhr's commentators.

For from the mid-1930s Niebuhr's positive theory and political practice suggest a pragmatism and meliorism whose distinctiveness was self-conscious and so had to be marked out from other approaches. In the case of naive and sentimental optimisms this was easy enough. But to admit the existence of attempted justifications of a more cautious liberalism

other than his dialectical "neo-orthodoxy" presented special difficulties: for it was essential to his apologetic approach that only a Christian understanding of history and politics could avoid either this-worldly utopianism or pessimistic dualism. Liberalism for Niebuhr had to be seen to be characterized by this salvific progressivism. If it could not, the distinctiveness of his dialectical approach would be lost, and the basis (indeed, mischievously, the raison d'être) of his apologetic would collapse. Niebuhr's understanding of liberalism was essential to his defence of the Christian faith.

Although he was undoubtedly amongst its most influential critics, Niebuhr was not the only one to see the problems of liberalism, and liberals across the board learned to shun heavy-handed historicisms. As liberals in the eighteenth century had been brought to recognize the values of conservatism by the French Revolution, so in this century the Hegelian-inspired conception of history as the progressive self-unfolding of reason was shown by the First World War to be wrong and by the rise of Communist and Nazi totalitarianisms to be dangerously wrong.[115]

Perhaps the clearest of the mid-century rejections of historicism is found in Karl Popper.[116] For him historicism is the belief that a truly scientific or philosophical understanding of politics must be founded on an interpretation of history which can make predictions, thus showing which actions will be successful.[117] On this view Plato counts as an historicist, since his political theory turned on a belief that change was decay.[118] The problem Popper finds with historicism is that instead of looking for illumination for present action from history, it looks to history to discover the secret of human destiny. But history has no meaning, except that given to it by the historian. For there cannot be an account of universal history, since all historical interpretation is

selective and perspectival (though not thereby non-objective), and so-called histories of the world are merely histories of political power. There is therefore no destiny to be submitted to: historicism, with all its baleful consequences, shrinks from the dualism of facts and decisions and is born of the fear that human beings might genuinely be in control of their destiny. Yet history can be given a meaning, by using it to support the fight for the open society, for piecemeal social engineering, for freedom.[119]

Liberalism, then, is not committed to the strong progressivism Niebuhr rightly castigates. Meliorism however does seem constitutive, as the evidence of Popper corroborates. The same conclusion may be drawn from contemporary English-speaking liberal political philosophy in the manner of Rawls, Nozick and Dworkin. The question of the philosophy of history lies for this school somewhere on the scale between irrelevance and impertinence: if they are at all utopian, it is in a rather different mode than the earlier kinds of liberalism.[120] Nevertheless they might still be termed meliorist at least in the minimalist sense that they believe that, even though individuals should not be forced to conform to an externally-defined conception of the good, society can be better organized - namely, if it is organized in accordance with the reflectively-derived principles which constitute the theory of justice and ensure the just distribution of goods and services, benefits and burdens for individuals who have to pursue their goals within a social setting.

Niebuhr granted in later life that he did "define liberalism too consistently in terms of its American versions".[121] Yet, while it afforded him the posture of the liberal anti-liberal, this was (as intimated above) as much a response to the demands of the apologetic structure of his work as scholarly oversight. But this should not cloud appreciation of

Niebuhr's acute sensitivity to the slightest indications in writers or traditions of human pride, folly, self-deception or self-justification: that is, to those marks which were, to employ a term he used perhaps too sparingly, idolatrous.

(b) Does Niebuhr have a sufficient theological basis for his notion of meaningfulness in history?

Niebuhr's understanding of human ignorance and sin produce a theory of far greater explanatory power than that of the liberals, religious and secular, that he attacked. Indeed many of his conclusions must command the assent of those within the catholic mainstream of Christian tradition. Thus it is to be accepted that history is inscrutable to the human mind; its meaning is written in the scroll which can only be opened by the victorious Lamb (Rev. 5.1-7). An Augustinian understanding of the relation of time and eternity will also agree that there will be no perfection in history: the inevitability of sin implies that whatever historical progress there is cannot have the finality which is attributed to it by progressivist philosophies of history, and that politics can never achieve more than a relative justice or harmonization of interests. Again, Niebuhr's assertion of the necessity of grace is important: the eschatological transformation is shown thereby to come from beyond the natural, being neither demanded by anything immanent in creation, nor a reaction to the course history has taken; in rebutting human misunderstandings and judging pretensions, grace destroys not nature but creaturely transgressions of the created limits. Likewise, the fulfilment of history in eternity does not render history meaningless: its completion beyond its intrinsic possibilities does not nullify the significance of relative good and evil. Finally, an Augustinian will accept that since

wisdom comes from revelation, the story of the Incarnation is determinative for the Christian understanding of history: as the eschatological event has taken place in God's self-disclosure in Christ, there can be no further turning-point in history which is decisive for salvation history.[122]

However it is questionable whether Niebuhr's understanding of theological doctrines can provide a sufficiently firm basis for the conclusions he reaches. For behind his biblical and theological language there remains a set of beliefs which are basically dualist in inspiration. If this claim can be substantiated, it would suggest that his theology may not be able to sustain the significance he wishes to claim for history. To establish the claim, two areas will be examined: first, his doctrine of the Trinity together with his account of the Atonement; and second his eschatology.[123]

(i) First, in respect of his doctrine of God, it emerges that despite his use of Trinitarian language, his thought is often operatively unitarian. In his Christology, for example, he asserts that "Father and Son are equally God".[124] But he is unwilling to give this statement its full <u>prima facie</u> ontological weight. One reason for this is the irrationality of the ontologically expressed account:

> It is possible for a character, event or fact of history to point symbolically beyond history and to become a source of disclosure of an eternal meaning, purpose and power which bears history. But it is not possible for any person to be historical and unconditioned at the same time.[125]

Rather the convictions that the Fathers tried to express in the doctrine of the two natures were "Jesus' historical and human character on the one hand, and his significance as the revelation of the divine on the other".[126] Yet he believes that it is important to maintain the central

truth obscured by the Greek metaphysical terminology: for it contains the basic affirmations of Christianity concerning the relations of time and eternity[127] and the bridged gap between passible and impassible;[128] and it also shows that God's word is important for human life, and that an event in history can reveal the character of history.[129]

Again in his pneumatology, he is orthodox in pronouncing that the Holy Spirit is "the Spirit of God indwelling in man".[130] But he appears to remove the substance of that assertion through his later talk of Christ as "the criterion of the holiness of spirit",[131] in the context of a discussion of the Holy Spirit, which suggests that he is referring to the holiness of the human spirit. Indeed it turns out that for Niebuhr the doctrine of the Spirit is important as a sign that all indications of holiness or redemption in history are not the immanent product of human abilities, but the result of the divine breaking through human self-sufficiency, presumably as the power engendered in the contrite acceptance of revelation.[132]

It seems from these examples that for Niebuhr eternity cannot enter or become part of history: there is a "barrier of creation"[133] which perfection can never cross. Niebuhr's Christ is not identical with, but the finite counterpart or "representative" of, the infinite. This "counterpart" approach to the relation of the infinite to the finite is reflected elsewhere: mutual love and justice are the finite representatives of an Agape that can itself never be justified in historical terms; and in history the divine goodness can only be portrayed through powerlessness, since all power held by finite beings is partial.

But it is also found in Niebuhr's doctrine of the atonement, discussed earlier in the chapter. For Niebuhr the contradictions of history are resolved outside of history: it is at the level of the eternal and divine that God takes sin into Himself, and the Cross, as the centre

and point of the Incarnation, is the revelation to mankind of that divine mercy. In this conception history is given significance in two ways: God is revealed on the one hand as "involved in" history rather than detached, and on the other as a personal being rather than an undifferentiated unity which destroys history in the process of destroying evil. Thus the Cross here represents an ethical isomorphism of the person of Christ. For just as Christ could not be both eternal and human, so the Cross shows that perfect love is not possible in history. Christ is "the historic incarnation of a perfect love which actually transcends history, and can appear in it only to be crucified".[134]

However, in none of these three cases is it clear that Niebuhr can affirm the significance of history, and therefore of historical action, which he claims. Christ reveals God, but is not himself God; the Spirit indwells human beings but is not himself (itself) fully and ontically divine; the Cross reveals that God has taken sin upon Himself, but does not itself contribute substance to God's saving work. Each of these positions engenders its own distinct theological problems (if Christ is not divine, for example, we may yet be confronted with an unknown God behind him; again, if the Spirit is not fully God, our knowledge and experience of God is not certain to avoid dissolution into personal subjectivity), but they all converge in this one respect: none of them can ground the importance of history which Niebuhr requires. None of them can admit the strongest reason for ascribing significance to temporality, namely that the eternal has deigned to enter time and take it upon Himself.

The point may be put to Niebuhr in his own terms. He attributes the supreme revelation of God to Christ. Yet if God has Himself done nothing in history, Niebuhr might be asked, it is not clear why the life, death and resurrection of Christ should be attributed special signific-

ance. The question is even sharper in that in respect of the resurrection he considers that it is "the revelatory depth of the fact which is the primary concern of faith", and that the supposed empty tomb is a kind of miracle "in opposition to true faith".[135] Niebuhr has two kinds of response to this. Apologetically, the general structure of his argument is that a belief in these events as determinative for history provides a better interpretation of the whole of history, explains better human transcendence over yet engagement in time and nature, defends more convincingly belief in individuality, and so on, than any rival creed. But it is his second response that is important for the present argument: theologically, he argues, it is in those events that God's self-disclosure happens. However, if that is so, and if the content of revelation is certain information about God - that He suffers because of human sin, for example - it must be asked why the particular person Christ should be regarded as necessary or irreplaceable for that revelation: Christ becomes just a token, perhaps the supreme token, of the type 'Suffering Servant', but without further intrinsic significance.

How might Niebuhr obtain grounds for giving Christ the special significance his theology requires? Niebuhr's dualist presuppositions create the basic problem, which he tries to resolve in terms of the paradoxical relations between time and eternity. But paradox is no proper substitute for the full ontological engagement of history and eternity: it can only allow an external relationship between the two, never a meeting-place in which the two are substantially linked. One way in which Niebuhr could have come to this conclusion, though there are many others, would have been by placing a greater stress on revelation's nature as the revelation of a free God, instead of placing a priori constraints on the content of that revelation. If his theological epistemology allowed knowledge to be a reflexive rather than an absolute operation, so that

theological possibilities were derived a posteriori from the revelation actually given in Christ, rather than vice versa, he might have argued from an analysis, not of the concept of revelation, but of the content of what has been revealed, to the conclusion that in this person this God with whom we have to deal has revealed Himself, and thus that in these events the meaning of history has been decisively determined and the importance of historical action affirmed. Such an approach would not be entirely without public corroboration or confirmation, but it would ground the insistence that God in Christ is the clue to history. It is ultimately this ontological claim which is critical, whether this general approach or another be preferred: at any rate, without such an affirmation, Niebuhr's Christ has in the end no better purchase on eternity than the liberal Jesus he rightly derides as being worthy of devotion because of the number of superlatives that can be attached to descriptions of his goodness.[136]

(ii) Second, it must be asked whether he gives eschatology its proper weight. For if God has done nothing in history, no guarantee is given that He will do anything to history in the future. If it turns out that there will be no actual divine transformation of historical existence, in an appropriately strong sense, the pointedness of history as a whole will be in question.

Niebuhr stresses regularly that the eschatological symbols should be taken seriously but not literally. It has been the recurrent error of Christian orthodoxy to intepret them literally as events in time. But "[the] end of history is not a point in history".[137] This does not prevent Niebuhr employing traditional formulas: history after Christ is "an interim between the disclosure of its true meaning and the fulfilment of that meaning, between the revelation of divine sovereignty and the full establishment of that sovereignty".[138] Yet it is difficult to know what he can mean by this if, for example he believes that "[the] end of an

individual life is, for him, the end of history; and every individual is a Moses who perishes outside the promised land".[139] For this suggests that what is important for Niebuhr is ultimately not the meaning of history as a whole but the significance of finitude, that is, the meaningfulness of human historical existence. Indeed he hints positively at what he means by the importance of the eschatological symbols when he mentions "[the] sense that the final fulfilment impinges on the present moment, the feeling of urgency in regard to anticipating this fulfilment", which is wrongly turned into "the feeling that the fulfilment of history is chronologically imminent".[140] The eschatological truths that give history direction are by Niebuhr absorbed into the ethical demands of the present moment.

From this discussion of his doctrine of the Trinity, of the Atonement, and of eschatology, it appears that Niebuhr's language promises more than his theological system can deliver.[141] He promises an account which will show Christ as the meaning of history; what he delivers shows neither the person of Christ to be significant, nor the meaning of history to be more than a vapid sense of the meaningfulness of historical existence. A theological critique of liberal progressivism must drop his dualist premisses: then alone will it be able to give substantial grounding to his proper assertions that in Christ the meaning of history is disclosed; that salvation cannot be a conclusion of the historical process; and therfore that not before the eschaton will the perfect order of society be established.

6 Conclusion

Niebuhr's work points the way to the constraints which Christian

political thought must place on an acceptable philosophy of history. Although twentieth-century liberalism has generally been more cautious, and while contemporary liberal political philosophy limits itself to the theory of just distribution, liberals in the past have often espoused a progressivism which, in their ignorance of the limits of human knowledge and the pervasiveness of human sinfulness, is prone to underwrite and itself to become a form of salvation without grace. All this Niebuhr explodes.

To achieve this he required profound adjustments in the liberal theological anthropology and theology of history that he inherited. That these changes were ultimately insufficient was argued above. But their inadequacy stemmed not merely from apparently misguided reflection and thus a failure to affirm some fore-ordained set of orthodox theological doctrines. Rather they are symptomatic of a more deeply-seated nexus of commitments.

Niebuhr's first book was Does Civilization need Religion? (1927). The converse question, that religion might point to a God whose demands could not be simply identified with the requirements of civilization, was never considered: both in the direction of his life's interests and in the structure of his thought he posited politics and deduced theology. In the end for Niebuhr religion could be construed as projection, its doctrines "believed poetry",[142] its God an imaginative symbol, its value in its capacity for motivating to action and sustaining a meaningful historical existence. Not that he was a sceptic: God did still exist for him in some important (though unclear) sense. But his failure to break with the dominant idealist theology, his acceptance of the hegemony of natural science, his profoundly empiricist approach to life, his search for a theology that would justify his politics, all summed up in his fundamentally apologetic stance,[143] prevented him from securing a firm

theological basis for his position and, in the last analysis, denied him the God-centred authenticity and the knowledge of the Holy that marked out the Hebrew prophets he so clearly cherished.

CHAPTER FOUR

GEORGE GRANT AND THE BASIS OF LIBERAL VALUES

1 Introduction

The power of George Grant's searching account of the inadequacies of the liberal conception of value derives from his showing liberalism to be one aspect of modernity within an interconnected whole. Drawing from, amongst others, Nietzsche, Heidegger, Leo Strauss and Jacques Ellul, he constructs with considerable lucidity and intensity a picture of the modern age as fate, and contrasts it with an alternative understanding, hesitantly and apophatically expressed, that is illuminated by Plato, the Gospels, and Simone Weil. The multi-faceted nature of his thought is such that an exposition of his account of modernity could with equal propriety take any of several themes as prior - history, technology, justice, human self-interpretation, philosophy, nature, freedom, and science, amongst others. This chapter will give priority to his account of the modern notion of value: in particular, it will consider his attack in English-Speaking Justice on John Rawls' liberalism, in terms of his claim that Rawls fails to provide the foundational affirmations necessary to defend human beings against the predations of technology, and indeed encourages a conception of the self that serves to legitimate the hegemony of technology.

Rawls' A Theory of Justice is the most rigorous and sophisticated

account of contractual liberalism yet presented. As Robert Nozick writes, "Political philosophers now must either work within Rawls' theory or explain why not."[1] In particular his account of method in political philosophy, and thus of the nature of moral value, has been widely influential within the dominant school of political philosophy in the contemporary English-speaking world, even amongst those who reject his substantial claims.[2] Present-day liberalism is not confined to Rawls' method or conclusions, but the widespread influence of his theory is such as to suggest that, if weaknesses are found in it, they may be symptomatic of a common (and perhaps deeper) malaise in modern thought.

Grant highlights a contradiction within contemporary Western civilization: liberal values are being overturned by technology, but liberalism can appeal to no justification of its values which does not also validate the technology which is subverting them. He claims that Rawls' theory of justice as fairness does nothing to avert this technological fate. Although Grant importantly misinterprets Rawls' device of the "original position", and although Rawls' more recent work escapes some of Grant's strictures, Grant's arguments may be developed to show that Rawls' account of the basis of value, and his distinction of private and public identities, may in practice result in the subversion of liberal values.

2 The civilizational contradiction

Grant opens English-Speaking Justice by considering the relations of technology and liberalism. The "dominant form of self-definition" found in the English-speaking West is, he claims, "a sustaining faith in a

necessary interdependence between the developments in technological science and political liberalism".[3] Liberalism is widely accepted as the most plausible modern political rhetoric: thus lip-service is paid to freedom, its central value, by all sides in public debate, providing strong evidence that it expresses what Western cultural elites regard as the best available articulation of moral truth.[4] Likewise technological science is generally seen as the most powerful engine of progress in modern society and the primary means to the freedom necessary to lead the good life. Whether it is believed that science is necessary to realize the goals of liberalism, or that liberalism is most likely to ensure scientific progress, their close relationship is such that liberalism is often thought to be verified through the same account of rationality and objectivity as science.

How does Grant understand liberalism and technology? He argues that they were born of the same cultural moment, and that the historical roots of both reflect the typically modern understanding of humanity and "the whole". Modernity, used by Grant to refer to "the civilization of the age of progress",[5] is conceived as a unified historical totality, whose essence may be "enucleated"[6] in several ways, such as history, technology, or liberalism. Its origins Grant finds most closely articulated in terms of the will, "that primal western affirmation which stands shaping our whole civilization, before modern science and technology, before liberalism and capitalism, before our philosophies and theologies".[7] This in turn, despite the clear influence of Heidegger, he finds to be owing not to some ancient Greek Seinsvergessenheit, but to the exclusivity and the manner of reliance on revelation that was associated with the western use of Scripture.

It is within this account of modernity as the rise to ascendency of voluntarism that his understanding of liberalism and technology should

be placed. In the case of technology, it led him to reject Ellul's definition of la technique as "the totality of methods rationally arrived at and having absolute efficiency (for a given stage of development) in every field of human activity".[8] He felt that Ellul's theological framework was too strongly indebted to voluntarism, scorning philosophy in the classical sense of the contemplative desiring love of wisdom, and failing to recognize that the technological civilization first arose in Western Europe because of the Hebraic elements introduced by Christianity. Thus, although much of Ellul's sociological spadework is useful, he fails to uncover the essence of technology in its relation to the will. Instead, Grant observes that 'technology' is a neologism which captures in its conjunction of techne and logos the co-penetration of arts and sciences, of knowing and making, such that they are united in the will to mastery of the earth.[8a] Correspondingly he describes it in broadly Heideggerian terms as "the endeavour which summons forth everything (both human and non-human) to give its reasons, and through the summoning forth of those reasons turns the world into potential raw material, at the disposal of our 'creative' wills".[9] The Nietzschean overtones of this are accented when he talks of technique as "our vision of ourselves as creative freedom, making ourselves, and conquering the chances of an indifferent world".[10] More than a way of thinking, it is a way of being, "the basic way western men experience their own existence in the world".[11]

Grant's understanding of liberalism is more complicated. He appears to use the term 'liberalism' in two ways. The first is adopted on polemical grounds and is too broad to be an illuminating heuristic device: it refers to "the broad tradition of sane discourse in the western world", in that "[in] so far as the word 'liberalism' is used to describe the belief that political liberty is a central human good, it is difficult for me to consider as sane those who would deny that they are liberals".[12]

Thus on this definition Plato, Hegel and Rousseau count unproblematically as liberals. While it is valuable as a reminder to English-speaking liberals that Russell, Popper and the like represent not "liberalism itself, but a particular species of it",[13] the definition will not be further discussed here: it is peculiar to Grant and not sufficiently close to the kind of liberalism that is of central interest to the present essay.

His second and more common account of liberalism, however, in which liberalism is the whole of modernity from one aspect, promises (no doubt largely through its neglect of detail) a theory of considerable explanatory power. Occasionally distinguished as "modern" liberalism, this kind of liberalism refers to "a set of beliefs which proceed from the central assumption that man's essence is his freedom and therefore that what chiefly concerns man in this life is to shape the world as we want it".[14] In the Straussian contest between the ancients and the moderns, it comfortably sits on the side of the latter, and amongst its number Grant includes Machiavelli, Hobbes, Spinoza, Vico, Rousseau, Hegel, Marx and Darwin.[15] The alternatives to this liberalism he lists as on the one hand, Plato and Aristotle and their Jewish and Christian interpreters, and on the other, those indebted to Marx and Nietzsche.[16] Contractual liberalism is one form of it, with "right prior to good; a foundational contract protecting individual rights; the neutrality of the state concerning moral 'values'; social pluralism supported by and supporting this neutrality."[17] A characteristic feature of this liberalism has been its general hostility to Christianity: at its "very centre" was the belief "that man must eliminate the idea of the supernatural from his mind". Amongst other things they disagree about the role of self-restraint: for liberalism "the emancipation of the passions and optimism about the result" has been a central tenet, but for Christianity fulfilment of desire is found through

obedience to Christ. Again for liberalism freedom is "the ability of man to make himself and the world as he wants them to be", but for the Gospels "the ability of a human being to give himself to God". In general:

> To liberalism, man is the measure; to Christianity, God is the measure. To liberalism man creates himself, and measures and defines the order which he makes. To Christianity, man is measured and defined by an order which he does not make.[18]

There are certain difficulties in Grant's account of liberalism, even given its (alarming) brevity and typification. Marx, for example, is described variously as a liberal, a modern post-liberal, and (elsewhere)[19] a pre-modern. Again, although liberalism is for Grant the whole of modernity in its political aspect, Nietzsche, who is the modern par excellence for Grant, is here a post-liberal. Furthermore, Grant names as representatives of liberalism figures none of whom would occupy more than a marginal position in the standard canon of liberals, and some of whom are not even political thinkers. This certainly need not be taken as confusion: it is precisely Grant's point that because modernity is a totality, the similarities between different traditions of political thought and indeed between different discourses are more important than the dissimilarities. It is a revisionary account, whose rationale is derived from Grant's preferred method of interpreting liberalism in terms of the metaphysics that grounds modernity. How much of this can be recruited for the purposes of the present essay will be discussed at the end of this chapter.

The historical outworking of liberalism and technology are exemplified by North America. In particular, the evolution of modernity and the working out of this western affirmation of the will is emblematized in the history of the United States, which he regards as "the

most progressive society on earth", and which as an imperial centre is becoming a universal destiny through its technological expansion.[20]

Grant explains American identity in terms of its rejection of one of the two "primals" of Western civilization.[21] These "primals", or originating presences determinative of thought and action, were ancient Greece and Christianity. The former at its height in Plato and Aristotle was oriented to eternity and thus to contemplation of the good as the highest end: justice was conceived as a given order for which human beings were fitted, and morality as a desiring attention to a timeless perfection. The latter, although in its truest form in the Gospels to be found compatible with the truth given in Plato, differed through its identification of charity as the highest good;[22] moreover, exalting the will through its doctrine of creation, oriented to time through its doctrines of providence and redemption in history, and directed to the future in its eschatology, Christianity was responsible when secularized for the modern idea of progress.[23] While for Europeans the more contemplative primal of ancient Greece was still present to inform their lives and their polities, North Americans had for their primal the meeting of the New World with a Calvinism which represented a rejection of the classical world in the name of the Bible.

This fateful conjunction occurred in the context of the joint seventeenth-century attack on mediaeval Aristotelianism by Protestantism and the new natural sciences. These two movements agreed negatively in their opposition to Aristotelianism, the one demanding total dependence on divine revelation, the other seeking explanation through efficient rather than final causality. But they were also joined together positively: the naked Calvinist soul before its transcendent and sovereign God, seeking the divine will and securing the divine approval through its activity rather than its contemplation, came to regard the self as radically free

and the external world (including the body) as matter of no intrinsic value, to be subdued in accordance with the demands of the soul's "unappeasable responsibility".[24] Likewise the traditional contemplative understanding of science gave way to the utilitarian and empirical interrogation of nature, the ceaseless efforts of a detached Archimedean self striving to move the world to prove its own designs. The human will in this way became no longer one of many natural agents oriented to the good, but was alone able through its activity to impose good on an indifferent material world. The historicist understanding of the self as creative freedom and the technological account of the natural world as ruled by necessity and chance formed (through its English-speaking founders) the "spiritual primal"[25] of North America, and led to the portrayal of the unspoiled continent as a tabula rasa, ready to yield to the impressions of the overriding conqueror. In combination with the "practical primal", shared by all North Americans, of crossing the seas and settling the land, there came to be that primal which still shapes North America, "the omnipresence of that practicality which trusts in technology to create the rationalized kingdom of man".[26] In this is expressed a will to mastery and an orientation to the future which seeks an emancipation both practical (in freedom from disease, poverty and overwork) and theoretical (in freedom from traditional and irrational prejudice), but which serves to veil the eternal order of good.

The results of this Grant finds in every area of contemporary life. Because the political good is widely accepted to be the overcoming of chance in the building of the technological society, politics as negotiation between differing conceptions of the good is being replaced by the administrative search for means to secure the technical good.[27] Likewise, political conservatives, "in the sense of being the custodians of something that is not subject to change" no longer present a viable

political option,[28] while local cultures and traditions are particulars in the process of becoming little more than charming residual customs because of the universalizing effects of technology.[29] Again, education is conceived as the teaching of the sciences of mastery over human and non-human nature,[30] while the sciences are treated as value-free, quantificational and behaviourist,[31] and the humanities as a museum culture for intellectual tourists.[32] Further, computers, like "those crisp rationalized managers, who are the first necessity of the kingdom of man",[33] contribute to homogeneity by their need to classify.[34] And public religion has become "an unimportant litany of objectified self-righteousness necessary for the more anal of our managers",[35] while in "personal relationships" ecstatic relations are sought that transcend the merely contractual[36] but in which only the loss of the other results.[37] Underlying the superficial variety of a pluralist society is the dreary monism of the religion of progress:

> Some like pizza, some like steaks; some like girls, some like boys; some like synagogue, some like the mass. But we all do it in churches, motels, restaurants indistinguishable from the Atlantic to the Pacific.[38]

The goal and destiny of modernity Grant describes, following Strauss's Hegel, as the "universal and homogeneous state".[39] This liberal ideal is a world society without class or national division, in which freedom and equality are realized on the back of technological growth. For Grant this ideal would be the perfection of tyranny rather than of freedom. In making the most important truths available to and practicable by all, the universal and homogeneous state represents the final identification of philosophy, religion, and politics. And in affirming that the most important truths are self-evident, and identifying these with the truths of the religion of progress, it represents the improper

replacement of religion by philosophy as the arbiter of public truth.[40]

However even within its own terms, and without accepting Grant's belief that "reverence rather than freedom is the matrix of human nobility",[41] this political ideal of modernity encounters a deep problem: its content is becoming more vacuous as it is replaced by the pursuit of technical expansion. For by a powerful and tragic irony technology is now turning against human freedom and in fact serving to limit the liberty that it was originally intended to enhance. In the name of control over nature, of efficiency and of freedom of choice, technology is now effecting the rise of cybernetics and the managerial, of eugenics and behaviourism, with the result that the traditional and largely Christian notions of justice and human worth which form much of the content of liberal justice are being swept away. And ironically liberalism is contributing to its own demise:

> When modern liberals, positivist or existentialist, have criticised the idea of human excellence, they may have thought that they were clearing the ground of religious and metaphysical superstitions which stood in the way of the liberty of the individual. Rather they were serving the social purpose of legitimizing the totally technological society by destroying anything from before the age of progress which might inhibit its victory.[42]

The problem liberalism faces, Grant argues, is that the conceptions of self and the world, of rationality and history, which provide the background for its intelligibility and the basis of its justification, are precisely those which justify and further the progress of that technology which is undermining liberal values. Liberalism, even if it had the motive, can find no independent ground from which to

criticize technology. Nor, moreover, can it prevent the erosion by technology of liberal values: it is being "played out within a destiny more comprehensive than itself".[43] For although liberalism and technological science found their joint origins in the flowering of the will in Reformed Protestantism and the new natural sciences, their continued mutual sustenance is not guaranteed by their common origin. This two-fold problem Grant attributes to the "civilizational contradiction"[44] of the modern world, the contradiction involved in attempting to hold together both the scientific world of chance and necessity and the notions of justice inherited from the pre-modern world. For modern science revealed a world apparently indifferent to moral values, which thus had to be conceived of as imposed on nature by the will, and not derived from it through the reason. While this led the moderns to reject the ancient account of the justification of value, at the same time they wished to preserve the traditional values.

The potential danger this threatens to the traditional understandings of justice that were taken over by liberalism has been avoided till now, but only for extraneous and historical reasons, not because of the adequacy of the intellectual defence of liberal values.[45] The increasing cultural dominance of the various English-speaking middle classes has ensured that their moral and political beliefs required no deeply considered intellectual justification: thus in this century "the expansion of the United States around the world, as the great capitalist empire, was so fast and successful that the constitutional principles of bourgeois hegemony became even more self-evident" than they were before.[46] Again the religious traditions of the English-speaking countries, Calvinist or Anglican in Britain, small-town pietist in North America, were able to provide "that necessary moral cement which could not be present for those who were consistently directed by contractualism or

utilitarianism or a combination of both."[47] The continued existence of the traditional understanding of justice was an accident of history: it did not require justification in thought since it was sustained on other grounds.[48]

There were of course attempts to reconcile the old justice and the new science: Grant mentions Locke, Rousseau, Kant, and Marx, for example.[49] But these represented the "secularised Christianity" which Nietzsche ridiculed:[50] thus Kant, who attempted to hold together science and human autonomy, was the "great delayer" because of his self-anaesthetization from the modern through maintaining morality as the one fact of reason. The full horror of the discontinuity between the impersonal universe and the moral values of Western civilization was incomparably expressed by Nietzsche, for he recognized that if justice were merely the imposition by will of values on facts, there is no reason beyond the contingencies of history why the values of liberty or equality or the worth of others should be respected. Such values become merely horizons, and once horizons are recognized as horizons they no longer have power to sustain those who live within them. The death of the Christian God is the end of all horizons, the admission of chaos outside of the will to power.[51] But for Nietzsche such an admission properly owned is not trivial, "something after which we can get on with the business of making life cosy".[52] For with the recognition that human purposes are not guaranteed by the order of things, the whole burden of meaning falls on the will, and with that an immense darkness. It is neither possible to return to the enchanted world of the past, nor is it clear how to lift the curse of living without horizons.

But such a recognition also entails that it is unnecessary to accept the <u>décadence</u> values of the Platonism-for-the-people that modernity has adopted. Liberalism is unable to defend the content of the justice it

upholds. There is no reason on its account of the foundations of justice why the conveniences technology affords should not be exploited by those with sufficiently strong wills, whatever the moral cost. Although it might be thought that we could decide to will the liberal values of equality, freedom and rationality, the recognition of these values as willed, and not as "cosmically sustained",[53] prevents them from acting as horizons and forces the admission that their acceptance derives ultimately from the play of power. Grant hints at the danger to an age which believes in time as history but which has given up belief in progress because of the experiences of the twentieth century. The corporations will be free to replace justice with convenience values, and while liberal justice will still be dispensed, those will be excluded who are too weak to enforce contracts: "the imprisoned, the mentally unstable, the unborn, the aged, the defeated, and sometimes even the morally unconforming."[54] Fascism, he declares in what was to be his last publication before his death, "is a growing possibility in advanced industrial countries."[55]

3 Grant and Rawls

If liberalism is to be sustained as the principal expression of Western self-understanding, then, it faces the task of showing how its central values of liberty and equality may be justified in the face of the technological forces which threaten to undermine them. John Rawls' liberal contractarianism is the most prominent contemporary justification of the values of what is fated to be a world-historical class, and it is clearly incumbent on his theory to address the problems of this civilizational contradiction.

(a) Grant's questions to Rawls

The questions Grant directs specifically to Rawls are found in part 2 of English-Speaking Justice: these may be conveniently summarized through a number of passages of questions in the text. In this section it will be shown, by way of interpretive clarification (and in contrast of style to what precedes), that Grant poses questions of three basic kinds.

The first passage of questions turns on the justification of equality:

> Why is it good that all human beings should live in a society to which they can give consent and in which they are guaranteed an equality of political liberties? Why is it good that human beings should have political rights of a quite different order from members of the other species? Why should equality in legal rights stand above and not be influenced by the obvious inequalities in contribution to progress whether in production, in the arts or in the sciences? ... [Why] does Rawls' account of the "person" make equality our due? Why are beings who can calculate and cannot avoid choices worthy of equal inalienable rights? After all, some humans can calculate better than others. Why then should they not have fuller legal rights than the poor calculators? Why do either of these human abilities justify the primacy of equality, or the different level of our rights compared with those of other species?[56]

These boil down to two questions:

(a) in virtue of what are only human beings (and not, say, animals) worthy of this level of respect?

(b) in virtue of what are <u>all</u> human beings worthy of this level of respect?

There is perhaps the hint of a third:

(c) in virtue of what are <u>any</u> human beings worthy of this level of respect?

The second passage of questions centres on the practicability of Rawls' combination of individualism and egalitarianism given the power of the public and private corporations in late state capitalism:

> Can his calculating individualism bring forth a doctrine of the common good strong enough to control the ambitions of these mammoths? Can the calculating individual be a citizen in such a world, or does this account of human beings only lead to individuals concerned with consumption - above all entertainment and the orgasm as consumption?[57]

This passage raises at least two more questions:

(d) is Rawls' ideal practicable in this society? is the liberty and equality he would like to have for all in abstract theory nevertheless impossible in practice?

(e) is Rawls' ideal, in so far as it is practicable, incompatible in practice with other independently-specified ideals, specifically (i) life as a citizen, and (ii) the individual as more than consumer?

The third passage contains "the fundamental question" about Rawls' theory; it does not require glossing:

(f) can the content of justice he advocates be derived from his contractual theory?[58]

The last passage of questions addressed specifically to Rawls concerns his attempt to justify contractarianism within what Grant sees as the assumptions of analytical philosophy:

> Is justice pursued because of convenience, even when the calculation is in terms of an account of self-interest reached in abstraction from any knowledge of the way things are as a whole? Is such justification of justice able to support the pursuit of liberty and equality at a time when the inconveniences of technology do not seem to favour them?[59]

At least one question arises from this passage:

(g) can the pursuit of justice, liberty and equality be defended if it is inconvenient?

But there is also implicit:

(h) can a knowledge of justice be abstracted from the way things are as a whole?

Questions (a)-(h) reduce to questions of three basic kinds. 1) The first concerns whether justice, and value in general, can be understood except on the basis of ontological affirmations: this would include questions (a), (b), (c), and (h). Grant compares Rawls with Kant, his supposed mentor: Kant makes axiological claims for the good will, grounded ontologically in that moral willing is participation in the very form of reason.[60] Rawls by contrast accepts the naturalistic fallacy as a fallacy. Grant interprets this to mean that "propositions concerning how human beings ought to act cannot be derived solely from factual propositions about nature", and that "the principles of justice cannot be derived from such metaphysical propositions as the state of nature".[61] This he connects with the distinction of "nature" and "freedom" and of "is" and "ought", with Weber's formulation of the distinction between judgements of fact and of value, with the denial of a teleological knowledge of nature, and with the removal of political philosophy from dependence on metaphysical

assumptions.[62] Thus the fact-value distinction grounds values outside of "the whole":

> Facts are now identified with objects and are abstracted from things in their wholeness. The rest is labelled "values" and is tucked away as part of one's own subjectivity. Values are detached from "objective" being.[63]

2) The second basic kind of question concerns whether justice can be derived from a contract by calculating self-interested individuals: this would include questions (e)(ii), (f) and (g). There are several overlapping questions under this heading. First, will Rawls' contract ensure justice in the sense of preserving the pre-modern values of equality, dignity, and freedom? Second, what sort of conception of the self does Rawls' version of the contract imply? Specifically, does it not lead to treating human beings as consumers, searching to satisfy their wants without regard to externally-given ends? Third, can justice interpreted as giving others their due be derived from prudential calculation, in the moderns' sense of prudence in which it is contrasted with morality? That is, can a contract show me why I should be altruistic rather than self-interested? If another's good is construed simply as a function of the agent's self-interest, it will have no independently-founded claim against the demands of technology, should they conflict.

Certain other connected questions hinted at by Grant will not be discussed here. The question wholly internal to Rawls' theory whether his two principles would be the ones chosen in the original position (whether the maiximin criterion is appropriate, etc.) is beyond the intended scope of the present chapter, as is the general question whether social choices can be derived from individual preferences.

There are a number of reasons for the distinction of questions 1)

and 2). First, it highlights the similarities and differences between Rawls and earlier contractarians. Although the questions under 2) are here addressed specifically to Rawls, they (or at least similar questions) are well-asked of the contractarian tradition as a whole. Question 1) by contrast turns on Rawls' metaphysical denials which were not shared by previous contractarians. Second, the questions relate to different issues subsumed under the question of personal identity. The first question, as will be seen, is concerned in part with what distinguishes persons from non-persons and makes them worthy of respect; the second is related to the question of the nature of human agency and the self. Third, the two questions correspond to different parts of Rawls' justificational structure.

3) The third fundamental question considers the practicability of Rawls' ideal: this includes questions (d) and (e)(i). Grant's sociological understanding of contemporary society sees the dynamics of corporations rather than of, say, the class struggle as the threat to the feasibility of Rawls' ideals of equality and liberty: but he wonders also whether Rawls' theory will allow room in practice for the good of citizenship, understood perhaps in a civic republican sense as the responsible and effectual participation of each in the affairs of the civitas through the development of virtue.

There are, then, questions of three basic kinds that Grant puts to Rawls: 1) whether justice can be understood except on the basis of ontological affirmations; 2) whether justice can be derived from contracts by self-interested individuals; 3) whether Rawls' ideal is practicable. Less attention will be paid to the last question than to 1) and 2): although initial responses to some of Rawls' more fatuous a priori claims

about the "well-ordered society" will be entertained, serious treatment of the issues raised by question 3) would require a social and psychological theory that is much more empirically-informed than is possible here.

(b) A response to Grant on behalf of Rawls

It is essential to understand properly the justificational structure of justice as fairness: one commentator has complained correctly that in at least one respect Grant seriously misrepresents Rawls.[64]

At first sight Rawls appears to make use of at least two separate kinds of argument for the two principles of justice. One kind centres on the notion of reflective equilibrium, seeming to suggest that the principles reached at the end of the argument will eventually match our considered judgements after a process of mutual adjustment. The other kind is a version of a contract argument, making use of the original position and the veil of ignorance to represent the state of nature without the metaphysical difficulties of that notion. The relation of these two has caused considerable disagreement amongst Rawls' interpreters. For Ronald Dworkin[65] the original position appears redundant in the justificatory process since a hypothetical contract cannot bind, and anyway the two principles can be directly derived from the state of reflective equilibrium. The original position, he suggests, should be taken not as a justificatory device or a part of the process of reaching equilibrium, but as a major substantive claim which itself requires defence: this he finds in the guarantee it affords to the right to equal concern and respect. For David Lyons[66] the coherence argument cannot serve as justification since it is not clear how its conclusions are distinguishable from arbitrary sentiments. The principal argument must therefore be the contract argument, he claims, although he finds this also troublesome: it is not

clear how the pure procedural justice of the contract argument could produce justice; moreover, if the contract argument is the only possible justification, then it should not be tailored to fit the results of the coherence argument, but vice versa. For T. M. Scanlon[67] the original position embodies the ideal of individual rational choosers which is found in the range of societies to which Rawls' theory is expected to apply: it is a substantial claim but an uncontroversial one.

Rawls' own interpretation of his work is clarified to some extent in three more recent articles, "Kantian Constructivism in Moral Theory",[68] "Justice as Fairness: Political not Metaphysical",[69] and "The Idea of an Overlapping Consensus".[70] He starts from the premiss that since the Reformation it has been impossible to apply a general moral conception of justice to the basic structure of society: the diversity and incommensurability of conceptions of the good has meant that "as a practical political matter no general moral conception can provide a publicly recognized basis for a conception of justice in a modern democratic state".[71] Even within democratic theory there has been a conflict, in Constant's terms, between the more Rousseauan and egalitarian "liberties of the ancients" and the more Lockean and libertarian "liberties of the moderns".[72] Rawls' hope is that from the traditions embedded in the public institutions of democracies an intuitive notion will be discerned which accords with our considered convictions, but which is more fundamental than the values of liberty and equality: this will lay the basis for a "working agreement on the fundamental questions of political justice"[73] by providing a framework for relating those other values. This fundamental idea he claims to be that of "society as a system of fair social cooperation between free and equal persons".[74] The notion of "person" involved here is not descriptive, drawn from the natural or human sciences, but normative, a political conception of "someone who can be a citizen, that

is, a fully cooperating member of society over a complete life".[75] Persons are free and equal in virtue of their possessing the two moral powers which are associated with participation in a system of fair social cooperation, namely the ability to act from the public understanding of justice and the capacity for a conception of the good.[76]

From this fundamental shared understanding of a society are to be drawn the principles of justice which define the terms of fair social cooperation. The means of deriving these is the original position. This device serves to provide constraints on what will count as appropriate terms of bargaining in order to ensure fair agreement. These constraints are again derived from our considered convictions: most notably, they include the veil of ignorance, which abstracts from the "contingent advantages and accidental influences" of history, social background, natural talent, etc. The parties in the original position then choose principles of justice to form the terms of social cooperation. The aim of each party is to maximise his self-interest: this is understood in terms not of the maximal desire-satisfaction of each but of the greatest possible development of moral personality.[77] The principles of justice chosen in the original position are binding on us in the actual world not because it is supposed that a hypothetical contract has any binding power, but because the original position is a heuristic device for discovering the implications of the moral beliefs that we actually have, or are prepared to acknowledge for the sake of reaching public agreement. "[The] conditions embodied in the description of the original position are ones that we do in fact accept. Or if we do not, then perhaps we can be persuaded to do so by philosophical reflection."[78]

From this the relation of the contract and coherence arguments, and thus the correct understanding of Rawls' position, should be clear. Amongst the beliefs about the political good and about human nature which

are embedded in the institutions of our public culture there is latent the fundamental intuitive idea of society as a fair system of cooperation between free and equal persons. The original position is adopted in order to work out the principles which would govern the cooperation between persons conceived in this way. The choice of principles is a matter of pure procedural justice: that is, "the parties are not required to apply, nor are they bound by, any antecedently given principles of right and justice".[79] But in order to ensure that they are plausible for us in the actual world, the principles derived from the original position must accord with our considered convictions in reflective equilibrium. That is, they must fall within the range of provisional fixed points which mark the settled and widely-held moral convictions of our society. The reason why the device of the original position is necessary is because our considered convictions in reflective equilibrium are not in themselves sufficient to settle the conflict between, say, the Rousseauans and the Lockeans. Its function is to clarify what we think by appealing to the more fundamental intuition, the conception of society. "The original position serves as a unifying idea by which our considered convictions at all levels of generality are brought to bear on one another so as to achieve greater mutual agreement and self-understanding."[80] Thus, in response to Dworkin, the original position is not redundant; it is binding because it reflects the convictions we do have, and we are bound to follow our convictions. And, in response to Lyons, Rawls does not tailor the conclusion of the contract argument to the coherence argument such as to compromise the justificatory power of the contract argument.[81]

With the structure of Rawls' argument in place, we may now consider the questions Grant puts to Rawls.

Grant's first question was concerned with Rawls' apparent

separation of facts and values and thus his failure to see justice as a part of "the whole": justice is not in some sense grounded in reality, but conceived independently of knowledge of "the nature of things". This certainly appears to hold for Rawls' notion of pure procedural justice from within the original position. For "the idea of approximating to moral truth has no place in a constructivist doctrine: the parties in the original position do not recognize any principles of justice as true or correct and so as antecedently given: their aim is simply to select the conception most rational for them, given their circumstances."[82] The principles chosen in the original position are defined as just: there is no question of correspondence to an independent order. The question of pure procedural justice will not be pursued here: since the original position is a special device within a more general understanding of the justification of justice, it is more important to examine whether Grant's question is well asked of the theory as a whole. This turns on Rawls' appeal to the agreements embedded in democratic institutions, and in particular on the method of reflective equilibrium. It is his use of these that is considered here.

Rawls' notion of reflective equilibrium clearly resembles a coherence theory of morality. But a coherence theory of morality could be realist or constructivist.[83] On the realist account theories of justice attempt to describe or correspond to an independently-given moral reality; if particular intuitions conflict, that is due to insufficient understanding of the underlying rationale, not to their necessary irresolubility. On the constructivist account the primary virtue of a theory of morality is coherence: if there is a conflict of moral intuitions, they must be moulded to fit each other for the sake of consistency. Now it seems clear that reflective equilibrium corresponds better to the constructivist model: the realist model cannot allow mutual adjustment of

moral phenomena so that some are just ignored if necessary for the sake of consistency, nor can it allow that the mere embeddedness of moral beliefs within public culture provides any reason for believing them to be true.

But this raises the suspicion that reflective equilibrium implies some form of moral relativism or scepticism. Thus Hare sees Rawls as espousing "a kind of subjectivism, in the narrowest and most old-fashioned sense."[84] Again, Allan Bloom finds no defence of the superiority of liberal democracy: Rawls is engaged in rationalizing current practice rather than searching for knowledge.[85] And David Lewis Schaefer argues that "the acceptability of a theory of justice seems to depend, for Rawls, on whether it is intuitively appealing, rather than on whether it has been demonstrated by reason to be true."[86] Mere appeal to values thought to be implicit in democratic institutions scarcely justifies them.

Rawls refuses to ground his theory in some "moral reality" since he hopes by the "method of avoidance" to evade controversies about the status and justification of moral and political values. "Philosophy as the search for truth about an independent metaphysical and moral order cannot, I believe, provide a workable and shared basis for a political conception of justice in a democratic society".[87] Justice as fairness is not concerned with finding the truth about the issues it covers, but with discovering public terms of fair cooperation between people with conceptions of the good which are incompatible or indeed incommensurable. Its primary aim is practical and political rather than epistemological or metaphysical, although it may involve solving philosophical issues.[88]

But it does not follow that justice as fairness is committed to denying moral realism. Although Rawls himself probably thinks moral realism mistaken, justice as fairness is not committed to this. Nor does it require constructivism in political philosophy in any sense that denies that the nature of political justice or the political good is somehow

discernible in the order of things. The questions whether the principles of justice are susceptible of truth assessment, and if so, whether they are true, are bracketed. Thus Kantian constructivism is compatible with a given order of value, Rawls claims. On the other hand, although it does not deny the moral ontology of the realist model, it does not require it: thus "[what] justifies a conception of justice is not its being true to an order antecedent to and given to us, but 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."[89] The notion of justification involved is not that of demonstrating correspondence to moral reality but of appealing to those that disagree with us on the basis of premisses that we all regard, if not as true, at least as acceptable for the purpose of reaching agreement about the terms of cooperation. Thus justice as fairness is not intended to be universal or readily applicable to any nation whatever its social or historical background.[90]

But the question still remains whether this is not just a rationalization of a form of liberal democracy. Deriving a public conception of justice from the values latent in democratic public culture is hardly an argument for that conception. In fact, Rawls is aware that public justice cannot merely reflect what has historically been given, and that it needs to be thought true or appropriate by its citizens. In order to cater for this, but to avoid the difficulty that contemporary democracies are pluralistic and cannot sustain justice as fairness through a generally agreed conception of the good, Rawls introduces the notion of an "overlapping consensus" of those with opposing religious and philosophical beliefs, in which all citizens justify justice as fairness to themselves within the terms of their own theories. People are motivated to cooperate under its terms since "each comprehensive doctrine, from within its own

point of view, is led to accept the public reasons of justice specified by justice as fairness".[91]

The truths latent in public culture appear then to provide the content of the public justice (through the device of the original position), while the overlapping consensus justifies this to the citizens. "We suppose that these ideals and principles can be elaborated into a political conception of justice, which we hope can gain the support of an overlapping consensus".[92] Thus justice is fairness is primary, and it is hoped that the overlapping consensus will sustain this. But what is there to suggest more than a coincidence between the kernel of the overlapping consensus and the values latent in public institutions? If justice as fairness is not just to be a rationalization of communal traditions, it must be because it is thought to be true (or at least reasonable for that society) by its citizens. But if so, it is the set of beliefs which make up the overlapping consensus which is basic, justice as fairness being epiphenomenal upon this. That is, because the relation of the two is external and contingent rather than internal and logical, and because citizens have no reason to support the public conception of justice except within their own theories, the legitimation of justice as fairness depends on the continuing liberal democratic sense of the citizenry. But this suggests that if a strong nationalist-fascist movement were to rise, and a significant proportion of the people rejected liberalism, justice as fairness would no longer, even within its own terms, be a plausible conception of justice for the basic structure of society. Rawls' own theory cannot show that fascism is wrong: it can only mediate a consensus of people who all happen to think fascism is wrong.[93]

But this exposes Rawls fully to Grant's main charge: that it is just a matter of historical accident that Rawls' theory defends an understanding of the good which overlaps with that given in the Christian

tradition. To the extent that the forces that control historical change are ideational, to that extent Rawls does nothing to prevent the dynamics of technology from controlling and fashioning human beings.

For Grant this issue focusses on abortion. If justice is not anchored in ontological foundations about human beings, it will slide to accord with convenience:

> What is it about our species that makes it appropriate that we have rights at all? If the fetuses are accidental blobs of matter, aren't we also? It is this that is frightening about those who argue that the fetus in the womb has no rights. In that affirmation is implied a view of human beings that destroys any reason why any of us should have rights.[94]

Now Rawls does explain in virtue of what somebody is a person, namely his capacity to be a citizen, to participate fully in society: partly constitutive of such a capacity is the possession of the two moral powers, a capacity for a sense of justice and a capacity for a conception of the good.[95] This claim about persons seems little different in principle from the claim of Kant, with whom Grant unfavourably compares Rawls, that we are persons in virtue of the capacity for rational willing. After all Rawls, like Kant, states here what is to be regarded as valuable. The difference, Grant claims, is that Rawls does not have the "central ontological affirmations" of Kant.[96]

The notion of "ontological affirmations" is scarcely clear. Grant cannot mean that Kant has a reality-dependent morality in the sense of an affirmation of an immanent teleology in nature, for Kant has a modern view of nature. Nor can he mean that Rawls claims no more than culture-relativity for his ideal, since that is not how he interprets Rawls.[97] He seems to mean that Rawls lacks even the non-teleological reality-

dependence that Kant affirms through his axiological claim about the good will. In the same way Hobbes and Locke, even if they made no claim about the summum bonum or of justice as what we are fitted for at least had made claims about, for example, the summum malum.[98]

Rawls can make no such affirmations, because of his acceptance of Hume's law. His conception of the person differs from Kant's in that it is an ideal, a normative or political conception, without any connection with reality (except in that the ideal of the person has to be feasible, and a theory of human nature and society is necessary to inform this).[99] In this sense he makes no ontological affirmations. But it does not follow immediately that Rawls can give no good reason why the mentally unstable, the unborn, etc., should not be counted as persons.[100] His account can be moulded to our intuitions in such cases with at least as much dexterity as a supple Kantianism (though perhaps no more). But if this is so, it might be wondered where the difference comes, why Grant thinks that Kant at least delayed the technological drive, whereas Rawls' theory does nothing to stop it. The answer surely lies in his conception of the task of a normative theory as trying to fit our intuitions, rather than seeking the truth which will itself judge their adequacy. It is not the particular ontological affirmations that were made by Kant and the earlier contractarians that distinguish them from Rawls - after all they disagreed amongst themselves - but the awareness that normative theory required such affirmations. While those writers were certainly lodestars of modernity, they still had some recognition that perception rather than choice was the more adequate metaphor for moral reasoning.

Though Rawls is concerned not to ground his theory through correspondence to an independent moral order, he does this for practical reasons. That is, it is accepted from the outset that in democratic

societies there are competing philosophical, moral and religious beliefs. But this puts an important question to Grant. To a certain extent they are arguing about two different conceptions of justice. While Grant looks for a remembrance of justice as what we are fitted for, Rawls is interested in solving the pressing practical problems. Nothing in Rawls' position is incompatible with Grant's claims about the nature of justice: it is just that not everybody in present society agrees with Grant, and some practical resolution of the differences must be found. But if this is so, Grant must accept that Rawls is addressing an important problem, and can only be criticized to the extent that he implies that there are no serious problems to be solved once people with their different conceptions of the good are cooperating, and that his is no more than an interim solution for a problem that should ultimately be located elsewhere.

Grant's second question to Rawls asked whether justice could be derived from contract. This general question had three aspects, about the possibility of deriving the pre-modern content of justice from contract, about the nature of the self implicit in Rawls' theory, and about the possibility of deriving other-regard from self-regard.

The question whether Rawls' contract will preserve pre-modern values such as freedom, equality and dignity, is partly the question whether the two principles of justice, or similar principles that supported such values, are derivable from some version of the original position. This question is internal to Rawls' theory and beyond the intended scope of the present chapter: a proper consideration of this will here be elided in favour of some initial pertinent observations.

First, the device of the contract certainly ensures some kind of equality: indeed it can be understood not as a justificatory procedure but as a way of affirming the fundamental right to equality.[101]

Second, as was suggested above, inasmuch as Rawls' contractarianism is not committed to limiting the constituency of those who benefit from the contract to those who are able to conduct contracts, it is not intrinsically incompatible with assigning dignity to those unable to contract. However, since rational choosers are the only source of value, while they may be able to bestow dignity on (say) the handicapped, such a choice seems to obtain its rationale only as a concession to the Western moral tradition. The contract does not provide an anterior and independent foundation for treating such people as of equal dignity.

Third, it is worth asking what would have to be the case for traditional justice to be derivable from contract. We would have to conceive a possible world in which values chosen under certain specified constraints corresponded to the values given in the moral order. Now it may be that this possible world is the actual world. But even if this were the case, a Rawlsian account would be faced with a dilemma: either it would have to show that it was no accident that the constraints chosen accurately modelled traditional justice through individual rational choice; or it would have to guarantee identity by understanding the prudence involved in the original position not in Rawls' sense of rational self-interest but in the traditional sense of acting in accord with the moral order. The former seems impossible from within Rawls' philosophical method; the latter, even if it thought not to beg the question by incorporating into the initial conditions precisely what needs to be demonstrated, is incompatible with Rawls' conception of the purpose of political philosophy.

The other two aspects of this general question turn on the relation of the parties in the original position to people in real life. This is the fundamental issue in determining Rawls' conception of the

self, which has been much misunderstood.[102] Thus while Michael Sandel argues correctly that "[if] the method of reflective equilibrium operates with the symmetry Rawls ascribes to it, then the original position must produce not only a moral theory but also a philosophical anthropology",[103] he wrongly deduces that "[looking] from one direction through the lens of the original position we see the two principles of justice; looking from the other direction we see a reflection of ourselves."[104] For Rawls it is not ourselves that are seen but the people in the original position. These are related to us in that for the purposes of political agreement we are willing to see ourselves as such: they portray our political or public identities, but not our own individual self-understandings. Rawls is willing to make affirmations about our public identities - for example that it involves freedom in the three respects that citizens are regarded as having the moral power to have a conception of the good, as self-originating sources of valid claims, and as capable of taking responsibility for their ends. But none of these imply that this is how private individuals do or should view themselves. "It is essential to stress that citizens in their personal affairs, or in the internal life of associations to which they belong, may regard their final ends and attachments in a way very different from the way the political conception involves".[105]

Thus Rawls is not committed as Sandel claims to seeing us as selves prior to our ends, choosing our conceptions of the good rather than in part constituted by them. When the heuristic device of the original position is employed, "our reasoning no more commits us to a metaphysical doctrine about the nature of the self than our playing a game like Monopoly commits us to thinking that we are landlords engaged in a desperate rivalry, winner take all."[106] Nevertheless Rawls is bound in his political conception of the person to the distinction between the public

and nonpublic identities of citizens, and it is the reasonableness of this distinction, not the question of the thickness of Rawls' conception of the self, on which a communitarian critique should concentrate.

Now a parallel defence to that against Sandel can be made on Rawls' behalf concerning Grant's specific claim that justice as fairness treats human beings as self-interested calculators. For it is not as private individuals that Rawls invites us to see ourselves as such rational choosers, but only as public citizens seeking fair terms of social cooperation. It is not just that for Rawls interests of the self are not necessarily self-interests,[107] but that these interests of the self which are the ends of calculation apply to public identities only, and these are logically separate from private identities. Furthermore, in "Kantian Constructivism" Rawls develops his understanding of the ends in terms of which the primary goods are chosen in the original position. Parties are motivated not by egoism or the desire to satisfy any passing desires, but by their highest-order interests, namely the belief that the best life is lived in the development and exercise of their moral powers - a belief that Rawls regards as embedded in the public culture of democracies. The parties' motivations are "not egoistic, but entirely fitting and proper."[108] There is an ideal at work here: though it may not be beyond criticism,[109] it does not lead to a conception of human beings as consumers as readily as might the account of the self in standard rational choice theory.

This understanding of the relation of the parties to people in ordinary life indicates an answer to the question why you and I should be just rather than selfish. For Rawls that is a matter of moral theory, not of political philosophy. The justice he is concerned with is that applicable to the basic structure of society, and has no logical connection with justice as a virtue of individuals. While he thinks that

in a well-ordered society a just distribution would, for example, make people more just and more likely to pursue other aims because the acquisition of wealth was less important,[110] this is tentative (and naive) psychology, not a claim about the nature of justice. To Grant's possible rejoinder that this is to divide up justice in a way not given in the order of things, he would appeal again to the pragmatic nature of his enterprise.

From Grant's position three problems are outstanding in Rawls' account. First, can justice be divided up in this way into personal morality on the one hand and the distributive justice of the basic structure on the other? For Grant the two cannot be:

> In the western tradition it was believed that the acting out of justice in human relationships was the essential way in which human beings are opened to eternity. Inward and outward justice were considered to be mutually interdependent, in the sense that the inward openness to eternity depended on just practice, and just practice depended on that inward openness to eternity. When public justice is conceived as conventional and contractual, the division between inward and outward is so widened as to prevent any such mutual interdependence. Both openness to eternity and practical justice are weakened in that separation.[111]

Second, is such a sharp distinction of the private and public identities acceptable? Grant deplores the manner in which it is manifested: "[the] widespread concentration of most North Americans on private life, and their acceptance that the public realm is something external to them, takes us far away from the original liberal picture of autonomous and equal human beings participating in the government and

production of their society".[112] It leads to "either the necessity of finding one's role in the public engineering or the necessity of retreating into the privacy of pleasure".[113] Nevertheless in his attack on the universal and homogeneous state he recognizes the importance of the distinction. He accepts the classical understanding of the relation of philosophy and religion, such that all human beings are inevitably religious, but not all will become philosophers. A consequence of this is that "religion has a more direct relation to the public sphere than has philosophy".[114] To assimilate the two, as has happened under the religion of progress, so that philosophy usurps the role of tradition and takes the place of religion and public truth with its claims about the self-evidence of progress, is the totalitarianism of modernity, the absorption of the private (that is, philosophy) into the public.

The problem for conservatism is that it realizes the need for a public religion that is not a philosophy (that is, a public religion that is not the present <u>de facto</u> public religion), at a time when only the religion of progress seems to have the "right of tradition".[115] Rawls by contrast depends precisely on this right of tradition, the values embedded in the public institutions of democratic societies, to give content to his theory. But there is a paradox here. For Rawls is the spokesman of a liberalism that (for Grant) will rationalize the universal and homogeneous state in which public and private are not distinguished, and yet that liberalism is also deeply committed to a sharp distinction of private and public. The paradox is probably to be solved by way of Grant's belief that citizens' private identities are deeply influenced by their public identities. Aware of the role of socialization and social participation in the shaping of identity, Grant (while fully aware of the value of privacy) simply refuses to believe that the sharp separation of private and public has as great a cash-value as it has in (classical liberal) theory. The

presence of base public values will prevent the development of noble private ideals.

This issue is closely connected with the third question: this is the earlier question 3), concerning the feasibility of justice as fairness. To some extent this requires a theory of human nature and society beyond the scope of the present chapter. Nevertheless some preliminary considerations are appropriate. In particular, the likely effects on individuals of the government of the public institutions by Rawls' two principles should be examined: is it plausible that public justice based on the conception of individuals as rational choosers will have no effect on the behaviour and self-interpretation of people in the well-ordered society? Rawls is aware that the public institution of justice as fairness will affect citizens. For example, it has an educative function: because of the full publicity condition of a well-ordered society, citizens "are presented with a way of regarding themselves that otherwise they would most likely never have been able to entertain", that of full autonomy.[116] Again, certain ideals or ways of life will not flourish: "[if] a conception of the good is unable to endure and gain adherents under institutions of equal freedom and mutual toleration, one must question whether it is a viable conception of the good, and whether its passing is to be regretted".[117] And to Nagel's charge that justice as fairness has a strongly individualistic bias,[118] he replies correctly that nothing in the theory prevents more communitarian values, but accepts that it might affect people <u>indirectly</u> towards individualistic values, although the degree of influence would be a matter for conjecture and careful argument.[119] Thus Rawls admits the influence of the public theory of justice on citizens' self-interpretations.

Yet surely the same might hold concerning the tendency towards people being considered as contractors. For while Rawls' account does not

demand anything of a citizen beyond acceptance of the terms of cooperation, it is implausible to think that the practical impact on citizens' self-understanding of a public culture justified in these terms will be negligible. If people in their public identities are treated in effect as rational calculators, and as subjects related to their world as possessors and consumers of it rather than at least partly constituted by it, it is surely plausible that, indirectly, through the manifold channels of social power and idea-formation, their private identities will be forged into a like mould.

(c) Conclusion

Rawls' justification of the principles of justice is, it has been argued in this sectiom, more nuanced than a mere rationalization of liberal democracy: through the device of the overlapping consensus he hopes to ensure that the public terms of co-operation reflect beliefs that citizens have. Nevertheless he has not shown that an overlapping consensus which converged on justice as fairness would be anything other than a "happy coincidence", and his failure leaves him open to Grant's charge that his theory does nothing to hinder the convenience values fostered by the technological society.

Further, his distinction of private and public identities means that Rawls is not committed to treating human beings as self-interested rational calculators, at least at the level of theory: Grant is wrong,[120] therefore, to identify us straightforwardly with the contracting parties. Nevertheless, his suspicion that people in the well-ordered society will become little more than consumers seems likely in practice even if not necessary within the terms of Rawls' theory. Rawls' strong separation of private and public identities also engenders similar difficulties.

There are also two different conceptions of justice involved, and these reflect two different understandings of political philosophy. For Grant political philosophy seeks the truth about the political things.[121] For Rawls, however, "the task of political philosophy for our time", which justice as fairness undertakes, is to find "a reasonably systematic and practicable conception of justice for a constitutional democracy, a conception that offers an alternative to the dominant utilitarianism of our tradition of political thought".[122] The task is practical, not epistemological or metaphysical. Clearly the desire to find a workable theoretical basis for a stable society is laudable, but the parochial nature of Rawls' approach to the exercise, with its procedural refusal to question the consensus, must cast doubt on the ultimate validity of this understanding of political philosophy.[123]

Grant's much profounder conception attempts to think what has been lost in the technological drive to mastery. Whatever the present demands of political pragmatism, the supremely relevant task is one of recollection, of loving, and of gathering from the tradition "intimations of essential deprivals".[124] While the idea of time as history should not be abandoned "as if it had never been",[125] for through it there have been given elements of the good,[126] yet there remains the need to think in unity what in this civilization has been contradiction:

> to those of us who for varying reasons cannot but trust the lineaments of liberal justice, and who somehow have been told that some such justice is due to all human beings and that its living out is, above all, what we are fitted for, - to those of such trust comes the call from that darkness to understand how justice can be thought together with what has been discovered of truth in the coming to be of technology.[127]

4§ Critical assessment

It needs to be shown now how the results of the debate just constructed can be recruited for the wider purposes of a theological critique of political liberalism. To this end, three areas must be examined: (a) the theological basis of Grant's criticism; (b) the representativeness of Rawls as a liberal; and (c) the role of Grant's understanding of technological modernity.

(a) A theological perspective on Grant[128]

Grant has rarely written explicitly on his theology, and indeed displays only occasionally any interest in the traditional concerns of theology. While this paucity of material makes criticism of his theology difficult, it may perhaps also allow a greater latitude for incorporating his thought as a whole into other theological frameworks.

While his theology is broadly Christian, it is not bound to the formulations of traditional orthodoxy. Led to the gospel by way of Greek philosophy rather than the Old Testament, Grant places himself on the side of Christianity that is "farthest away from Judaism, and nearest to the account of Christianity that is close to Hinduism in its philosophic expression".[129] Thus he identifies belief in God with the affirmation that there is order beyond space and time,[130] and opposes the (now largely defunct) biblical theology movement to the extent that it bases Christianity on the history of Israel and stresses the historical to the exclusion of the universal teaching of perfection and affliction.[131] Christ is a universal truth, and should not be connected with an account of God's dynamic action in the world; this seems "unthinkable and to lead

directly to atheism",[132] for it believes in a scrutable providence and justifies the culture-destroying aggression of triumphalist missionary expansionism.

He counts Simone Weil as his ultimate theological authority.[133] She has known Christ, he believes; those who have not experienced such a vision cannot speak with authority but can only speculate about theological matters. For her, he holds, God is perfection and can have no purposes, and so cannot be thought to intervene in history; there is an infinite distance between the order of necessity and the order of the good, so that human beings can never improve themselves by their own efforts, but only by participation in God's being; the corresponding attitude to the realm of necessity is one of submission rather than mastery, a love of fate which will lead to the discovery of beauty.[134] Again from her he accepts that "faith is the experience that the intelligence is illuminated by love",[135] and the belief that justice should not have been separated from love in the Western tradition, that something can be known truly only by the one who loves it.[136]

Weil's Platonism is helpful when it leads Grant to conceive justice as "what we are fitted for", and thus to recognize the existence of a moral order not grounded in history. Again its attitude to the course of history as one of acceptance rather than control helpfully illuminates the nature of technological hubris.

Nevertheless it has theological drawbacks. First, it leads Grant to deny, or at least not positively to affirm, the doctrine of creation.[137] He appears to associate the belief in creation with a belief in the radical contingency of nature and an arbitrary divine sovereignty.[138] However neither of these follow from the doctrine of creation. It is possible to assert both God's ultimate freedom and the non-arbitrariness of nature and the moral order through a doctrine of

creation in which God has in freedom committed Himself to acting in certain ways towards the creation. An emphasis on the Aristotelian notion of the good as embodied in the structures of existence, and on the Augustinian teaching about the necessary connection between created existence and ordering to the good, would admit both the doctrine of creation which is necessary to preserve God's final sovereignty and the objectivity of the moral order which is necessary to render intelligible creaturely existence.

Second, such a Platonism runs the risk of exaggerating its response to historicism by rendering history insignificant. In attacking the assertions implicated in the notion of time as history, such as "the finality of becoming, the assertion that potentiality is higher than actuality, that motion is nobler than rest, that dynamism rather than peace is the height",[139] and recalling us to recollection and to "wondering or marvelling at what is",[140] salvation may begin to resemble a gnostic redemption from the world. Thus one critic complains that Grant refuses to allow his belief in an ahistorical standard of morality to be tested in historical struggle: his vision is a too easy historical fatalism that cannot be translated into politics, a "panic remembrance" which falters at the edge of Nietzsche's abyss and reaches back for "the sinecure of natural law".[141] And Grant's self-appointed task in his later career of not reflecting on the modern but thinking the truth of what is absent in the modern might suggest an unwillingness to engage with the practicalities of justice.

However Grant's practice belies any impression that historical action lacks significance. His political engagement from the beginning of his career supports his approval of More's advice, "When you can't expect the good to happen, try and prevent the very worst,"[142] and his claim never to have despaired of politics. In theory also, he agrees with

Nietzsche that love of fate is not a passive acceptance of "destiny", while any search of the past that insulated from the present would be "cowardly, trivializing, and at worst despairing."[143] "Getting on with the job" is a necessary moral maxim for all: "[what] the world tends toward without it is seen in quietist societies, and against this we may thank God for our activist tradition."[144] Compassion comes before thought: Heidegger is indicted for speaking of Being but conniving at tyranny.[145] And to love is "to pay attention to other people and this means to communicate with them".[146] But philosophy also has a public role: not (in the present circumstances) effecting goods, but subversively unmasking "the assurances that move us to pursue less than the highest ends."[147]

But if Grant is to attribute significance to historical action, he must provide (whether explicitly or not) a theological foundation for this. Not only does he need, as was just argued, a doctrine of creation. He also needs a Christology which affirms the incarnation without a Platonic lapse into docetism, and which, through pointing to the Christ-event as the climax of history, can confer uniqueness on the particular events of history and thus enable a narrative of those events to be given. Moreover he needs an eschatology in which history is gathered up through the divine purpose to its fulfilment.

Grant does not speak to any of these issues. Nevertheless, the last is connected with the doctrine of providence, and this he does address. Here we may contrast his theology with another Christian tradition. For the Augustinian tradition divine providence must be distinguished from the decree of election, the former being purposive but inscrutable, the latter simply arbitrary. Grant, however, while his thought is crudely compatible with the latter when he talks of faith as a matter of "luck" - it just is given to some to know that experience - even if he identifies the call of election with the phenomenal experience of

faith,[148] explicitly denies the existence of the former, appearing to think that to deny the scrutability of providence is tantamount to denying providence itself. Such a denial of providence prevents the possibility of faithful historical action whose meaningfulness is neither dismissed nor imagined to be absolute or independent of the divine initiative. Providence cannot be conflated with creation, for creation has to be complete to render intelligible the notion of the fulfilment of history; nor can it be eliminated, for the divine government of history and the theological founding of politics would be lost. While Grant may rightly regret aspects of Christian missionary expansion, the solution lies elsewhere than in denying the doctrine of providence.

Aspects of Grant's few excursions into theology are problematic, therefore, but this is not tantamount to a charge of heterodoxy. As we have argued, he does not allow his Platonism to cause him to neglect the value of action in history; moreover his sense of immanent teleologies displayed in his attacks on abortion and euthanasia[149] correlates with a Christian conception of the created moral order. But more importantly, his Christianity is never swallowed up by his Platonism. Thus, while he preceives the infinite gap between necessity and the good, he also finds the gap bridged in the act of love which is Christ crucified. And while Christianity shares the classical account of justice, it extends what is due to others (forgiveness), and adds an account of how that due should be fulfilled: participation in the divine goodness involves attention to "the immediate requirements of the world",[150] since the second great commandment is like unto the first. Indeed it is his conviction that the Gospels as well as Plato are the primal revelation for the two dominant Western traditions that leads him in his later work to find tragic and unresolved tensions between the claims of contemplation and of charity.[151] In general, therefore, though we may have reservations about some of his

theological claims, Grant is properly to be included amongst Christian critics of liberalism.

(b) How representative is Rawls of liberalism?

There is little need to rehearse Rawls' liberal credentials. Nobody doubts them, though some may note his well-meaning liberal totalitarianism, according to which "we deny that the concern for salvation requires anything incompatible with ... [equal] liberty [of conscience]".[152] What is more important is how much of liberalism is caught up in Grant's fire on Rawls.

Concerning the first question, about the detachment of values from "the whole", Rawls conception of political philosophy sets him apart from the mainstream of liberalism. His refusal to pin his liberalism on general or comprehensive doctrines, as (he instances) Kant and Mill did, is the other side of his lack of ontological affirmations. Such a refusal he regards as one of the distinctive virtues of justice as fairness: because no more general doctrines are supported by a broad consensus, cooperation must be secured on as narrow a metaphysical and epistemological base as possible. It is an ingenious move: but if the argument presented above was correct, it is inadequate in the face of technological reality, to defend what Rawls would like to defend. At least to the extent that they were willing to say what they thought human beings were, earlier liberals were better advised.

The second set of questions however strike at much of contractarian liberalism, and not just at Rawls. The questions whether the ancient values can be derived from contract, whether other-regard can be deduced from self-regard, and whether contractarianism does not assume a view of the self as contractor, are all well asked of the tradition.

Further, the fundamental liberal divisions between personal morality and public justice, and between private and public identities, are also closely interlinked with founding terms of social cooperation on contract, and to many minds are equally suspect.

(c) Grant's understanding of modernity, technology, and liberalism

Finally, the enquiry must be broadened to its initial scope. Grant, as was seen, maintains that liberal values are being eroded by technological dynamism. Does this imply that, crudely speaking, if we do not stop being liberals we are fated to enter technological tyranny?

This turns partly on Grant's interpretation of liberalism. That it was non-standard (in including non-political thinkers, for example) was noted above. Nevertheless it is notable that his account of liberalism as modernity in its political aspect, rooted in the will, accounts for most of the features of liberalism described in chapter two, from the conception of the self as sovereign chooser, through the progressivist philosophy of history, to the supreme liberal values of liberty and equality. However, Grant never explicitly deals with the possibility of being a liberal in some respects but not in others: in particular, the liberal conception of the self, of the basis of value, of history, and of rationality, can be rejected by a theory that justifies aspects of constitutional, economic and welfare liberalism as being either true or at any rate most appropriate for certain contemporary societies.

But it is also a question of the nature of technological fate. As for Ellul and Heidegger, technology for Grant is a "destining". A product of the Western tradition, technology has paradoxically broken with that tradition, being at once the necessary historical outcome of the Christian revelation and the rejection of the truth given in that revelation.[153] But

Grant differs from Ellul and Heidegger concerning the nature of the destining. For Ellul technology is primarily a sociological, not an intellectual or spiritual phenomenon: only restraints of a sociological kind could change technology, but none such exist, he holds: it is an irreducible social reality, "essentially independent of the human being".[154] For Heidegger, technology is a destining of Being: it is not merely humanly-derived instrumentality, but the demand upon human beings, which follows from the way that they find the world to be, to focus on themselves rather than the world as the source of certainty, and thus to objectify reality and to understand it by representing it as system.[155] While for Heidegger technology is a destining, he is not a determinist: human beings are free at least in the sense that they can open themselves to the essence of technology, and recognize their destining as destining without being constrained simply to obey it uncomprehendingly. For Grant, however, technology is a fate of thinking:

> I mean by 'civilizational destiny' above all the fundamental presuppositions that the majority of human beings inherit in a civilization, and which are so taken for granted as the way things are that they are given an almost absolute status."[156]

Likewise, political philosophy becomes the unfolding of fate because of its concern with judgements about the good which are then acted upon by practical men.[157] This moderately idealist account of the nature of historical change - "theories are at work in the decisions of the world, and we had better understand them"[158] - explains why he places such stress on the intellectual task for the present era of thinking together ancient justice and modern science: praxis alone is no solution, nor is waiting for a "Turning".

But, theologically speaking, necessity in history can only be the necessity of human sinning.[159] The primary human response to technology

must be that of repentance. Further, if technology is a perversion of the good, and not a sham entity with no ultimate ontological status (such as sin or death) - that is, if a more positive normative account of the will can be given, in which it is in harmony with the reason - it could be handled within the scriptural categories of the principalities and powers.[160] It could be taken as a corrupted good which has forsaken its subordinate role and sought absolute authority. And to that the primary Christian response should be the prayer: "Thy Kingdom come!"[161]

CHAPTER FIVE

JACQUES MARITAIN AND THE LIBERAL DEFENCE OF PLURALISM

1 Introduction

Central to any discussion of political liberalism is a complex of interconnected problems concerning the possibility of state neutrality, the justification of pluralism, and the legal enforcement of morality. On these issues the ideas of Jacques Maritain have perhaps been as important as those of any Catholic thinker of the twentieth century. Although their chief influence was during the middle decades of the twentieth century,[1] they potentially have a renewed significance in the light of more recent discussions within liberalism. The value of this potential contribution to contemporary Christian political thought may be gauged by briefly describing the background of the current debate.

The focus of interest within English-speaking political theory has shifted decisively in the last two decades. Liberals, more self-assured against their external enemies as a result of the moral unattractiveness and increasingly evident economic incompetence of revolutionary socialism in practice, have turned their attention instead towards domestic issues concerning the definition and distribution of goods and rights. Arguments within the broad liberal consensus of Western democracies have come to centre-stage, and the rehabilitations of the quasi-Kantian theory of contract by John Rawls, which we discussed in the last chapter, and of a

quasi-Lockean theory of property by Robert Nozick, have become the most prominent philosophical emblems of the wider political argument between welfare left-liberals and conservative libertarians. Nevertheless, while the imaginative plausibility of collectivist societies of any kind remains apparently expunged, the submerged quest for "community" which emerged in the humanistic Marxism of the New Left has re-emerged in the last decade as a response to the alleged "individualism" of much analytical political philosophy. It is this new family of criticisms of liberalism, which draw on the tradition of Aristotle, Hegel and the German Romantics, as well as on Heideggerian analyses of mass society, which is at present attracting much attention.

Representative of these "communitarian" critics of liberalism is Charles Taylor.[2] The understanding of man and society typical of modernity is, he argues, one of "atomism". According to this doctrine, individuals are conceived as metaphysically distinct from society; society is an aggregate of individuals, who enter into it with the instrumental purpose of fulfilling their anteriorly-defined ends: hence rights are granted primacy, and obligations are justified by consent. Against Aristotle, for whom the characteristically human excellences were only made possible by living in society, atomists believe that human beings are self-sufficient as individuals: they deny that the individual is constituted by the self-interpretations communicated by the language, culture and historical traditions of a community. This belief has been sustained, Taylor claims, by a notion of the agent as disengaged from the world of scientifically-neutral facts and as thereby able to experience the heady freedom of a self-defining subjectivity.[3] This view of the agent as detached from nature has produced the modern understanding of natural science (with its stress on objectification and primary qualities), the attempted modelling of the human on the natural sciences, and an account of linguistic meaning

as basically designative. But it has also made plausible the idea that no background understanding of human capacities is required to make intelligible the specification of rights, and thus also the idea that rights can be ascribed without a consideration of the social and cultural circumstances which are constitutively necessary for human agency. However, if the social thesis is true that the distinctively human capacities (such as language-use, freedom of choice, capacity to worship, etc.) can only be developed (or at least properly or fully developed) in society, and if it is only such capacities that make intelligible what rights should be attributed to human beings, it follows that obligations to the society which gives identity to an agent are as fundamental as the rights which that agent claims. That is, the considerations which justify rights should be recognized as simultaneously justifying obligations: duties are not derivative from rights. The modern individual with his panoply of rights is a product of a certain kind of civilization and has duties to the institutional and communal bearers of the culture which have given him that identity.

Taylor's account, the details and difficulties of which are not of concern here,[4] focusses the central issue in the debate between communitarians and liberals. A basic liberal commitment is the ideal of neutrality between conflicting and perhaps incommensurable conceptions of the good. But the communitarian notion of the agent implies that the fostering of the capacities that constitute the agent is of public concern, and thus that the political and legal framework of a society should not be neutral. And this suggests that, if a neutral state is immoral, the degree of pluralism possible within a society must be limited, and with it the range of conceptions of the good that may legitimately be pursued within that society. Are liberals correct to remain attached to their ideal of neutrality, or does the necessity of

socialization for individual development imply that the public realm should embody substantive moral commitments?

The debate between liberals and communitarians, with its focus on the nature of agency, is the most recent guise of the complex of wider and more familiar disputes conerning pluralism and state neutrality which was mentioned earlier. Maritain's vision of a "new Christendom" provides, we shall argue, theological foundations for a distinctive solution, a tertium quid, to these problems which are encapsulated in the question of the neutral state.[5] Accepting the Aristotelian understanding of human beings as naturally social and of the common good as intrinsically moral as well as material, he yet argues for a quasi-neutral state in which each religious group would justify the same foundational charter of rights within its own terms. Although the neutrality of the democratic charter is informed and qualified by his requirement that legislation should not approve conduct contrary to natural law and by his belief that his "integral humanism" will produce a "vitally Christian lay state", his insistence on religious freedom provides in effect the grounding for many other liberties.

Maritain professes to be a Thomist. In the first part of this chapter, however, I argue that his rendering of Thomas serves to justify a version of political liberalism only through a tacit historical relativism and historicism. The apparent similarity between his understanding of the new Christendom and R. A. Markus' pluralist reading of Augustine's political thought is shown in the next part, which discusses Maritain's committedly Christian but pluralist state, to be misleading. Nevertheless, so I suggest in the final section, some of the problems Maritain faces could be solved within an Augustinian framework.

2 Religious freedom, historical relativism

Maritain's distinctive contribution to the Thomist tradition of social and political thought is his defence of the ideal of a new Christendom. He has, he claims, "sought inspiration in the general principles of St. Thomas Aquinas ... and tried to feel ... what would be his personal reaction to the conflicts of human history".[6] To this end he has laid special stress on Aquinas' doctrine of analogy, a method of argument which he finds to be "the truly living and universal instrument of research and of the truth".[7] However, his manner of using the principle of analogy raises the question whether he adopts an improper historical relativism, and indeed historicism, which is at variance with Aquinas. In this section, after an introductory outline of his new Christendom, we examine the suspicion that his understanding of historical development leads to a relativism: particular attention is given to the case of his defence of religious freedom, an issue which also foreshadows the later discussion.

(a) The new Christendom

Three different but overlapping contexts of action can be adduced to make intelligible Maritain's development of the ideal of the new Christendom. The first, reflected notably in True Humanism (1936), was that of Catholic Europe, and especially France, in the mid-1930s. Here was founded his vision of a new Christian order, informed by a Christian social theory and intended as an alternative especially to atheistic communism but also to the rising fascist totalitarianism;[8] this would replace outmoded and dying capitalism,[9] would recognize the value of the

historical gains made by (for example) the labour movements, and would uphold the Catholic church, against internal mediaevalist conservatives and external modernist detractors, as the defender and invigorator of the temporal common good. The second context was that opened up by the prospect, in the latter years of the Second World War, of reconstructing European and world order: the task undertaken here, developed out of considerations such as had been outlined in The Rights of Man and Natural Law (1942), focussed on constituting effective supranational institutions, and framing a universal declaration of human rights which could be acceptable at the level of moral agreement to people of any philosophical or religious creed.[10] The third context, into which Man and the State (lectures 1949, published 1951) partly fits, was that of the efforts of American Catholicism to enter the mainstream of American public life. Maritain could be represented as contributing to a Catholic legitimation of the American experiment, a task which would involve defending Catholics against nativist fears of the Church's authoritarianism,[11] and showing how Catholics would abide by the First Amendment's no establishment and free exercise clauses, provided that these were understood to be excluding preferential treatment for particular churches or denominations, rather than to be discriminating against religion as such and so establishing secularism by default.[12]

These three contexts were in no sense opposed to each other: indeed the continuity and basic unity of Maritain's thought is outstanding.[13] Thus he was to write in Reflections on America (1958) about True Humanism that, although it was originally written with reference to Europe, the congeniality of American civilization to him had led him to reflect that "it appears now to be a book which had, so to speak, an affinity with the American climate by anticipation".[14] It is not out of place to begin therefore with a discussion of the new Christendom, even

though our later discussion will be more concerned with the Democratic Charter, a notion he had not conceived at the time of True Humanism.

The ideal of a new Christendom signals for Maritain the goal of a vitally Christian lay polity which will be appropriate for contemporary historical conditions. The historical ideal of mediaeval Christendom is no longer plausible, he argues: Catholics should work with all people of good will towards a Christian social order which will succeed capitalist social and economic structures and will avoid the errors of individualism, communism and fascism. The temporal polity of mediaeval civilization was just one possible realization of the religious truth about the political order. In new circumstances an analogous realization of the same religious truth is necessary, avoiding, on the one hand, the dissolution of eternal principles through equivocation and, on the other, the false rigidity of univocal application in different historical contexts.

There are certain abstract principles which apply to the temporal order invariably.[15] First, it will be communal. The end of civil society is a common good which is more than an aggregation of individual goods and to which every individual as part of the social whole is subordinated. The common good is the proper temporal end of political society, and is both material and moral. But since the social whole is comprised of persons endowed with spiritual existence, the temporal common good is not its final end. Rather is it ordained to the extra-temporal good of the person: thus Maritain terms the temporal common good the "infravalent" end of political society. Second, the social polity will be personalist. Incompetent of itself to lead to perfection of spirituality or the full autonomy of sanctity, it nevertheless should assist the final end of each person through providing the material, moral, intellectual and social conditions necessary for achieving the goal of human existence, the vision

of God. Third, because it is thus ordered to a supravalent end, the temporal order will be peregrinal in conception: the earthly city is a society of those travelling towards their eternal habitations. This does not entail a purely instrumental role for it, such that it has no value in itself: it should aim to procure "a relative but very real earthly happiness for the assembled multitude".[16]

Similarly, three immutable principles govern the relations of church and state.[17] First, the transcendence of God above any earthly institution implies "the freedom of the Church to teach and preach and worship, the freedom of the Gospel, the freedom of the Word of God".[18] Second, the universality of the Church above every body politic, together with the essential secularity of the temporal order through the division of the things which are God's from those which are Caesar's, entails "the superiority of the Church - that is, of the spiritual - over the body politic or the State".[19] Nevertheless, third, since the Church and the body politic cannot live in separation from each other, and since persons are members of both societies and cannot be divided, there follows the requirement of "the necessary cooperation between the Church and the body politic or the State".[20]

Although these principles are permanently valid, their realizations as concrete historical ideals will vary between contexts. These contexts differ in respect of the "dominant dynamic idea"[21] and the empirical conditions found in each. The historical ideal of mediaeval Christendom was that of the Holy Empire. Its dominant dynamic idea was that of "force in the service of God", and the attendant empirical fact was that the political order was "a function of consecrated activity" and so needed religious unity.[22] This ideal of the sacrum imperium corresponded to a "christian consecrational conception of the temporal", which Maritain analyzes into five elements.[23] First, there was a tendency

towards an organic temporal unity in which political unification would be the expression of a more fundamental intellectual, spiritual and cultural identification: "national quarrels were quarrels within one family and did not break the unity of culture".[24] Such unity was made possible through, second, the effective ministerial function of the temporal towards the spiritual: to the extent that this happened, the political order became merely instrumental to the end of eternal life.[25] Next, there was the willingness to use the institutional or coercive powers of the state to assist towards the spiritual good of persons or the spiritual unity of the body politic. Fourth, there was a "diversity of social races": temporal authority was conceived in the manner of paternal authority, and social structure as a hierarchy of family relations. Finally, there was a distinctive conception of the city's common work: "the faithful strove to build a figurative and symbolic image here on earth of the Kingdom of God".[26]

For Maritain the dominant ideal of the new Christian society will not be that of the holy empire but of "the holy freedom of the creature whom grace unites to God".[27] The temporal order will be motivated by "the conquest of freedom and the realization of human dignity";[28] it no longer requires religious unity to ensure its political stability.[29] Maritain argues here also for five elements which correspond to but replace those of mediaeval civilization.[30] First, instead of a maximal organic unity there will be a pluralism of economic structures,[31] and of juridical structures (which will recognize "the differing juridical status of the diverse spiritual groups included in one commonweal"[32]). The unity will be of a shared aspiration for a common good that best subserves the person's supra-temporal goals, rather than a unity of fundamental doctrinal agreement. Joined in this way by a civic friendship rather than a common faith, it will aim at a unity which is, although minimal and at the level

of the temporal, nevertheless "organic" and "much superior to that of the liberal-individualistic order".[33] Second, the coming of age of the temporal order must be recognized: the authority of the State will be acknowledged as supreme in its own order, serving a genuinely infravalent end, and not just a minister to the spiritual order. Third, the manner of collaboration between church and political authority will reflect the dominant dynamic idea of the autonomy of the person: the state's role in spiritual matters will not be one of legal coercion, but of moral influence through its cultivation of the common good. It will do less to promote the person's eternal interests on the "objective" side, and more on the "subjective" side. Similarly, the church will pursue its mission through its "vivifying inspiration" rather than its social power.[34] Fourth, instead of a hierarchy of social relations, authority will be founded on the fundamental equality of all persons: although government will still derive its authority from God, it will lose its sacral aura and will be mediated through organs of popular consensus. Finally, the common task of the new Christendom will not aim at reflecting the Kingdom of God on earth, but at realizing a fraternal community: it will be this practical common task, not a theoretical doctrinal unity, which will be the unifying force of Maritain's vitally Christian lay state.

(b) The defence of religious freedom

Maritain's portraits of mediaeval and new Christendoms give rise, even in these general terms, to the question whether his appeal to analogy is a legitimate justification or merely a sophisticated blind for a basic historical relativism. His belief that different concrete historical ideals obtain according to the different dominant dynamic ideas and empirical conditions of historical periods requires grounding. To

investigate this we must first describe more closely an example which clearly demonstrates that Maritain prescribes different actions in different historical periods. The example chosen, one which is in addition pertinent to the overall argument, is his defence of religious freedom in the new Christendom, contrasted with his acceptance of the traditional double standard as appropriate for the Middle Ages.

The traditional Catholic position concerning religious coercion, as it had come to be seen by Maritain's time, was particularly associated with Gregory XVI, Leo XIII and Pius XII.[35] Its fundamental and determinative doctrine was that "error has no rights": this was derived from an interpretation of the principle *extra ecclesiam nullum ius*, such that the church had access to the temporal sword in order to ensure the religious unity of Christendom and the elimination of heresy. From the denial of rights to error came teaching on the rights of conscience and the constitutional incorporation of the church. The *conscientia recta et vera*, guided by higher norms that are true, was the Catholic conscience and had full claim to religious freedom. The *conscientia recta sed non vera* was granted inner freedom and the right not to be compelled to accept the true faith, but not the right to the outer freedoms of teaching, worship and witness, though these might be granted for the sake of the common good. The *conscientia exlex*, i.e. *non recta*, had no right to religious freedom. Constitutionally, the old position demanded intolerance where possible and tolerance where necessary. In thesis, in countries where Catholics were in a majority, error may and ought to be extinguished; in the situation of hypothesis, with a minority of Catholics, the evil of error had to be tolerated as the lesser evil.

Maritain's own position concerning the double standard is somewhat ambivalent. It is clear that in general he regarded it, or at least an earlier version of the view just outlined, as appropriate for the Middle

Ages. It is also clear that he advocated for the era of the new Christendom a doctrine of religious freedom. This is to be founded, as mentioned above, on a doctrine of the relations of church and state which reflected the dominant dynamic ideal of the freedom of the person. The person's spiritual interests would be promoted more on the "subjective" than the "objective" side:[36] the political authority would not use legal coercion in religious matters, nor would the church depend on its social power for fulfilling its purpose.[37] This doctrine of religious freedom, while it would permit a civil tolerance that respected conscience, would not represent a dogmatic tolerance: there would be a freedom not to be coerced into the truth, but not a freedom to err.[38]

Now these ideas appear to imply that Maritain has overthrown the double standard altogether, rather than merely consigned the modern world to a period of indefinite hypothesis. They are supported by the statement that even if religious unity were to return, "no return to the sacral regime in which the civil power was the instrument or secular arm of the spiritual power could be conceivable in a Christianly inspired modern democratic society."[39] Moreover, he argues that nothing he says opposes the ideal that the Catholic church alone should have the juridical privileges that rightfully belong to the true religion, but adds that such a condition could only obtain when there was worldwide religious unity and therefore the Catholic church alone enjoyed the privileges granted to every religious body.[40] And most explicitly of all, he quotes Cardinal Manning to the effect that if Catholics became the majority, they would not use political power to constrain faith: this statement of Manning's

> does not refer to the requirements of an hypothesis reluctantly accepted, but to the requirements of the very principles soundly applied in the existential framework of the modern historical climate.[41]

Tolerance, it seems on this evidence, is justified not as a lesser evil, but as a positive good. But, disconcertingly for this interpretation, he also argues that

> in order to avoid greater evils (that is, the ruin of the society's peace and either the petrification or the disintegration of consciences), the commonweal could and should tolerate (to tolerate is not to approve) ways of worship more or less distant from the true one[.][42]

That is, toleration of non-Catholic rites is not a matter of right, but of the lesser evil. Again

> The Church does not lose any of the essential rights she has claimed or exercised in the past. Nevertheless, she can renounce the exercise of certain of them, not because she is forced to do so, but voluntarily and by virtue of the consideration of the common good, the historical context having changed.[43]

And he implies elsewhere that amongst these essential rights are legal constraint over religious profession.[44]

These other passages might suggest, then, that Maritain has not wholly excluded the double standard approach. Thus Sidney Hook argues that Maritain has no disagreement in principle with using force against heresy, and indeed that for him toleration of heresy is an evil, the church merely acquiescing in the modern liberties until she can exercise again her own proper liberty.[45]

It is not evident how these two themes should be made compatible, the one suggesting that tolerance is now appropriate, and thus that the modern era is in a situation of hypothesis, the other that the thesis-hypothesis approach itself is no longer appropriate. The general flow of his thought, however, embracing the new Christendom and the analogical

nature of the concrete historical ideals, surely indicates that the latter should be interpreted as the dominant theme. If this is right, Hook's understanding of Maritain is incorrect in as much as religious freedom in the present age is not a concession but fully appropriate for now, but correct in that for Maritain religious coercion is not straightforwardly wrong in timeless principle, but is justified according to historical context.

(c) Is this not an historical relativism?

If the double standard was applicable during the Middle Ages but is not in the new Christendom, it appears to follow that Maritain is committed to a simple historical relativism. But before the charge can be pressed against him, we must first understand certain features of his philosophy of history.

Time, he argues, has an intrinsic reality. An absolute supra-temporal ideal must be realized existentially and in time, and so must be relative to historical conditions. To separate thesis and hypothesis such that the normative ideal is insulated from contact with experience is to allow the working principles of the practical order to become the "handmaid of opportunism".[46] The thesis/hypothesis distinction should rather contrast "a <u>concrete historical ideal</u>, an image that incarnates eternal truth for a given historical firmament and under a form essentially adapted to it, and <u>the conditions of effective realization</u> of this practical ideal".[47] Although no doubt difficult, such an ideal is not essentially impossible to realize: it is not the fact that circumstances thwart our wills that prevent it coming to be. Thus the ideal must be capable of being willed with integrity: it must be a possible end of rational action. Further, historical change is not continuous, but is

divisible into discrete and discernible organic wholes:

> whereas in actual fact time has a meaning and a direction, human history is made up of periods each one of which is possessed of a particular intelligible structure and therefore of basic particular requirements, a fact that no political brain should ignore.[48]

Such periods are characterized by "historical climates" or "historical constellations".[49] The Middle Ages was one such constellation: the new Christendom will incarnate the analogical principles appropriate to another.

An ideal must, then, be realizable and relative to its age. But it might be wondered why there is a difference in kind, rather than just a difference of degree, between realizing the new Christendom and returning to the ideals of mediaeval civilization: after all, however propitious the circumstances, incarnating ideals is no simple matter. Maritain offers three reasons for thinking that a revival of the Middle Ages is not just instrumentally difficult but also morally inappropriate.[50] First, he appeals to a law governing the relation of man and time, that "a <u>too complete</u> [<u>trop faite</u>] experience cannot be recommenced".[51] Mediaeval Christendom has been lived once, has borne its fruit, and is now dead. Second, the modern age has aimed to rehabilitate the creature and "it is impossible to conceive that the sufferings and experiences of the modern age have been useless".[52] Third, the Christian belief in the government of history by God means that to attempt to make the past immobile would be to deny His providence.[53]

These arguments are sketched so briefly and with so little reference to their assumed philosophical and theological background that it is difficult to evaluate them. At any rate it is not clear whether each of the arguments does not presuppose the periods whose very existence it

is intended to establish. Further, the scrutability of history which each of them supposes is undefended: of course historians can individualize discrete historical periods for their own purposes, but a theological argument must be given for according such periods theological significance, and Maritain provides none such.

Even if such a periodization were shown to be justified, so that in different historical periods there properly obtained different moral and juridical prescriptions, the central question remains whether it acquits Maritain of the charge of relativism. He argues that the new Christendom, while incarnating the same analogical principles, should be regarded "as belonging to an <u>essentially</u> (specifically) distinct type from that of the mediaeval world".[54] But, as one critic enquires, although it is possible for there to be differences between the objects to which a concept applies, how is it possible for a concept to have "des applications <u>essentiellement</u> diverses sans subir d'alteration <u>essentielle</u>"?[55]

Maritain claims, in response, to avoid relativism through his analogical application of the immutable principles that govern the relations of church and state. He does not state explicitly to what kind of analogy he is referring, beyond presenting it as a middle way between univocity and equivocation.[56] Of the two principal kinds of analogy traditional to philosophical theology, that of proper proportionality and that of attribution, the absence in Maritain's exposition of any prime analogate (such as mediaeval Christendom), to which other historical periods would be secondary, suggests that it is not the latter. Presumably therefore it is the analogy of proper proportionality: as certain principles applied under past historical conditions, so certain others obtain now. But such analogies require control: there must be specifiable features common to the relations within each pair of the terms of the

analogy in virtue of which the analogy holds. That is, each pair (empirical conditions: governing principles) must instantiate a universally specifiable relation, such that there is a universally applicable principle which may generate different prescriptions according to empirical circumstances.

Now such a requirement is satisfied by the double standard. For the prescriptions "intolerance when Catholics are in a majority" and "tolerance of Catholics when they are in a minority" are derivable from the universal principle that error has no rights together with secondary claims about the truth of Catholicism and the relevance of majorities. The question is whether Maritain can find a similar fundamental principle which will generate the two prescriptions (a) that the double standard should be adopted at times when political unity requires religious unity and it is generally accepted that force may be used in the service of God, and (b) that there should be religious freedom at times when political unity is compatible with religious pluralism and the ideal of religious freedom is prevalent.

Maritain hints at two candidates (or perhaps a joint candidate), namely the common good and that which helps the Church's mission, when he refers to "the ruin of the peace of the community and the hardening or the weakening of consciences" as greater evils than religious pluralism.[57] But it is not clear that either of these are adequate. As they stand, neither is sufficiently specific. The latter is certainly a necessary condition, but can scarcely be criterial (that is, necessary and sufficient) without incurring the charge of "Machiavellianism",[58] the ascription of rights for such periods as it conveniences the Church. The former requires filling out: while confronting new situations will require the political authority's judgement, the common good itself must be understood as a network of moral claims which are in principle universally specifiable: it

is amongst these that the principle must be found. The most obvious of these is that whatever serves political unity should be taken as deciding about coercion or religious freedom. But political order must itself be an order of justice: although it is properly a norm that regulates the exercise of religious freedom, it cannot be the ground of that freedom.

If no principle can be found from which Maritain's acceptance of the double standard for the Middle Ages and of religious freedom for the new Christendom, it follows that Maritain is an historical relativist, despite his disclaimers. But he has two further lines of defence.

He appeals, first, to Albert the Great and Thomas. They justified their contemporary practice against the patristic church's refusal to use force through the notion of the diversity of states or ages of the church. "That in yet another age", he claims, "it will again be appropriate to make no use of [force for religious ends] is explicable in the same way".[59] But neither of these authorities support his claim. Aquinas in the question utrum sit una ecclesia quae fuit in principio tempore apostolarum et quae est modo[60] accepts Augustine's assertion against the Donatists of the diversa tempora ecclesiae, and says that est alius status ecclesiae nunc et tunc, non tamen est alia ecclesia.[61] Again Albert comments that Christ responded Satis est to the eager disciples offering the two swords on the grounds that

> although in the primitive church, when iniquity and unbelief were prevalent, there was no use for that sword, yet, as we have said, Christ wanted this help [praesidium] to be in the Church, knowing that the Church once it had spread could not govern without the material sword.[62]

But both of these can be interpreted as versions of the double standard: Aquinas and Albert are earlier double-standard theorists, not believers in historical constellations.[63]

Maritain might wish to reply, again, that the approach just outlined is "abstract" and insufficiently "existentialist". The brief answer to this is that it is one thing to take full account of particular historical circumstances before making a moral judgement, another to let those circumstances govern the content of that moral judgement. History is a morally-relevant feature in certain respects: as Maritain himself grants, there is a historical change between the Age of the Old Law and that of the New Law.[64] But there are no morally-relevant ages within the age of the Church. An existential grasp of circumstances is possible without succumbing to an historical relativism.

Here the Vatican II Declaration on Religious Freedom, Dignitatis Humanae Personae, may be compared.[65] In respect at least of its avoidance of historical relativism and its acceptance that the Church may need to repent over past complaisance in unevangelical behaviour, the Declaration was much more satisfactory. Explicitly intending to develop Christian doctrine (Article 1), it declares right from the title its abandonment of the double standard, and accepts that in the past life of the People of God "there have at times appeared ways of acting which were less in accord with the spirit of the gospel and even opposed to it" (Article 12). The church has fully renounced all use of coercion:[66] religious freedom is not recommended as a concession to circumstances, but is argued for in its own right.[67] Its central claim, that the right to religious freedom belongs to the inalienable dignity of the human person (Article 2), is regarded as applying without historical qualification. Not that the right is structurally unqualified: there are regulatory norms which qualify this, as all other rights. Morally, the norm is the "principle of personal and social responsibility" (Article 7); juridically, limits are provided by the concept of public order, which comprises an order of justice and the

non-infringement of rights, an order of public peace, and an order of minimal public morality. Whether these limits were operative in the Middle Ages, the Declaration does not venture to pronounce upon.[68] At all events, although John Courtney Murray hints at a certain historical element,[69] and although the Declaration faces other difficulties,[70] the Council's route through development of doctrine is happier than Maritain's historical relativism.[71]

One question remains. If the criticism of Maritain outlined above is correct, why should he devote himself to such an elaborate philosophy of history, with its stress on the diversitas temporum? Why should he raise the suspicion of historicism, which he himself condemns as "epistemological time-worship" and "chronolatry",[72] if it is open to him to offer a non-relativist defence of religious freedom in the manner of the Vatican Council's? Perhaps, the thought runs, Maritain, writing before the Council, has worked up the complex doctrine of analogy between historical periods just so as to avoid the charge of developing doctrine: perhaps he was seeking a means of rendering his temperamental liberalism compatible with his respect for the magisterium.

In fact, whatever Maritain's motivations, the structure of his thought shows greater complexity in his position than has so far been presented. Two sections of the late work, On the Philosophy of History (1959), throw some light, in which he discusses the laws of "the passage from 'sacral' to 'secular' or 'lay' civilizations" and of "the political and social coming of age of the people".[73] In the former case, the distinction between sacral and secular civilizations is of universal import, though the full autonomy of the temporal only came to its proper historical significance through the Christian distinction between God's and Caesar's realms.[74] In the latter case, which refers to the progressive

movement from subjection to democratic self-government, the Gospel leaven was again crucial; though such autonomy also responded to the call of natural law - "such a spontaneous universal spreading of the democratic process is an obvious sign of its basically natural character".[75]

These two laws of historical change are "typological formulas or vectorial laws": that is, they "manifest" particular yet typical historical developments.[76] But what sort of claim do they make? They are not merely historical generalizations about the secularizing tendency towards separation of church and state and about the geographical spreading of democracy. They also appear to encapsulate the moral claims that a secular temporal order is normatively superior to a sacral order and that autonomy is in itself a good. His analogical treatment of the concrete historical ideals, it seems, masks an evolutionary periodization of history.

Further, the two laws suggest that it is no accident that the empirical and moral claims coincide: history and the improvement in the existential moral order run together because both are outworkings of a fundamentally natural law. This coalescence of historical and moral change may be compared with his reason for denying a conflict between the claims of ethics and of temporal success.[77] There is no need to fear such a conflict, he claims, because underlying natural forces ensure that the way of peace is more potent than the way of war: "the Christian has a natural love of Being and a natural desire to co-operate with the push of creative forces at the heart of history".[78]

The new Christendom turns out to be not just another analogical realization of the immutable principles: it is the order towards which history itself is tending, at least for the moment.[79] This is not to say that Maritain believes that human behaviour is improving: rather, history is moving towards a better moral framework within which human beings

act.[80] Nor does it imply that history is determined in all its particulars: while history is propelled by "the immense dynamic mass of the past",[81] it is wrong to deny with Marx that there is a "sphere of indeterminateness" which allows for freedom.[82] Thus the new Christendom may also be a plausible end of Christian action.

Why should Maritain believe that history is tending towards a more natural order? In the end he seems to have mapped intrinsically ahistorical natural law claims (e.g., that self-determination is better than subjection) onto history, such that a law can be posited depicting the movement from darkness to light. Now there is no reason to deny that human knowledge of natural law grows (or better, is susceptible of growth), nor that social organization has grown in sophistication. But it is illegitimate to deduce - or at least no persuasive argument has been produced to show - that the future can be bound in the manner his vectorial laws suggest. That freedom is better than slavery tells us nothing about the future of the human race.

Maritain, it appears, is not only an historical relativist but also an historicist: such disclaimers of these positions as he makes should in view of this be rejected.[83] Does it follow that critics who reject these positions have nothing to learn from this aspect of Maritain's thought? Should they jettison without remainder all his talk of the intelligible structures of history and the historicism which informs it? Not necessarily, as may be seen from the fact that Maritain does not treat the defence of religious freedom as an abstract <u>topos</u>. The thrust of his thought is not towards a revision of Catholic teaching about heretics, or about Church and State, or indeed about any number of isolated issues, but towards the realization of a whole civilization. It is this ideal that animates and integrates his thought and action, and which leads him to conceptualize history in terms of discrete periods rather than a

continuous flow. For Maritain, only if the building of a civilization forms the end of action can there be an ideal sufficiently noble for a heroic humanism. Whatever the value of his specific proposals for this grander vision, it is this sense of the situatedness of human action and of the complexity of its practical outworking, of the civilizational context of moral issues, which finally abides.

(d) Conclusion

In a memorable passage Maritain lamented:

> Moralists are unhappy people. When they insist on the immutability of moral principles, they are reproached for imposing unlivable requirements on us. When they explain the way in which those immutable principles are to be put into force, taking into account the diversity of concrete situations, they are reproached for making morality relative. In both cases, however, they are only upholding the claims of reason to direct life.[84]

No doubt there was an element of irony here. Nevertheless, although he recognizes the falsity of the opposition, so that there can be immutable principles applied to particular situations without improper compromise, he does not succeed in our opinion in avoiding returning to the dilemma and impaling himself on the latter (relativist) horn. Yet Maritain's better self would have agreed that with a correct doctrine of the Holy Spirit, an acceptance of the role of repentance in moral learning, and a proper understanding of the application of rules to cases, it is possible to construct a model in which reason can be seen to direct life without making impossible demands or making morality relative. Such an approach would also allow us to accept his account of the basis of religious

freedom without being saddled with historical relativism.

3 Maritain, Augustine and Aquinas

Maritain's account of the new Christendom, of religious freedom, and of the understanding of history with which he supports it, clearly distance him from Aquinas, as a brief overview of the latter's political thought shows.

For Aquinas there is a systematic coherence between the naturalness of political society and the constraints on religious freedom. It is natural that humankind is an _animal sociale et politicum_.[85] Society is necessary because of those needs which individuals are unable to satisfy out of their own resources: it provides both "those things without which life itself would be impossible" and what is necessary "to achieve a plenitude of life [_ad vitae sufficientiam perfectam_]".[86] But there could be no social existence unless somebody were set in authority for the sake of the common good:[87] there were inequalities between human beings even in the state of innocence,[88] and it would be wrong if those more knowlegeable and righteous did not exercise their gifts on behalf of the rest.[89] Such natural subjection should however be distinguished from slavery, which is a consequence of sin: in the relationship of slavery the master rules for his own benefit, whereas in the political relationship the king rules over a free people for the sake of the common good.[90] The function of the ruler is to secure the virtuous life which is the object of human community.[91] But since it is the final aim of social life to attain the supreme good of the enjoyment of God, and since this cannot be achieved by natural virtue, human government must be subordinate to divine rule.[92] Thus, although kings have the supreme power in temporal affairs, under the law of Christ

reges debent sacerdotibus esse subiecti.[93] From their obligation to assist the virtue of their subjects, rulers must cooperate with the church by their religious intolerance. Infidels and Jews may not be compelled to profess the faith, because credere voluntatis est;[94] their rites, however, are not to be tolerated, unless some benefit can be derived from toleration (the foreshadowing of the true faith in Jewish rituals, for example) or some greater evil averted.[95] Heretics and apostates should be constrained, by force if necessary, to acknowledge their baptismal promises, for their own sake and for the safety of others: their punishment is a just reward for their sin.[96]

Aquinas' political thought represents the working out of an Aristotelian understanding of political authority within a theological context. In its founding of the order of politics on nature, its belief that human government can assist towards virtue, and its acknowledgement that the achievement of that good requires the subordination of political authority to God, Aquinas's understanding of politics echoes wider themes in his theology and metaphysics: notably, the healing and supernatural elevation of nature by grace, and the harmonious hierarchy of relations between higher and lower orders of being.

Augustine's different theological cast of thought engenders a different conception of politics, centring principally in the place his historical-eschatological scheme gives to providence. Although he initially toyed with the neo-Platonic notion of political authority as part of a cosmic hierarchy of levels, his developing reflections on history, sin, the church and justification, issued in a radical reinterpretation of the classical treatment of the political order.[97] Before the fall, he appears to have believed, there was no political subordination.[98] There is no clear evidence that political authority for Augustine was part of created nature: the principle that rational

creatures, made in the image of God, should have dominion only over irrational creatures is naturally taken as excluding political direction (and slavery) from the created order, an inference strongly supported by his observation that "the first just men were established as shepherds of flocks, rather than as kings of men".[99] Unlike the natural authority of parents over children and of husbands over wives, political authority, whose essence is coercion, is a divinely ordained remedy for the fall. Since it was instituted to restrain sin, it should not be imagined to contribute positively to the final human good: rulers are not divine agents for helping towards salvation, though obedience to them is submission to the hidden will of God. For Augustine, whose opposition to Pelagianism had led him to counter nature with grace and so to espouse a highly unified account of iustitia, this divorce of earthly politics from eschatological righteousness means that justice cannot be a defining feature of political society. The ends of a particular commonwealth are constituted by a compositio voluntatum of the people agreeing together about the common object of their loves. The saeculum represents the temporal life of the two cities in their intertwined, and only eschatologically separated, reality.

From this R. A. Markus concludes that the main lines of Augustine's thought "point towards a political order to which we may not unreasonably apply the anachronistic epithet 'pluralist', in that it is neutral in respect of ultimate beliefs and values".[100] He further claims that this "'secularization' of the realm of politics implies a pluralistic, religiously neutral civil community", and that "Augustinian theology should at least undermine the opposition to an open, pluralist, secular society."[101] Although Augustine did countenance and even encourage religious coercion, this bore no structural relation to the general tenor of his political thought: rather was it part of a pastoral strategy of

disciplina, aided by his non-libertarian understanding of freedom of choice and (in his earlier thought) by his prophetic interpretation of the Roman Empire.[102] His acceptance of religious coercion does not compromise ascribing to Augustine the lineaments of a neutral "state", so long as the use of that term is seen as a reasonable extrapolation from the text and not read anachronistically into it.[103]

When compared with these two great figures in political theology, much of Maritain's thought, despite his professed Thomism, bears a greater prima facie resemblance to Augustine than to Thomas: not only in the connection of politics with history and the structural place for religious freedom, but also in respect of the naturalness of equality and the endorsement of pluralism in civil society. Such a conception, we shall argue through a closer analysis of Maritain's account of the committed but pluralist civil society, seriously misprises Maritain, although this should not detract from the important differences between him and Aquinas. Nevertheless, through the process of attending to the differences between Maritain and Augustine, we turn out to be in a position to suggest some improvements on Maritain's answer to our central theological problematic concerning the neutral state and the debate between communitarians and liberals.

4 A committed but pluralist political society

Maritain's account of the relations of natural sociality and political neutrality, his proposals for state commitment but juridical pluralism, and his attack on liberalism and instrumentalist accounts of politics yet defence of rights in the name of democracy, draw us to the

heart of his political thought. Eschewing the term "neutrality" because of the vitally Christian nature of his projected lay state, he yet offers a pluralist society which also admits the importance of human socialization and cultural traditions. Although such a programme, we shall argue, faces difficulties, a comparison of his thought with Augustine's indicates the direction in which will be found such resolution of them as is possible.

(a) The attack on liberalism

In an appendix, entitled "On Liberalism", of the early The Things That Are Not Caesar's (1927),[104] Maritain provides his fullest explicit reflections on liberalism. Liberalism, he defines in accordance with Leo XIII's encyclical Libertas, praestantissimum, is "the application to morals and politics of the claim to absolute independence which is the distinguishing characteristic in philosophy of rationalism and naturalism", and is therefore "the refusal in practice to admit any control proceeding from anything other than ourselves".[105] Though there are degrees of liberalism, every form of it tends to its perfect type in which all authority, natural or supernatural, is repudiated. It is centrally a teaching about freedom, and Maritain faults this doctrine of independence of the will from every external rule:

> Parity of truth and falsehood, of justice and injustice, of good and evil, is the metaphysical secret to which liberalism obscurely attunes the human soul.[106]

His understanding of freedom and the liberal misconception of it is expounded in the important essay "A Philosophy of Freedom" (1935).[107] Here he distinguishes "Free will" from the "Freedom of autonomy". The former a human being possesses as a person, which concept Maritain appears to understand with Boethius as the individualis substantia rationalis

naturae: this "initial freedom"[108] is a metaphysical given that is inherited with rational nature. But it requires development into the latter, "terminal freedom",[109] and it is our duty to become in the psychological and moral orders what we are metaphysically, that is, "by our own effort to make ourselves persons having dominion over our own acts and being to ourselves a rounded and a whole existence".[110] Freedom of choice is teleologically ordered beyond itself to the freedom of autonomy.

This has implications in two significant areas. In "the order of the spiritual life" two mistakes are to be avoided: the error, on the one hand, of assuming that freedom of autonomy is a natural endowment, with a consequent self-divinization;[111] and, on the other, of making free will an end in itself, so that "man, condemned to recurrent acts of choice without ever being able to bind himself, is launched into a dialectic of freedom which destroys freedom".[112] Properly, freedom of autonomy is realized perfectly only in the beatific vision, at which time freedom of choice will become redundant, since that object will have been gained to the choosing of which free will was itself ordered.[113]

In the order of social life, there are parallel errors. One is to base social life on freedom of autonomy, which is re-interpreted "as a type of transitive action, expressing itself in production and control ... in material accomplishment, in the realization of power":[114] thus Hegelianism, Marxism and Fascism. The other is the liberal, individualist error. This takes freedom of choice as an end in itself: society functions to preserve this "in such a way that all possible acts of free choice may be available and that men may appear like so many little gods, with no other restriction on their freedom save that they are not to hinder a similar freedom on the part of their neighbour."[115] But such an ideal in practice is hypocritical (since this freedom is available only to a few) and leads to an anarchy which both prevents effective realization of

autonomy and requires compensation for by a large and enslaving bureaucratic apparatus.[116]

This identification of the liberal error of equating freedom with the initial freedom of choice and his sense that personhood is an object of moral striving as well as a given metaphysical status make clear Maritain's rejection of Enlightenment liberal conceptions of agency. But the constitutive role of society in the realization of human potential implies further for him the denial of three typically liberal notions: the ideals of an instrumental and material understanding of the common good, of uniting through common consent to a philosophical minimum, and of a neutral (that is, laicist) state. We shall treat each in turn.

People seek society, Maritain contends, because of the nature of human perfection and because of sheer physical need. As "persons", they require communion since human beings naturally "overflow into social communications in response to the law of superabundance inscribed in the depths of being, life, intelligence and love."[117] As "individuals" they need material sustenance. This distinction between individuality and personality is identified with that between matter and spirit. The ontological grounding of individuality is in matter, which of itself is lacking in the determination of form and tends internally to fragmentation and externally to the selfish exclusion of others. Personality is metaphysically rooted in the spirit, being "the subsistence of the spiritual soul communicated to the human composite"[118]: it is the form which endows the individual with independent existence and the possession of interiority, and which enables unification internally and relations with others through knowledge and love externally. This distinction of individuality and personality should not be mistaken for a Cartesian dualism of unextended mind and extended body, however: the two are

co-principles of the one reality of the human being, just as chemical composition and aesthetic value are two aspects of the one reality of a painting.[119]

Because people desire society to achieve their ends in both these dimensions, the common good of society cannot be construed as the material goods or sum of material goods of the individuals that compose it. That idea "would dissolve society as such to the advantage of its parts, and would amount to a frankly anarchistic conception, or to the old disguised anarchistic conception of individualistic materialism in which the whole function of the city is to safeguard the liberty of each".[120] Nor, however, is the common good analogous to the public good of a hive in which individual bees are sustained merely for the sake of the whole. Since it is the common good of <u>persons</u>, it is redistributed back to each and is common to both whole and parts: intrinsic to it, therefore, is respect for the rights of persons and families. Further, this correlation of the common good with the good of persons is the source of its principal value, namely

> the highest access, compatible with the good of the whole, of the persons to their life of person and liberty of expansion, as well as to the communications of generosity consequent upon such expansion.[121]

But achievement of such a goal is inconsistent with an understanding of society in which a moral component is optional: the formation of society around justice rather than force is what distinguishes civil society from a gang of robbers. The common good is an ethical good, by which Maritain means both that it may only be furthered by ethical means, and that it is a good in itself: it is not just a function of individual utilities, but is constituted by the achievement by each of "real independence from the servitudes of nature".[122]

It follows that the common good is a moral as well as a material good, and it is one of the errors of liberalism to deny this.[123] Governments are obliged to secure the welfare of the soul as well as external advantages and benefits:

> the social polity is essentially directed, by reason of its own temporal end, towards such a development of social conditions as will lead the generality to a level of material, moral and intellectual life in accord with the good and peace of all, such as will positively assist each person in the progressive conquest of the fullness of personal life and spiritual liberty.[124]

Although political authorities may only apply external sanctions for external misdeeds and are not competent to ensure the eternal well-being of citizens, the law must yet be understood as the "pedagogue" of liberty, educating citizens into freedom with a moral authority which has all but disappeared under liberalism.[125]

Human beings require society for the sake of their moral as well as their material needs, then, and this generates a richer notion of the common good than liberalism can provide. Yet since Maritain's ideal is of a pluralist society, the issue arises of the basis of social unity and of the liberal claim to found this in a common subscription to a philosophical minimum. The source of mediaeval unity lay, he asserts, at the supratemporal level in a common Christian faith. In the modern period, however, philosophers (he mentions Descartes, Leibniz, Hegel and Comte) attempted to usurp the function of religion by replacing faith with reason as the supratemporal principle of unity. Such efforts have met with singular lack of success, which leads Maritain to the conclusion that "nothing is more vain than to seek to unite men by a philosophic

minimum".[126] And, he continues,

> this quest of a common denominator in contrasting convictions can develop nothing but intellectual cowardice and mediocrity, a weakening of minds and a betrayal of the rights of truth.[127]

Instead of an agreed doctrinal minimum, the practical common task of effecting the common good should be the basis for common action.[128] Instead of subscription to a common creed, whether of faith or reason, there must be a "simple unity of friendship".[129]

Maritain recognizes that this fraternal love will be insufficient, however. He notes the importance of "a biological community of interests and passions, a social animality so to speak".[130] More importantly he indicates that this civic friendship itself presumes an ethical specification,[131] and that while force may be necessary for social order, it will be ineffective without religion.[132] For a secularly Christian political community, the ethic that will inform social unity will be Christian. This introduces the third liberal ideal which Maritain wishes to criticize.

The common good is directed towards obtaining for its citizens the greatest liberty of autonomy. Yet such autonomy, which in its purest form is perfect sanctity in the vision of God, is not achieved in earthly life. Because the highest goal of the person is a destiny beyond time, the temporal common good of the civil society must be indirectly subordinated to those ends which it is incompetent to achieve. Indeed unless it is so subordinated, not as a pure means but "infravalently",[133] it fails to fulfil its own nature. The common good is destroyed once it claims to include within itself the higher ends of the human person.[134]

This is incompatible with the liberal ideal of neutrality or

laicism, according to which no religion should have any public role. The temporal order is to be confessedly religious, and specifically Christian: every state, he proclaims, "will be obliged to make a choice for or against the Gospel".[135] The political order

> can and should also, while all the time remaining in its own order, bear in its proper political specification an impregnation of Christianity. A christian city or commonwealth is a temporal city intrinsically vivified and impregnated with Christianity.[136]

(b) The Democratic Charter

In these criticisms of the liberal conception of freedom as initial freedom, and thence of the notions of the common good as constituted materially and not morally, of social unity as attainable through joint consent to a philosophical minimum, and of the political order as neutral and separated from religious commitment, Maritain appears far removed from typically liberal political conceptions. Yet, as we saw earlier, he is committed to a form of pluralism. He wants a body politic Christianly inspired, yet one which allows people of diverse understandings of the good to co-operate in the common task. It is this blend of commitment and pluralism that is at once the strength in his criticism of liberalism and the source of potentially seriouus difficulties.

The issues are focussed in the conception, shadowed in The Rights of Man and developed in Man and the State, of the Democratic Charter. It is possible, he holds, to obtain public agreement to a charter which would detail personal and social rights of citizens, without obtaining similar

agreement about the rational justification of those rights. A common creed of this kind, enabling practical co-operation between those of differing theoretical positions, was lacking in nineteenth-century bourgeois liberalism. Because that understood democracy as an arena for the clash of ideas, including those prejudicial to the continuance of the democratic arena, it was unable to resist disintegration under the force of totalitarian propaganda. Instead there is needed a substantial but non-religious civic faith, constituted by the practical rather than philosophical or dogmatic agreement of citizens. The mediaeval creed of religion and the modern creed of reason each required the imposition of beliefs which are prejudicial to genuine democracy: common action can not now be based on agreed religious or philosophical premisses, but only on agreed practical conclusions.

Certain other conditions are necessary in addition to the jointly accepted practical principles: Maritain adds that citizens must "similarly revere, perhaps for quite diverse reasons, truth and intelligence, human dignity, brotherly love, and the absolute value of moral good".[137] And he asserts the right and the duty of education for democracy, since civic peace depends on acceptance of the terms of co-operation framed in the democratic charter. Each religious group must teach the truths of the democratic charter from within its own suppositions, and in order that it does not reduce to a set of lifeless propositions, those who teach the charter "must believe in it with their whole hearts, and stake on it their personal convictions, their consciences, and the depths of their moral life".[138]

There are clear parallels between Maritain's account of the democratic charter and Rawls' account of justice as fairness, each citizen or group of citizens justifying in the one case a list of constitutional

rights, and in the other certain principles of justice which might include (by plausible extension) the constitutional specification of rights. Maritain's account of the plurality of justifications for the democratic charter, based on the principle that "[a] genuine democracy cannot impose on its citizens or demand from them, as a condition for their belonging to the city, any philosophic or any religious creed",[139] has a clear *prima facie* resemblance to Rawls' notion of the overlapping consensus, based on the recognition that "just as on questions of religious and moral doctrine, public agreement on the basic questions of philosophy cannot be obtained without the state's infringement of basic liberties."[140]

There are, however, disparallels. The principal difference may be discerned from the role Maritain casts for natural law in relation to the democratic charter. Natural law, of which he gives a broadly Thomist account, albeit with an idiosyncratic understanding of knowledge by connaturality,[141] serves both as the basis for the specification of the constitutionally-recognized human rights, and as the properly Christian justification for those rights. Other creeds will justify those same rights from within their own positions. Rawls by contrast proceeds by abstracting from the question of the existence of natural law: the principles of justice are specified by derivation from the very terms on which citizens will co-operate, without any reference to an antecedent moral law, although Christians are welcome to provide a natural law justification for themselves of the ruling principles of justice.

This shows a distinction between Rawls and Maritain in two respects. First, although both assert that practical agreement is possible despite theoretical disagreement, for Maritain this is because there is a conceptual separation between morality and religion, whereas for Rawls the notion of a "conception of the good" is employed precisely so as to abstract from the issue of whether such a separation is appropriate.

Second, while both hope that all will agree to the public terms of co-operation, Rawls (as was argued in chapter four) can supply no substantial reasons for his hope, whereas Maritain provides at least some support for his claim.

This support is to be found in his ontological grounding of the principles of the charter in natural law, a basis which is central to Maritain's belief in practical agreement. The theme is developed at its deepest level in his account of the morality of "pseudo-atheists" in his article "The Immanent Dialectic of the First Act of Freedom".[142] By the first act of freedom he means the first childhood action performed from the moral motive of pursuing good or avoiding evil rather than from desire of praise, fear of blame, or other heteronomous motives. Logical analysis of such an act shows, first, awareness of the formal distinction of good and evil; second, the existence of a law of human acts; and third, the ordainment in lived act, though not in signified act, towards God as the ultimate good. Thus in such an act the intellect has an actual but non-conceptual knowledge of God, knowing the Separate Good through a practical and non-speculative direction of the will to its natural end. While grace is necessary for this act to be good, and supernatural faith for it to be salvific, the agent need be conscious of neither of these. Now such an act is not confined to childhood, and is found whenever an adult "by means of a decisive act of free will ... changes the essential direction of his moral life".[143] Further, it may be found whatever a person's religious background: indeed, it is found amongst those who are consciously atheists, many of whom have denied an imaginary entity that is supposedly either immoral or logically impossible, but not the God who is the final object of the reason and terminus of the will. These pseudo-atheists may consciously disagree with Christians about ultimate matters, but they have chosen the moral good and have therewith an

unconscious knowledge of God.

The implications of this for agreement about issues of morality, despite disagreement on speculative matters, are drawn out obliquely in Man and the State. Here Maritain asserts that there is "a sort of unwritten law, at the point of practical convergence of extremely different theoretical ideologies and spiritual traditions".[144] This is due to a complex "geology of the conscience" in which common but pre-conscious ethical knowledge is refracted into consciousness through differing rational frameworks,[145] though it is particularly through the Gospel leaven that these apperceptions have been awakened.[146] The undoubted fact of moral disagreement despite the ontological universality of natural law can be ascribed either to different determinations of more basic principles or to the presence of perverted inclinations.[147]

The ontological grounds for agreement in practical principles are an important feature in the argument for common subscription to the democratic charter. In particular they lead to a different account of "political heretics" than can be provided for by Rawls. These heretics are those who threaten the common unity because they reject the democratic principles on which it is founded.[148] For Rawls, as was argued in a previous chapter, the irreducible paradox remains that certain people - he instances the recalcitrant fundamentalist - may in the last resort be coerced against their will despite never having agreed to the original terms of co-operation, thus irretrievably vitiating the principle that a society is justified only when justified to each of its members. The deviant cannot be condemned as irrational, since the very criteria for practical irrationality are ultimately derived by consent. But Maritain, while curiously appearing to think that there is no moral difficulty within his suppositions about coercing those who break the law because of their anti-democratic opinions,[149] can at least appeal to the

unnaturalness or perversity of their actions as grounds for coercion.

(c) Dissenters from natural law

Nevertheless Maritain shows only peripheral awareness of the difficulties of the democratic charter. In an introduction to a UNESCO volume on human rights he alludes to the need for a "scale of values" to adjudicate clashes between rights, and senses that differences will arise because of the different theoretical justifications of the charter.[150] Elsewhere he comments briefly on how agreement on paper about the list of rights will lead to discord in practice because of the different hierarchies of values related to liberal-individualist, communist and personalist understandings of the basis of human dignity. But the discussion is couched in a tone of cosy nonchalance about the means of resolving these disputes.[151] And the same bubble of enthusiasm leads him to imagine that in nations such as France and the United States "practically everybody would be ready to endorse all the tenets of such a charter", and indeed in general that "we have good reason to hope that in all the nations of the world the people - I say the people, whatever the case of their governments may be - would be likely to offer the same endorsement."[152]

There are hints, however, contained in a discussion of matters of conscience, of the guidance Maritain would offer for legislation concerning those who reject natural law morality within a vitally Christian lay state. The general principle is that

> the legislation of the Christian society in question could and should never <u>endorse</u> or <u>approve</u> any way of conduct contrary to Natural Law. But ... this legislation could and should <u>permit</u> or <u>give allowance to</u> certain ways of conduct

> which depart in some measure from Natural Law, if the prohibition by civil law of these ways of conduct were to impair the common good[.][153]

The common good, he continues, could be damaged either if communities within the nation whose loyalty to the nation was essential to the common good were constrained from acting on their moral beliefs, even if they deviated from Christian morality; or if many of the citizens were of insufficient moral capacity to follow particular natural law precepts. Such derogations would be allowed not because of some blanket right to pursue the moral career of one's choosing, but because legal permission of deviant moral codes is a lesser evil for the sake of the common good. Since the purpose of law is to lead to virtue, the adaptations of natural law to the moral traditions of a nation will be as few as possible, and would never be justified because of "sheer relaxation of morality and decaying mores".[154]

These derogations could, he suggests, be recognized constitutionally through the granting of charters to those communities or spiritual groups which the legislator in his political judgement recognized.[155] The charters would be adapted as compromises between the public morality and the communal traditions: therefore for Catholics the charter would converge towards Canon Law, while in the case of the colonizing of polygamous cultures, to cite Maritain's example, the ill effects of polygamous practices would be limited by the charter and every encouragement given in the direction of natural morality.[156] The relation of the individual charters and the overarching Democratic Charter is not made explicit, though it may be that "federal" legislation would cover some areas and leave others to the discretion of the communities: thus it is suggested by one commentator that civil legislation would coincide with church legislation on marriage, education, domestic responsibility for

children, the freedom of succession, and so on, but permit divorce or birth control techniques for those religious groups which accepted them.[157]

Natural law must therefore always be the positive pole in the direction of legislation in the lay state of the new Christendom, and there would be degrees of variance from it. In this way "the commonwealth would be vitally Christian, and the various non-christian spiritual groups included in it would enjoy a just liberty".[158] Maritain appears to envisage as his focal case countries such as France or the United States, countries in which the dominant moral traditions are rooted in versions of Christianity and are _prima facie_ close to natural law, and in which a few religious minorities would demand separate attention.

But this raises the question of those countries which are not Christian. The issue of whether Maritain's prescriptions apply to the kingdom of the Turks (as it were), turns on his understanding of the relation of Christianity and natural law. Often, on the one hand, he appears to imply that a natural law commonwealth would _eo facto_ be a Christian commonwealth. Thus for a Christianly-inspired body politic it would be sufficient for the people to recognize the value and reasonableness of Christian political conceptions, not necessarily to profess Christian faith.[159] And he talks of the democratic charter having arisen through the awakening by the Gospel of the "'naturally Christian' potentialities of common secular consciousness".[160] This suggests the characterization of the natural order as unconsciously Christian that was discussed above in relation to the category of "pseudo-atheists". On the other hand, it clearly helps if the commonwealth is explicitly Christian: a Christian democracy is a democracy "fully aware of its own sources".[161] In general Maritain's position reflects the principle that while "the political order has its own proper specification", it can and should "bear

in its proper political specification an impregnation of Christianity".[162] That is, while there are commonwealths properly called such which are not Christian, they are never more truly themselves than when explicitly Christian. From this it appears that the natural law pole is necessary to any body politic, whatever its religion: the Kingdom of the Turks would have to lean, however slightly, towards a Christian order. But it also seems that any country which did not have such a natural law pole would thereby be unjust; and since justice is essential to the political order for Maritain,[163] those countries would not contain properly political societies. This anomaly we return to in the last section.

(d) Conclusion: Maritain and the communitarians

We are now in a position to see, by way of summing up this section, how Maritain's political thought addresses the original questions about socialization and neutrality that were raised at the beginning of the chapter in connection with the communitarian criticisms of liberalism.

Maritain's Thomism clearly allows him an understanding of agency that is communitarian rather than liberal: instead of a discrete self prior to its ends, metaphysically separable from society and with a given freedom which society functions to protect, Maritain's notion of personality takes it to be fulfilled in and to that extent constituted by social communication, its freedom a goal of psychological and moral pilgrimage as well as a metaphysical given.

This understanding of human beings as perfected in society implies the scotching of three characteristically liberal ideas: an instrumentalist conception of the common good, civic unity through shared acceptance of a philosophical minimum, and the laicist state. The rejection of these should not be assumed too quickly to be a move in a communitarian

direction: civic friendship, for example, as the basis of civic unity need only mean a willingness to co-operate without a commitment to shared substantial values. Nevertheless it is clear that existentially, with a proper Thomist denial of separately subsisting essences, political society will embody shared commitments that will reflect particular determinations of the democratic values of the new Christendom. The same idea is made when he accepts that the public expression of the civic faith would employ the forms of the Christian confession most appropriate to the people's particular religious traditions.[164]

Maritain differs however from at least the cruder forms of communitarianism through his acceptance of the moral imperative which he derives from the fact of pluralism: against the Romantic conception that anarchy is the only alternative to a substantial and shared conception of the good, he recognizes that in modern societies a form of social peace is enjoyed despite religious and philosophical disagreement.[165] This peace he wishes to be mediated institutionally through the Democratic Charter: some reasons were suggested for why Maritain imagined that practical agreement might be achievable despite different theoretical premisses. But the charter, despite being justifiable to every religious group in terms of their own assumptions, is not straightforwardly neutral: it provides for concessions to the moral creeds of particular groups for the sake of the common good, so long as these are kept in tension with the demands of natural law. Maritain's vitally Christian lay state should be seen not as a neutral state but as a natural law state with moral toleration.

This makes clear Maritain's response to one commentator who distinguishes cultures with shared linguistic and historical backgrounds (which may support several religious traditions) from Christian or other religious cultures (which may be common to many linguistic and historical communities), and notes that Maritain scarcely deals with the first.[166]

While it is true that Maritain is not primarily concerned with the former, it is clear that his Thomist sense of existentiality would allow the cultural traditions of a nation to be preserved so long as they did not conflict with natural law. And of course the multiplicity of determinations intrinsic to the working out of natural law would present each culture as a particular and individually patterned manifestation of what Christian culture must universally be.

5 Maritain in an Augustinian framework

This discussion of Maritain's position in relation to the debate between liberals and communitarians was set in the theological context of the contrast between Thomist and Augustinian accounts of political society. We must now consider whether Maritain's prima facie semblance of Augustinianism is deeply rooted, and then, if he turns out to be more nearly Thomist, how the adoption of an Augustinian political theology would help to illuminate the problem of the neutral state.

(a) Maritain and Augustine

There are several areas of ostensible similarity between Maritain and Augustine. For Augustine the political order is founded historically through providence; Maritain, as was seen above, also injects an historical dimension into his political prescriptions. Augustine finds human beings created equal, allowing natural subordination only between male and female, parent and child; Maritain has no place for natural subordination between citizens. Augustine looks for no more agreement concerning commanding and obeying than is found in a compositio voluntatum

concerning the things that pertain to mortal life; Maritain unfolds the Democratic Charter detailing the practical agreements reached by opposing theoretical creeds. Indeed the opinion which Markus accords to Augustine, that people "are more easily brought to agree in their intermediate principles, vera illa et media axiomata, as Bacon says, than in their first principles",[167] could as easily be ascribed to Maritain. And the general picture presented by Markus of a secular realm, pluralist and non-ultimate, describes Maritain's vitally Christian lay state with some accuracy.

Nevertheless Maritain is much better understood within the Thomist tradition, despite his many differences from Thomas. Although, as we argued, he is an historical relativist and historicist, political order is still part of the natural order. History enters in for him because nature itself is historicized, whereas for Augustine the locus of history in political thought is to be found in the categorization of the realm of politics as a providential dispensation in response to the fall. For the mature Aquinas the fall introduced the possibility of tyranny into the natural realm of political coercion, and Maritain no doubt would affirm an analogue of this: but for neither is the fall intrinsic to the very possibility of political subordination.

Again for Maritain the political order tends towards virtue, being a divinely appointed agency to assist (albeit indirectly) the journey towards God, rather than an instrument for minimizing disorder. Instead of having civil authority serve as a haven against iniquity, ut tuta sit inter improbos innocentia,[168] he finds a positive and creative role in its capacity, by securing the material and moral conditions of the good life of the body politic, to contribute to the welfare of the soul. Further, as in classical and Thomist thought, justice is "a primary condition for the existence of the body politic":[169] it is not that every kingdom is a

latrocinium unless its ruler is a Christian constantly praying for divine forgiveness, but that if a political society is found to be unjust, it is merely a gang of criminals. Government by Christians is not essential to the just society, although Christian leaders would be beneficial because of their awareness of the true sources of democracy and the natural law justification of the Democratic Charter.

Finally, Maritain's understanding of freedom is more Thomist than Augustinian. If Markus' interpretation of Augustine's account of political freedom is correct,[170] and his anxiety to secure Augustine for the cause of Berlin's negative liberty is the only reason for suspicion, then his opposition of this to Thomas' positive conception of liberty makes Maritain to be a Thomist. The distinction of the two kinds of liberty in this context might be misleading, in as much as both Augustine and Aquinas regard social existence as constitutive of and not just instrumental to human fulfilment, and in as much as Maritain argues for many rights more regularly associated with negative liberty. Nonetheless it still makes clear that for Augustine political coercion is a curtailment of liberty, while Thomas thinks liberty diminished only if coercion is not for the agent's good. Now, although (as we have seen) Maritain thinks religious coercion wrong in the new Christendom, and although he may well subscribe to the basic principle of the free society that freedom only be restricted when necessary, neither of these imply that he need regard legal coercion as such as intrinsically diminishing liberty: if so, his thought would still be compatible with a Thomist view of freedom.

Yet the superficial similarity of Augustine and Maritain prompts the question of what difference adopting a broadly Augustinian political theology would make to Maritain's contribution to the debate between communitarians and liberals. Augustine's denial that justice is intrinsic

to political society allows him to make intelligible the (albeit limited) order found in unjust social organizations, but it also appears initially to place him on the liberal side of the liberal-communitarian debate. This is evident if we consider another distinction made by Basil Mitchell between a "liberal society" and a "pluralist society".[171] The former turns on an understanding of liberalism

> which bases itself on a conviction about the nature of man and of his destiny and which insists on the need of the individual for freedom to choose the way he shall live ... a liberalism which has an explicit metaphysical context.[172]

The latter idea, that of a "pluralist" society is not wholly clear, wobbling between scepticism (which "denies that there is a truth about life") and an incommensurability thesis (which asserts "that there is no rational way of achieving agreement" about the ends of life), though evidently at least what is implied is that there are no publicly agreed truths beyond what is needed "to sustain a viable society".[173] Now Maritain's espousal of political freedoms, sustained by a public natural law creed, might place him with the former, while Augustine's limitation of agreement to the things that belong to mortal life, without any reference to justice, would put him with the latter. Within Mitchell's terms, does not Maritain play "liberal" to Augustine's "pluralist"?

At this stage we should note that Markus' derivation of an open, religiously neutral society from the saeculum as a temporally entwined and only eschatologically separable reality is contentious. Markus grants that the use of the word "state" is an inference from the text and would be an anachronism if read into it,[174] but still maintains that from Augustine's notion of the saeculum can be extrapolated the institution of the neutral state. Augustine, he holds, does not have an ideal of the Christian state:[175] he merely wishes to secure a common sense of membership for

Christian and unbeliever alike.[176] However Markus has, by his own admission, difficulties with the emperor's role in coercion: clearly Christian emperors, amongst whose duties are "to put their power at the service of God's majesty, to extend his worship far and wide",[177] cannot be identified tout court as the executives of a neutral state. But further, as Oliver O'Donovan well argues,[178] there is no common use of political society towards different ends: only the civitas terrena has an agreement about the uses of the political order, and it shares a common end in eternal destruction. Markus' stress on membership takes insufficient account of the pilgrim nature of the civitas caelestis, which merely makes use of the earthly peace during its earthly sojourn. A condition of order is all that is common to the two cities, not a neutral institution.[179]

The saeculum, then, does not entail directly the neutral state, but only an earthly peace, of which the heavenly city makes use. The neutral state is not essential to the Augustinian polity: backwoods tribes are not obliged to accept the political and legal institutions of Western pluralism. Thus Mitchell's liberalism or pluralism, or indeed countless other moral frameworks, would be possible, provided they served the common peace. Now in focal cases of Western liberal democracies it is factually most plausible that a condition of peace will be best secured, as a matter of peace aside from justice, through some version of liberal democracy: summed up in that phrase are the public traditions of political discourse which are accepted, for good reasons or bad, for the sake of outward show or from inner conviction, by the vast majority of the citizens of those societies. An Augustinian could be sympathetic in broad outline to Maritain's new Christendom, as one suggestion for a polity appropriate to those societies.

But, further, although Augustine denies that justice is properly

part of the definition of a commonwealth, he yet grants that "the better the objects of its united love, the better the people".[180] While it is not part of the *esse* of the body politic that its law be natural law, nonetheless, given that natural law is a better guide for legislation than other objects of love, such a standard could be taken as part of its *bene esse*. And this would allow us to introduce into this Augustinian framework Maritain's interpretation of natural law as applied to the new Christendom. The Democratic Charter could be admitted into an Augustinian political theology as an appropriate political framework for Western-style liberal democracies, without implying either that it is appropriate for all societies past and present, or that natural law itself need be historicized.

(b) Public reasons

This is not yet to say that Maritain's account is without difficulties. Some of them we have argued to be avoidable by adopting a framework of an Augustinian political theology. Probably the most glaring of those that remain concerns his failure to recognize sufficiently the theoretical problems that arise from the differing and probably incommensurable justifications of the Democratic Charter. How are the conflicts in the adjudication of rights that these will inevitably raise to be resolved without the Charter and its interpretation becoming, like politics on Michel Foucault's account, the locus of another "war pursued by other means",[181] albeit one more precisely circumscribed?

Maritain, as we saw above, appealed to natural law both as the basic orientation of the Charter and as the grounds for his belief in the possibility of practical agreement. No doubt his lack of doubt concerning the feasibility of his proposals was aided both by the Christian nature of

the societies he was principally addressing and by the wide reception granted to the Universal Declaration of Human Rights. Yet the problem in this position is revealed when it attempts to govern an issue such as public policy on abortion. If this is decided on the grounds of an appeal to natural law or to the Christian traditions of the country, a large and influential section of the population will be bitterly aggrieved. Civil war by competition of interest groups must result from not having public reasons for public decisions: if Maritain is to maintain the ideal of politics as conversation about the good rather than as the balancing of the power of pressure groups,[182] it appears that he must provide a theory of public rationality.

Some have attempted to produce such a theory by appealing to the nature of rationality itself. Charles Larmore, for example, uses Jürgen Habermas' notion of the ideal speech situation to argue for a neutral justification of state neutrality, based only on the prior moral commitment to rational conversation.[183] Rawls uses the rationality present in the public traditions of liberal democracies. Richard John Neuhaus wishes, in the case of the United States, for Christianity to become the sacred canopy which would provide the basic agreements necessary for public conversation.[184] David Tracy, searching for a less etiolated conception of rationality than the current technicized reason, develops his notion of the "classic" as a publicly-interpretable symbol which can disclose reality.[185]

Tracy takes as a special case of the "classic" those symbols from the Christian tradition which might address human rights, and suggests that these "can disclose new possibilities of human solidarity, and of personal and communal self-transcendence".[186] Yet it seems fortunate that these symbols, together with the Buddhist notion of compassion towards all living things, and no doubt other religious ideas, all point towards a

belief in the dignity of the human person. Might there not be "classics" which indicated a rather different morality? His method of argument requires an implicit appeal to a natural law ontology, which points to our previous discussion: the first principle of the possibility of public conversation must be the affirmation of the existence of a common world.

In addition to that requirement must be the recognition that there is no good reason to believe that the liberal hope that a society be justified to each of its members can be realized. A number of models of justification have been developed which might work granted the reasonableness (even fairly minimal reasonableness) of the participants: but there are unreasonable people who remain people. Of course this does not preclude the fortuitous circumstance of every person happily assenting to a liberal society justified on these grounds; but to make this highly implausible claim central to the project is a desperate approach. It follows then that no earthly society can be guaranteed to receive the full consent of each of its members, and therefore that, within the liberal terms of justice based on consent, justice on earth cannot be ensured. This does not imply that the achievement of such justice as is possible is not a worthy end of action, but only that those who seek it must, with Augustine's judge, pray: "De necessitatibus meis erue me!"[187]

CHAPTER SIX

THE CENTRAL PROBLEM OF LIBERAL CONSTITUTIONAL THEORY

1 Introduction

The concept of the Democratic Charter was elaborated by Maritain in an effort to secure a public definition of the personal and social rights of citizens without resorting to or presuming an agreed justification of those rights: he hoped for a practical moral consensus without philosophical or religious agreement. Natural law was to provide not only the Christian justification for the Charter and the specification of the rights listed in it, but also the ontological grounding for the belief that moral agreement was in principle obtainable. In Chapter Five it was argued that Maritain was insufficiently attentive to the problems posed for the Democratic Charter by its public dependence on conflicting and probably incommensurable rational justifications. These difficulties arose chiefly at two levels: at the level of the theory of rationality, concerning the possibility of adducing public moral reasons as a basis for public action, and at the level of constitutional theory, concerning the potential conflict generated by the commitment of the liberal democratic political order both to individual rights and to majoritarian choice. Some reflections on the former were offered in the last chapter; in this chapter we consider issues raised by the latter.

Maritain's conception of democracy comprised both a procedural

component, namely the electoral accountability of the government to the people and the use of majoritarian decision-procedures at several levels of choice, and a substantive component, which included the rights detailed in the Democratic Charter. The former was ultimately derived from the right of the people to govern themselves;[1] the latter was based on the demand that the Christian lay polity expound and defend the common tenets which formed the fundamental creed of its social and political life.[2] Yet the relation between the two components, formal and substantial, was never systematically developed: although in one place he asserted that a "renewed democracy" should be able "to defend itself against those who would use democratic liberties to destroy freedom and human rights",[3] he gave little guidance conerning either the proper institutional locus for settling conflicts between "democratic liberties" and "human rights" or the principles by which they should be adjudicated. Given the range and contemporary importance of his preoccupations in political theory, this lacuna was barely reprehensible. Nevertheless it occurred precisely at the node of a cluster of issues which together form the central problematic of present-day constitutional theory, concerning the nature and propriety of the separation of powers, the value of written and codified fundamental or constitutional law, the justification of judicial review of legislative or executive action, and the alleged conflict between majoritarianism and individual rights.

These are problems which not only confront a full development of Maritain's political theory but also lie at the core of Western political thought, since they portend a conflict between its fundamental allegiance both to individual rights (the "liberal" aspect) and to majority rule (the "democratic" aspect). As a matter of history, it was claimed in chapter two, while supporting equal political rights, liberals have sometimes feared democracy, associating it with popular tyranny and the suppression

of the rights of individuals and minorities, and have sought, in line with their characteristic stress on the effectiveness of institutions rather than the virtue of citizens, to control majorities through a range of constitutional devices. The most prominent example of this is of course the American constitution's highly-refined scheme of checks and balances, with its co-ordination under the Constitution of functionally-separated powers, its system of federal and state governments, and its inclusion of such features as the Presidential veto, the bicameral legislature, the senatorial ratification of Presidential appointments, and the judicial review of legislation.

Of these features of the American system the most discussed in the context of the defence of rights has been the last mentioned. Although the power to declare unconstitutional any law that contravenes the Constitution is not made explicit in the text of the US Constitution, nonetheless the right of judicial review, and with it the interpretation of the relation between legislature and judiciary as one of potential conflict between the rights of individuals or minorities and the principle of majoritarian decision-making, has been implicit in American constitutional practice ever since Chief Justice John Marshall's ground-breaking doctrine (formulated in Marbury v. Madison (1803)) that the American Constitution is fundamentally law, and that legal interpretation and adjudication is peculiarly the province of the judiciary.[4]

No such power has been invested in or seized by the British judiciary, and there exists no written constitution, in the sense of a body of fundamental law codified into a single document, which could be enforced by the courts against Parliament. There have however been calls for the incorporation of a Bill of Rights, perhaps of the European Convention of Human Rights,[5] into British domestic law, for a number of

reasons, including the growth of executive power within the British Parliamentary system, the failure of the British governmental machinery to provide prompt (if any) remedies for grievances, and the creeping encroachment on individual and group rights in the name of the "public interest" or "national security", particularly in special contexts such as Northern Ireland. Most recently, alleged infringements of rights in connection with trade union membership, press freedom, and governmental secrecy, have contributed to making the entrenchment of a written constitution and Bill of Rights into central demands of the largely liberal and socialist "Charter 88" manifesto.[6]

In this chapter we attempt to gain some theological purchase on the issues of constitutional and political theory connected with the judicial review of legislation, making special reference to the introduction of a Bill of Rights into British domestic law. Because to this writer's knowledge there has been no theological literature on the subject,[7] the argument will be more discursive than exegetical in relation to the theological issues, although some of Maritain's pronouncements on the basis of democracy will be discussed. After an outline of the precise problem and a brief account of some short-cuts that do not succeed, aspects of probably the most important general theoretical defence of judicial review, that of Ronald Dworkin, are presented. John Finnis' criticisms of Dworkin are discussed, and it is shown that these need supplementing in order to produce a general theological account of the relation of legislative and judiciary. The remainder of the chapter is devoted to developing that account and showing its bearing on the question of adopting a Bill of Rights and judicial review in the United Kingdom.

Before that, however, some remarks on the scope of this chapter must be made. First, although we are principally concerned with the

general problem of judicial review in North Atlantic types of democracy, by making special reference to the British system we can afford to ignore several issues which are irrelevant to that context, and therefore not intrinsic to the general problem, but which are discussed at length in the American literature. Amongst them are federalism cases, in which the Court[8] has to decide issues of "incorporation" and the relation of state and federal law (although we recognize that federalization of the United Kingdom through the devolution of power to the regions would require some governmental body, most likely judicial, to resolve conflicts); separation-of-powers cases, where the judiciary must decide disputes between the legislature and executive; historical questions concerning whether federal judicial review was constitutionalized by the Framers of the American Constitution;[9] and finally, issues of "substantive due process" taken as issues of the interpretation of the Fifth and Fourteenth Amendments, even though many of the most controversial cases of judicial review (such as Lochner v. New York (1905)[10] and its successors, and Roe v. Wade (1973)[11]) have been decided under this rubric.

Second, we will not discuss here questions of the merits of a written constitution, but only those which pertain to the enactment of fundamental law understood in the sense of a Bill of Rights. Certainly many issues concerning statutory constitutional law overlap with those concerning Bills of Rights (its provisions may not be amendable by ordinary legislative process, for example), but they will not receive attention here outside of that connection: no doubt the frequent assimilation of fundamental law to constitutional law in American writing is partly due to their "Bill of Rights" consisting in the first ten amendments to the constitution.

Third, we shall be concerned with judicial review of legislation, not with judicial review of executive action, provision for which is

already established in the United Kingdom; nonetheless the discussion is clearly relevant to review of administrative action. Finally, it should be emphasized that our interest is not with judicial "innovation" in cases involving either statutory delegation of authority to a court (whether explicit or implicit) or underdetermination of a case by statute law, common law and judicial precedent, but rather with the judicial declaration of a law's unconstitutionality: not, that is, with the judiciary's role in fulfilling or interpreting the legislature's purpose, but with its capacity for frustrating that purpose.

2 The problem defined; and some unsuccessful short-cuts

The teasing central problem can be formulated more precisely in three ways, each differing according to the principle which is taken as axiomatic. The first assumes the procedural understanding of democracy and makes judicial review the problem: this questions how a system basically committed to electorally-accountable decision-making can admit enforceable decisions made by the judiciary, which is composed of people appointed rather than democratically elected.[12] The second, impressed perhaps by the Supreme Court's desegregation decision in Brown v. The Board of Education of Topeka (1954),[13] takes judicial review as fundamental and with that side constraint seeks to maximise the power of the legislature.[14] The third takes the principles of both majoritarianism and judicial review to be derived from a common source which itself may be analyzed in order to determine their relative merits. One example of such a source might be utility; another might be some understanding of equality; a third might be at the level of rights, such that both the political rights of equal participation in the political process and the civil and welfare rights of

citizens would be canonized in a Bill of Rights and protected by the courts.[15]

Although each of these formulations sets the problem in a different perspective, they are all united in the basic assumption that there is at least a _prima facie_ inconsistency between policy-making by the elected representatives of the people and judicial policy-making. Some have argued, however, that the inconsistency is merely superficial. For example, it is claimed that in Britain, Parliament can override any judicial opinion not to its liking, and therefore that to the extent that the courts make decisions which are not reversed by statute, they in effect do so as delegates of Parliament. Again, it is urged that because Supreme Court judges in the United States are appointed by the President and ratified by the Senate, and the higher judges in the United Kingdom by the Queen on the advice of the Prime Minister in consultation with the Lord Chancellor, the judges are indirectly elected by the people. Third, at the opposite extreme from the last point, it is suggested that although judges are not popularly appointed, political representatives are rarely responsive to their constituents.

None of these arguments is cogent. The first underestimates the force of practical obstacles: pressures of time on the Parliamentary agenda and the political complications of reversing decisions in emotive moral areas. More importantly, it neglects the special conditions of entrenchment that would most likely accompany a Bill of Rights, and therefore the particular difficulty Parliament would have in reversing a judicial decision in precisely the most controversial and thus (in many instances) evenly-balanced cases. The second argument ignores the categorical difference between appointment and election. The former implies the intrinsic inappropriateness of reference to the electorate in a manner the latter does not: thus the principal reason for appointing

rather than electing judges has been to avoid accusations of political partiality. Certainly the history of appointments of and decisions by judges scarcely shows a record of detached impartiality and neutrality,[16] but the solution to this is not (though this would require further argument) popular election of justices. Moreover, at an empirical level, the argument fails to note that on the evidence from the United States, where Supreme Court judges must register their (at least nominal) party allegiances, the degree to which such explicit politicization of appointments affects the Court's judgements is difficult to prove: on the one hand "packing" the panel or increasing its number has not always helped, since judges have not always followed the policies which on appointment they might have been expected to pursue;[17] on the other hand the policies of the Court cannot oppose over the long run the wishes of a stable majority.[18] Either way, there is a sufficiently indirect connection between electorate and the judiciary for the appointment of judges not to be simply equivalent to election by the people. The final argument - that representatives themselves are not very responsive to the electorate - does not do justice, to the extent to which it is true, either to the critical importance for democratic government of elections, which are the primary and most effective means of securing such representative co-operation as is possible,[19] or to the Burkean argument that office-holders are representatives with consciences, not delegates with instructions.

3 Ronald Dworkin's defence of judicial review

The issue is not resolved, then, by these various arguments that judicial review by unelected judges and a commitment to majoritarian

policy-making are, despite appearances, compatible. A more robust defence is necessary if judicial review and majoritarianism are to be united in the same constitutional system. The position which will serve as starting-point for our reflections is that presented by Ronald Dworkin, who makes an appropriate choice both because he has treated the underlying theoretical issues with more philosophical awareness and sophistication than any other current defender of judicial review, and because he has integrated his account of the relations of judiciary and legislature into a general anti-positivist jurisprudence and anti-utilitarian liberal political philosophy. In addition, his grasp of the more fundamental issues make transfer of his arguments to the British constitutional context particularly easy.[20]

Dworkin's theory of judicial review is based on his revisionary understanding of the proper functions of legislators and judges. He agrees with his predecessors that courts and legislatures cannot be simply opposed, the one issuing statutes and the other merely interpreting them, since the law may be vague, may appear to have "gaps", or may produce conflicting provisions in particular cases. The positivist reponse to this generally resembled that of Benjamin Cardozo, in his classic account of judicial reasoning, The Nature of the Judicial Process,[21] who argued that where the correct interpretation of the law was unclear it was the duty of the judge to act as legislator: "interstitial" adjudication was more akin to creation than to discovery, and the judge "ought to shape his judgement of the law in obedience to the same aims which would be those of a legislator who was proposing to himself to regulate the question".[22] Dworkin argues, against this kind of position, albeit in the analytically more refined version developed by H. L. A. Hart, that for two reasons the methods of reasoning employed by judges and by legislators cannot be straightforwardly identified: the first concerns the type of argument

appropriate to each institution, the second the nature of adjudication.

The difference between the kinds of argument suitable to each institution turns on Dworkin's contrast between arguments of policy and arguments of principle. Arguments of policy, he says, "justify a political decision by showing that the decision advances or protects some collective goal of the community as a whole",[23] while arguments of principle justify a decision by showing that it "respects or secures some individual or group right".[24] The distinction between collective good and individual or group rights is the distinction between two types of political aim: within any political theory a political aim is any state of affairs such that "it counts in favour of any particular decision that the decision is likely to advance, or to protect, that state of affairs, and counts against the decision that it will retard or endanger it."[25] A "goal" is a non-individuated political aim, while a right is an individuated political aim which may be pursued even at the expense of goals, should they conflict: rights are "trumps" over goals. Using this distinction between rights and goals, Dworkin then defines questions of principle as questions about the rights of individual or groups against each other and the state, and questions of policy as concerned with the overall goal of a society and the appropriate strategy for achieving it.[26] The distinction between arguments of principle and arguments of policy then affords a contrast between the legislature and the courts: while the former should and do use both kinds of argument, the latter should and (Dworkin argues) do only operate with arguments of principle. The fundamental ground for offering this description of the contrast between the two institutions turns on the basic conviction that the demands of justice, of rights and duties, cannot be reduced to what will make the community "go better" in any utilitarian sense, and that it is the duty of judges to adjudicate in accordance with the rights and duties which they believe people have.[27]

The other strand in Dworkin's insistence that courts are not deputy legislatures is drawn from his theory of adjudication and legal interpretation: even if judges may appeal to principle alone and not to policy in hard cases, they do not simply legislate their own moral principles.[28] The positivist opposition of what is given-in-law and what is left to the judge's discretion is, he argues, amongst other things both phenomenologically inaccurate, in that judges find that law and precedent are constitutive of rather than constraints on their decisions, and morally unjust, in that by implication hard cases are decided by retrospective legislation. Instead the law must be treated as if a seamless web: if a law is insufficiently discriminate to decide a case, that is not because it is incomplete and requires superaddition, but because it is too abstract and requires more concrete expression. There is a right answer in hard cases, even if it is disputed and even though there is no rigidly defined procedure for specifying it. For Dworkin this does not imply "spooky" metaphysical commitments, but only the responsibility of judges to reason in a certain way. The process of legal reasoning is a matter of developing a theory of the law which produces the best "fit", sufficiently detailed to cover the case at hand, between legal provisions (and he provides for the variables introduced by the differences between statute and common law) and the history of precedents. Clearly such a process will require the judge to use his own judgement: in particular he may have to elaborate contested concepts by reference to those considerations of political philosophy which he finds persuasive. But his convictions will not be <u>simply</u> opposed to the community's convictions, since the theory he produces is generated out of his interpretation of the community's convictions as they have been expressed in law and precedent. To the extent, therefore, that it can be said that judges "innovate", they do so in a manner very different from legislators.[29]

For Dworkin, then, while on the one side it would be naive to think courts and legislatures utterly distinct in kind, on the other judges do not simply legislate. How then does he move from this account of courts as concerned with principle, and legislatures with policy as well as principle, to a defence of judicial review? John Finnis suggests that because courts are the forum of principle and legislatures the forum of policy, the trumping capacity of rights over goals grounds the constitutional supremacy of the judiciary over the legislature.[30] No doubt this correctly expresses the general relationship of the two, but Dworkin does not explicitly provide that account, partly perhaps because of Alexander Hamilton's influential Federalist description of the judiciary as "the weakest of the three departments of power",[31] but more importantly because the trumping power of rights is by itself insufficient to justify judicial review of legislation, since the legislature itself may and must deal with arguments of principle as well as of policy. That is, in order to justify the judicial arm's power of striking down legislation, and not just its role of using arguments of principle in hard non-constitutional cases, special arguments are necessary.

These arguments are grounded on the root notion of treating people as equals, the fundamental principle of Dworkin's political theory. By "treatment as equals" he does not mean "equal treatment", that is equal distribution within a society (whether of welfare, of material goods, of resources or just of opportunities),[32] but a more fundamental conception, namely "the right to equal concern and respect in the design and administration of the political institutions that govern them".[33] Although this right of itself could be satisfied by any of the different kinds of equal distribution, it is not an empty category: amongst the things it guarantees is the claim of all those whose interests will be affected by a decision to be heard in the debate concerning whether the decision will

serve the general interest.[34]

More importantly for our purposes, from the right to treatment as equals Dworkin derives three grounds for the institution of judicial review. First, from this fundamental ideal come the ideas both of democracy and of the rule of law: thus Dworkin treats the central problem concerning majoritarianism and judicial policy-making in the third of the ways outlined above, by appealing to a more basic value. But this deeper value implies, Dworkin appears to argue, that "justice is in the end a matter of individual right, and not independently a matter of the public good",[35] and such a claim of justice can only be ensured by an independent forum of principle. Democracy, when understood as a substantive and not merely procedural notion, is enriched rather than impugned by judicial review..

The notion of treatment as equals also explains why certain justifications for legislation are inadequate.[36] Pure utilitarianism or pure majoritarianism, for example, could offer no grounds for opposing the legislature in the case of racially discriminatory legislation which a strong majority of the people want, and so, Dworkin argues, treatment as equals cannot mean merely the equality demanded by these conceptions. Rather than the consequences of legislation, it is the types of argument used in defence of proposed legislation which should be scrutinized: thus "[r]acially discriminatory legislation is unjust in our own circumstances because no prejudice-free justification is available, or, in any case, because we cannot be satisfied that any political body enacting such legislation is relying on a prejudice-free justification".[37] And it is for such a scrutinizing role that Dworkin thinks judicial review justified.

Third, through judicial review minorities and the poor are treated as equals.[38] Although Dworkin thinks the power of individual citizens is weakened by instituting judicial review, some citizens are likely to gain

more than they lose. In particular, since on the one hand as a crude generalization the rich have more power over the legislature than the poor, and on the other majoritarianism is intrinsically biassed against minorities (whatever those vague and shifting entities may be), judicial review may enhance the power of respectively the poor and minorities.

All three arguments serve to benefit individuals and minorities, but they are each different kinds of argument. The first turns on the non-reducibility of rights to a function of the collective good, the second on the kind of reasoning for legislation that is impermissible, and the third on the relative distributions of access to political power of systems with and without judicial review. The third also differs from the other two, at least in respect of the second of its limbs, in the following way: while at a formal level it is a contingent feature of legislatures that the rich have, all else equal, more power over them than the poor, it is at the same formal level intrinsic to majoritarian decision-procedures that minorities will have reduced power. That is, at this formal level only the part of the third argument which refers to the nature of majorities shows an intrinsic problem with majoritarianism: for the other two (and a half) some further argument is necessary to show conclusively that majoritarianism needs supplementing, perhaps by judicial review. Why can the right of moral independence, the ensuring that justice be a matter of individual right, and the rights of the poor not be attended to by a responsible legislature? Why need the judiciary be brought in?

Dworkin answers in the following terms:

> Judicial review insures that the most fundamental issues of political morality will finally be set out and debated as issues of principle and not of political power alone, a transformation that cannot succeed, in any case not fully,

> within the legislature itself ... It is a pervasive feature, because it forces political debate to include argument over principle, not only when a case comes to the Court but also long before and long after.[18]

There is some problem over the interpretation of this passage. Finnis interprets it as saying that "what is in question is issues _of_ political power, not the fact that issues will be decided _by_ political power alone ... The question is ... the 'internal' question, how the issues are framed and considered within the respective forums."[40] On this premiss he argues[41] that it is curious for Dworkin to set up the contrast between courts and legislatures in terms of the difference between issues of principle and issues of "political power alone". For if both of these terms are to be interpreted in terms of the participants' reasoning, Dworkin would seem to be arguing that in courts judges decide in accordance with what they think is right, while in legislatures representatives vote in accordance with what they think the majority will think; whereas in fact, Finnis claims, legislators also argue the internal question concerning what they (or at least their party) think, not the external question about the preferences of the majority.

This last statement is surely plausible as an empirical claim. Yet surely it is only a relevant consideration because of a perversity in the presentation of the argument. For Finnis' initial premiss in his interpretation of Dworkin seems questionable: although it makes Dworkin's argument consistently internal, it neglects the more obvious fear which underlies his position, namely that in legislatures issues are decided _by_ political power, whereas judges who have no fear of re-election may nurture their thoughts in somewhat more temperate surroundings. The merits of the issue are for legislators often enough less important than the opinions of (some of) their constituents or their selection committees:

they may debate at the level of reasons and not at the level of beliefs about the majority's preferences, but they vote in line with political pressures. The real direction of Dworkin's argument becomes clear in his contrasting "the battleground of power politics" with "the forum of principle":[42] the legislature is different from the judiciary not only in its use of arguments of policy, but also in the comparative unresponsiveness of its decisions to the merits of the issues.[43]

This argument of Dworkin's supports judicial review as a necessary addition to a representative assembly in two ways. It suggests, first, the value of reflective debate on political issues, as well as the impetus judicial review gives to public discourse on questions of political and general morality, to a degree which Dworkin for some reason thinks cannot be supplied merely by Parliamentary debate and its public reporting. Second, and more importantly, it may provide reasons for believing in the superior accuracy of results of the judiciary: although there is no prima facie strong reason for thinking the legislature less accurate, the relative independence of the courts from political pressure removes that potential form of distortion - in particular judges are able to preserve "speculative consistency" to an extent which legislatures would not ordinarily match.[44]

Dworkin strengthens his case by counteracting some arguments against it. First: one version of the demand that judicial review be consistent with democracy or be abandoned allows constitutional adjudication so long as judges "confine themselves to enforcing norms that are stated or clearly implicit in the written Constitution" (Ely's understanding of interpretivism);[45] another version demands that judicial review confine itself to "process" issues, that is, those issues which concern the effective exercise of democracy, and refrain from matters of

substantive morality (Ely's own version of non-interpretivism). Dworkin's account, the argument in either of its forms continues, claims that adjudication of hard cases necessarily brings in the justice's own judgements of value, that this is incompatible with review understood in the terms just given, and therefore that Dworkin's account of interpretation undermines his case for judicial review.

Clearly Dworkin cannot accept that democracy entails a refusal to import any substantive judgements of value into adjudication, since he accepts the former but rejects the latter; the reasons for his rejection of strict constructionism were outlined earlier. His answer to this objection must therefore rest in his argument given above that his conception of the rule of law, which includes judicial review, enhances rather than detracts from democracy; for democracy is not understood merely in a procedural sense, and both democracy and the rule of law are grounded in the deeper value of treatment as equals which for Dworkin justifies judicial review.

Second, to the argument that judges, at least in the United Kingdom, are conservative by disposition and so would not help liberal legislation, Dworkin replies that making them aware of their conservative bias through the requirement that they make explicit judgements of political morality is no reason for thinking that they would become more conservative: indeed making them judge according to rights rather than welfare would be broadly liberal in its results.[46] Finally, to the argument that a general awareness that judges made conscious decisions of political morality would bring the law into disrepute, Dworkin replies, first, that in the cases where the law has been brought into disrespect ("whatever that means"),[47] it has been because of the content of the decision, not because the judges used arguments of political morality; second, that individual bad decisions only affect the citizens' obedience

to the particular law, not their regard for the institution of the law in general; and third, that much of the sense of impropriety would be removed if the public were made aware that judicial review is compatible with democracy and is "recommended by an attractive theory of the rule of law".[48]

Dworkin argues, then, for a concept of judicial review based on his account of the relation between courts and legislatures which denies that courts simply legislate in hard cases, both because of the nature of adjudication and because of the kinds of argument they may not use. Judicial review ensures that justice is a matter of individual right rather than of an independent public good, that law is not enacted for certain kinds of reason, and that minorities and the poor are treated as equals in their access to political power; these are secured by judicial review principally because the courts' freedom from electoral accountability makes them more responsive to the arguments of principle than representative assemblies. This account of judicial review is not impugned, he claims, either by the argument that only strict constructionist accounts of legal interpretation are compatible with democracy, or by the alleged conservatism of British judges, or by the claim that explicit judgements of political morality would bring the law into disrespect.

4 Finnis' criticisms of Dworkin

Criticism of Dworkin's individual arguments will be reserved for later. We start from the general criticisms of Dworkin made by John Finnis: by showing that Finnis' arguments need to be supplemented by a

more general theory about the relation between legislature and judiciary within a theologically acceptable theory of democracy, and developing such a general theory, the basis of our criticisms of Dworkin should become clear.

Dworkin's defence of his understanding of the separation of powers turned, it will be recalled, on a distinction between arguments of principle and arguments of policy, which in turn depended on a distinction between collective good and individual right. Finnis criticizes this latter distinction on two grounds. The first is familiar and cogent against many forms of utilitarianism: the idea of a quantifiable collective good appeals to a notion of an aggregation of different goods which is intrinsically incoherent and neglects the incommensurability of the states of affairs whose commensurability it assumes; there is nothing against which individual right can be contrasted.[49] The second is directed against Dworkin's allowance that <u>in extremis</u> rights may be overriden by policy. His assertion that "rights are not absolute and do not hold when the consequences for policy are very serious"[50] does not ultimately take seriously the exclusionary nature of rights which it has been the centrepiece of his theory to affirm. Instead of rights being defeasible or subject to exceptions under extreme circumstances, they should be properly qualified when they apparently conflict with other rights.[51]

Behind Finnis' criticisms of the notions of the quantifiable collective good and the rebuttable right lies a different conception of the goal of government. Every governmental action aims not at "collective welfare" which is independent of individual rights, but at the common good which is itself constituted by individual rights. More precisely, moral rationality in governmental action implies fulfilment of the basic requirements of practical reasonableness, amongst which is the requirement of "favouring and fostering the common good of one's communities",[52] but

which also includes the attempt to respect every basic good in every act, to admit no arbitrary preferences amongst basic goods, to be efficient within reason, etc. The common good comprises rights in the sense that lists of rights, exemplified in the various Charters and Bills of Rights, outline the basic features of the common good from the point of view of the bearers of rights.[53] There is no sense then to the opposition between common good and individual right: arguments of policy properly understood are arguments of principle. The policy-principle distinction cannot ground Dworkin's version of the separation of legislature and judiciary, and the constitutional supremacy of the Supreme Court cannot be derived from the trumping capacity of rights over utility.

Finnis' arguments here are largely persuasive, and we do not wish to add to them. Nevertheless Dworkin is not committed to utilitarianism as the best general normative approach to political theory, as Finnis recognizes,[54] and this might suggest that Finnis' argument is too narrowly focussed. Dworkin treats of utilitarianism principally because he thinks that many find it an attractive general theory and that it is at least arguable that "the best justification of our own legal practice shows utilitarianism as the general background theory supporting most legislation."[55] He never seriously explores any other background justifications, though he mentions a "platonic interpretation" which argues that the best conditions for human flourishing are those which will maximise the probability of people living in the manner which is really the most valuable for them,[56] as well as other interpretations which take as fundamental political goals the glory of the state, military success, class triumph, or material wealth.[57] Yet the most pertinent interpretation concerns what is surely the most plausible descriptive account of governmental decisions, that which points to the vaguely systematic and only partially theorized congeries of reasons for policies. The question

then might still be asked whether rights should be accepted as judicially-enforceable side constraints of these laws, despite their lack of theoretical justification. The coherence or otherwise of the background justification would here be irrelevant: the judicial enforcement of rights would be sufficiently justified by the fact of an infringement of rights in a particular instance by actions permitted or required under law.

This opens up the central problematic of the chapter. For the argument as presented begs the question whether courts are the uniquely appropriate place for discussing questions of rights, or, more generally, whether they are a suitable forum for enforceable review of legislation: Thomas Jefferson, for example, claimed to the contrary that Congress was equally competent to judge the constitutionality of laws. Does constitutional supremacy in these issues finally lie with unelected courts or with an elected legislative assembly?

Finnis argues for the supremacy of the legislature from considerations of institutional responsibility and competence.[58] Legislatures on the one hand have the responsibility for acting in accordance with the basic requirements of practical reasonableness, for assessing costs and benefits, and for choosing a society's public commitments concerning personal and political morality. Courts on the other hand must

> ensure that their decision are consistent with (i.e. 'fit') the derivative, <u>institutional</u> rights and principles created by the public commitments already made by the relatively determinate sources which can be the subject of legal <u>learning</u>: legislation, custom and judicial precedent.[59]

The construction of open-ended constitutional provisions is not a task for which peculiarly "lawyerly skills" are suited.

Finnis' arguments are cogent. Legislatures do have the

responsibility of making commitments on behalf of a society, and courts are institutionally better equipped to adjudge the relatively determinate sources of law. However his argument from legislative responsibility and judicial competence requires supplementing, for three reasons. First, although it explains why courts on the British model are not best suited to the conducting of judicial review of legislation and the interpretation of a broadly-worded fundamental constitutional document, it does not address the possibility of non-judicial review of legislation. That is, the function of review of legislation can be performed by an advisory body which is not part of the judicial system and whose officers are neither elected nor necessarily drawn from the ranks of the judiciary: the Conseil Constitutionnel of the Fifth French Republic is a body of this sort.[60] Here the training of lawyers and the institutional competence of courts would be irrelevant, yet the fundamental question of review by an unelected body of the the legislation of an elected assembly would still stand.

Second, legislatures are prone to make mistakes. Although on Finnis' account they may be charged with the responsibility of acting in accordance with the criteria of practical reason which he enumerates, they do not always fulfil that responsibility; nor of course do many legislators understand their responsibility in those terms. But even if they did act as Finnis stipulates, they would still occasionally produce legislation which was by independent criteria poor or mistaken, because of the pervasive fact of limited information. That is, given that there is a right answer to the question of what legislation would meet the criteria of practical reasonableness,[61] legislative procedures are, to use Rawls' terms, matters of "imperfect" rather than "pure" procedural justice: rather than the procedure defining what will count as just, there are independent criteria of justice, even though no set of institutional

legislative procedures can be guaranteed to achieve justice according to those criteria.[62] But if accuracy of results is the primary goal (a premiss we shall discuss below), then institutions of government should be designed so as to maximise sound outcomes; and if legislative process is a matter of imperfect procedural justice, then it may be that judicial review (or some other institutional arrangement) might serve to improve accuracy.

The third reason is an extension of the second, and echoes some themes mentioned earlier. Legislatures are liable not only to make mistakes, but to do so in a manner intrinsic to majoritarian democracies. Under such systems power may be systematically abused or the rights of some consistently mishandled in a manner peculiar to and inherent in majoritarianism: thus the rights of individuals, of minorities, or of the non-propertied poor may in different ways fail to be recognized by legislatures because they cannot obtain stable majority approval. A tempting remedy for these problems might be a written Constitution on the US model, which would incorporate both structural provisions (such as the separation of powers) which minimize such distortions of democracy as self-interested representation or factional tyranny, and rights provisions which would insulate certain rights from majoritarian interference.[63] At any rate it would be inadequate merely to assert the legislature's responsibility, since the possibility of certain kinds of deformation are inbuilt in majority rule.

For these three reasons, then, a full treatment of the issues concerning the entrenchment of a Bill of Rights requires not just an account of institutional competence and responsibilities, but also a broader theory of the relation of judiciary and legislature in the context of democratic theory, and, more particularly, of the propriety of having

unelected bodies pronouncing upon legislation. And since the present investigation is theologically based, we need to show how a theologically grounded account of democracy and political authority can generate results for the present question.

5 Democratic procedures and just outcomes: a theological perspective

At the beginning of this chapter I said that there was a lacuna in Maritain's thought concerning the relation between the formal commitment to democratic majoritarian procedures and the substantive commitment to the rights listed in the Democratic Charter. Maritain did not develop an account either of the institutional locus of adjudication between the two commitments or of the principles which such an institution should follow in adjudicating. There is, however, a further, deeper tension in Maritain's approach which remains even if one abstracts from the notion of a Democratic Charter. For if the political authority is ordained to the common good, it would seem to follow that accuracy of the political authority's provisions in respect of the common good is its supreme goal and criterion. Yet the right of people to self-government suggests that (at least for this historical constellation) fairness of procedure through majoritarian democracy is the principal formal criterion of just decision-making. This tension could be resolved either by fencing off some courses of action from the range permissible to representative assemblies, or by subordinating in principle the common good to majoritarianism, or conceivably by a mixture of the two. But the first option returns us to the problem of the locus of adjudication between democratic procedures and codified rights, and also introduces, should judicial review or a similar solution be adopted, the issues of inaccuracy in judicial review; while

the second runs severe risks of injustice.[64] Clearly this tension between soundness of result and fairness of procedure, which Maritain never addresses,[65] must be resolved by any theological account of judicial review.[66]

(a) Two models for popular consent

We start by comparing two theological models of popular consent to political authority. Maritain's is a version of what might be termed the conferral model of consent. The people "receive from God the right to self-government and authority to rule themselves in an inherent manner".[67] That is,

> they are possessed of this right and this authority as a "principal agent" (though "secondary" or subordinate with respect to the Primary Cause) which through its own causal power - acting, as everything acts, in the virtue of God's universal activation - invests with authority the one or ones designated[.][68]

Democratic philosophy is the only true political philosophy, in the sense that the people never alienate or transfer their right to self-government, though this is compatible with aristocratic and monarchic as well as democratic regimes.[69] The argument for universal suffrage is never expounded at length, though a passage in the essay 'Democracy and Authority'[70] suggests the line of his thought: universal suffrage, while it is valuable as a weapon against political slavery, is particularly important for its symbolic significance in witnessing to the "the right of human persons to political life, and of the multitude to the constitution of the authoritative organism of the city".[71] Its symbolic value, he continues, must however be given genuine value, through features such as

community representation.

The confirmation model of consent by contrast does not grant the people the intrinsic right to self-government.[72] On this view the axiom that all authority is from God is interpreted to mean that God is not only primary cause but also principal agent in conferring political authority: should a people take part in electing a government, their role in transmitting authority is instrumental rather than (subordinately) self-derived. The fundamental contribution of the people, prior to its participation in democratic process, is based in the right of public debate concerning the common good. This right is rooted in the structural analogies between politics and ecclesiology, in this case between the giving of the Spirit at Pentecost and the participation by all in political life: as the prophecy of Joel was fulfilled that sons and daughters, menservants and maidservants would declare the Word of God,[73] so all are freed to speak a word of judgement or encouragement for the sake of the public good. The denial of this right of public speech, which is grounded primarily in the good of the public realm, and not in the individual's right to say whatever he or she pleases, is tyrannical. The role of the consent of the people therefore lies in confirming rather than conferring political authority, and lack of consent is the sign rather than the substance of a lack of authority.

It is worth noting two differences between the models in addition to the contrast already noted between the people's intrinsic possession of the right of self-government and their instrumental role in transmitting political authority. First, the conferral model, being based on the people's right of self-government, has the emergent implication of popular participation in political appointment (though further argument would be necessary to reach a specifically majoritarian form of popular participation): such an implication, though in itself merely conceptual, could

with historicist premisses easily lend itself to claims of the sort we suspected Maritain of in the last chapter, about historical progress towards democracy. The confirmation model, on the other hand, does not of itself lean towards democracy so directly. Second, the two models would suggest different answers to the question whether democratic procedures are intrinsic or incidental to the common good: for the former, democratic fairness of procedure could be conceived as of intrinsic (even if limited) value, and therefore as essential for an accurate embodiment of the common good, at least in the historical climate of modern civilization; for the latter, the common good might be achieved without incorporating the right to vote.

How do the two models differ in their approach to the question of judicial review? This depends on whether these theological models themselves require a different statement of the central problem of judicial review. Let us assume first that the problem is as it has been portrayed so far in the chapter, namely that decision-making by unelected bodies is incompatible with a commitment to electoral democracy.[74] On this assumption there is a prima facie case for thinking that the conferral model's inbuilt leaning towards democracy makes it less open to judicial review and the role of non-elected bodies in government than the confirmation model; the latter, because it does not tend specifically towards popular electoral participation, cannot at this level of generality rule out the role of a non-elected review body.

In fact, on this assumption the conferral model does not rule out the possibility of judicial review, though it is clearer from Yves Simon's work than Maritain's that there can be limitations on pure democracy. Discussing the party system Simon accepts that democracy "may well be saved by a non-democratic principle acting as a check on its enemies",[75] and concerning the rule of the majority he allows constitutional

restraints on the majority, though he only mentions proportional representation.[76] Yet if proportional representation is granted as a supposed brake on the majority, there might well be a place for judicial review also, provided that an important constraining principle, derived from the fundamental right of the people to self-government, was accepted, namely that judicial review be in some sense an expression of rather than limitation on the will of the people. Given this principle, the people themselves would not lose power under a constitution with judicial review, even if their elected representatives would.

This consideration is adduced not in order to show that judicial review is desirable in the British case, but merely that it is at this general level possible within the terms of the conferral model of popular consent, despite that model's predilection for democracy. Neither the conferral model not the confirmation model finally either excludes or demands judicial review, then, on the assumption that the problem is that of the unelected nature of the court.

(b) A deeper understanding of the difference between the models

But to put the question in this way is not to draw on the deepest impulses of each theory. In fact, we will argue in this section, the nature of "the problem of judicial review" changes in accordance with the theory from within which it is addressed. Indeed, it turns out to be the confirmation model which is less hospitable to judicial review, though in the next section we will suggest that both models can be shown to reach a similar conclusion.

(i) The confirmation model

In the case of the confirmation model, judicial review is ultimately problematic on the grounds that it insulates public decision-making from public debate: whereas the good of the public realm depends on the freedom of all to contribute to discussion about the common good, judges cannot take the people's advice in a case, nor can their rulings be overturned except by other rulings. It is not the unelected status of judges which is the central problem of judicial review, the confirmation theorist would insist, but the hindering of the Word of God; the reason for defending electoral democracy - namely its capacity for representing symbolically universal posssession of the spirit of prophecy - is precisely the reason for rejecting judicial review. By rendering impermissible the universality of speech in relation to a selected class of public decisions, the role of the judiciary becomes tyrannical, destroying the element of balance between divinely-ordained authority and the popular confirmation of that authority made possible by the freedom of speech.[77]

This criticism clearly depends on the viability of some distinction between legislation and adjudication, for although acts of ordinary adjudication outside of review cases are acts of public judgement, it is not being suggested that these be opened to public debate. How then, if judicial legislation is undesirable on the confirmation model, is it to be distinguished from adjudication? Our answer to this will be by means of response to an argument about the status of Bills of Rights.

If it could be shown, this argument goes, that Bills of Rights are not in a significant sense law, it would seem to follow that the court

would be acting as a legislature. For in the order of being laws have to be made before they can be applied, the act of judgement being the two-fold process of legislation and adjudication, and so if a Bill of Rights had not been made law (in some significant sense, yet to be determined) by a legislature, the only evident institutional locus for its becoming law would seem to be the judiciary.

The case for denying that Bills of Rights contain law might, according to this argument, proceed as follows. A Bill of Rights contains moral teachings about fundamental goods of a society; its provisions are superior to non-fundamental law, not through their capacity for trumping statute laws by being applied directly to particular cases, but in their being embodied in all ordinary legislation. Therefore when a court applies a provision to a case, it is not merely interpreting a broadly-worded or open-ended statute, but is also legislating as well, since no truly legislative act had been performed previously. A Bill of Rights comprises the philosophy of law, and in order to be passed into non-fundamental law (so as to be at a level potentially to conflict with it) has to be legislated by the judiciary.[78]

How are we to make sense of this argument's distinction between "law" on the one hand and "philosophy of law" and "moral teachings" on the other? The distinction no doubt could be seen as drawing inspiration from parallels such as Albrecht Alt's categorization of Israelite law into "casuistic law" and "apodeictic law". According to Alt, the former was adopted from the Canaanites, had its Sitz im Leben in everyday jurisdiction, and was concerned only with relations between people, not with Israel's larger destiny. The latter was peculiarly Israelite, was concerned with the unalterable will of God, forming the unconditional guiding principle of the laws, and was associated with the recollection of the ideals of Israelite society at the renewal of the covenant: the

Decalogue is a central example of this latter kind.[79] The two kinds of law are fundamentally different, and the latter (so the argument would go) parallels a Bill of Rights.[80]

In response to this defence of the fundamental difference between two kinds of law, we should note that even in the case of the parallel just cited, the two are of a sufficiently similar status for Alt to allow that the two may clash, the apodeictic in such instances invariably taking precedence. And we might note a similar point in the case of a constitution and a law conflicting, by referring to the language of the Marbury v. Madison judgement:

> So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide the case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case.[81]

Both cases suggest that fundamental and non-fundamental law may clash, and therefore that non-fundamental law is law in some relevant sense.

These examples, however, are not enough to settle the issue against the argument just outlined: neither Alt nor Chief Justice Marshall may have had our problem in sight. Nor would it settle the problem to demonstrate that a Charter or Bill of Rights was law in the appropriate sense because it had been formally incorporated as statute law or had the status of authoritative custom, or whatever.[82] For even if human rights provisions in such a charter were shown to have the appropriate formal status, they might still not be law in the focal sense of the term.

Rather what matters is the degree of specificity a law possesses: the question of whether a judge is legislating or adjudicating turns on the quantity of material he has to import. Of course determining what

counts as introduction rather than interpretation, and how much of the former is permissible, are the central questions around which flow the great tides of debate between interpretivists (or originalists) and non-interpretivists (or non-originalists), between judicial activists and believers in judicial restraint. For our present, very limited, purposes we do not have to attempt a resolution of them: all we need to note is that if the difference between the provisions of a bill of rights and ordinary statute law is principally one of specificity, then the two differ not in kind, but only in degree. That is, there is no ~~fundamental~~ basic, qualitative difference between "fundamental" and "non-fundamental" law with regard to their status as law, and the contrast (to refer back to the original putative distinction) between "philosophy of law" on the one hand, and "law" on the other, is misleading.

The supposition that courts in judicial review cases are legislating is therefore not best defended by asserting a difference in kind between the two sorts of law, and denying the status of law to bills of rights. Rather in both cases judges are attempting to interpret or construe legal provisions, even if the one offers them considerably more scope for using their own judgement than the other. Certainly the greater specificity of the non-fundamental law may give grounds for regarding it as a more central or focal example of law, but this is not sufficient to refuse the title of law to more open-textured yet still formally valid examples.

Even if the argument presented above is wrong to deny that Bills of Rights are law, it is nevertheless right to suggest that courts in such review cases may be importing more content into their judgements than their role properly admits. The confirmation model insists that it is the primary responsibility of a body open to public debate to introduce content (even if the courts inevitably will also), and therefore the task

of the judiciary to construe provisions which are as relatively specific as is reasonably possible. We do not suppose that it is simple to determine in theory or in practice what is interpretation and what importation (and, to repeat, we are bracketing this and associated questions here); but - to cut this Gordian knot - there is a broad distinction between judicial legislation and judicial adjudication, and good reasons for suspecting to which side of the fuzzy boundary human rights review cases lean.

(ii) The conferral model

Maritain's theory, by contrast, does not find difficulties with judicial review to the same degree. For since the transmission of authority runs entirely from the people as principal agent (though as secondary cause to God as First Cause), and since the freedom of speech is not essential to the public confirmation of that authority in the manner that it is for the confirmation model (although of course it is an important good), the actions of a judiciary in reviewing human rights cases are not intrinsically problematic because insulated from public debate. In the conferral of authority through the act of election, the people in principle license judicial legislation as much as parliamentary legislation. This is not to argue that on this model the holders of authority are permitted to make any proposals they want: they are still bound by the natural law. Nor is it to say that authority is alienated by the people in a Hobbesian sense: the government holds it per participationem, vicariously, while per essentiam it still belongs to the people.[83] But it is to suggest that the body politic's natural right to full autonomy cannot exclude judicial review as a means of exercising that autonomy.

This does not commit the conferral model to judicial review, of course, and we must introduce further considerations if we are to gain purchase on the general question of the constitutional superiority of the court or the legislature from the premisses of the conferral theorist. One kind of consideration, I shall argue, is not finally illuminating for this question, though a second is dispositive.

The first kind of argument, based on an appeal to the principle that, in Rawls' formulation, "[t]he fundamental criterion for judging any procedure is the justice of its likely results",[84] would consider whether an elected assembly or an unelected panel would produce the sounder or more accurate results. In favour of the courts it is often argued, with Dworkin, that the legislature cannot police itself; that the court's independence of electoral accountability implies that there is no reason for it to commit the typical vices of majoritarianism, and at least in that respect would be more accurate (or at any rate no less accurate) than the legislature; that it is a good defence of minorities and individuals, and that the majority would in such instances be acting as judge in its own case; and that it provides a good defence not just of "participational" values of equal access to the political process and non-discrimination against certain kinds of minority (for which Ely argues), but also of the "non-participational" values such as sexual autonomy.[85]

Yet for all those who would agree with Henry J. Abraham that no "sane citizen of the United States would wish to have the ultimate exercise of his or her individual liberties, including the provisions of the Bill of Rights, be at the mercy of partisan political bodies",[86] there are many who would hold with John Hart Ely that

> Our society did not make the constitutional decision to move to near-universal suffrage only to turn round and have

> superimposed on popular decisions the values of first-rate lawyers.[87]

Or with Learned Hand, who did not want "to be ruled by 'a bevy of Platonic Guardians,' even if he knew how to choose them, which he did not."[88] The writers of The Federalist Papers were particularly wary of the tyranny of the majority. But the potential threat of the tyranny of the few cannot be neglected either: while the legislature may need guarding, so do the guardians of the legislature.

In general, the argument from accuracy is difficult to assess with any precision. Legislatures indeed have their characteristic distortions; but judges too may have their vices: the fashionable liberal attitudes of the intellectual elite to which they belong, the unwitting dispositional conservatism of stability and conformity. One system has produced Roe v. Wade; the other the Abortion Act 1967. Without considerably more evidence the criterion of accuracy is not dispositive either way, and certainly not conclusive.

If the criterion which of the two systems is overall more likely to be accurate cannot produce a decisive answer, perhaps another criterion within the terms of the conferral model will at least provide a presumption in favour of one system or the other. The criterion we shall suggest makes the decisive question that of which institution should be allowed to make the errors, given that both inevitably will. The choice of this criterion does not derive from a diminshed view of the importance of soundness of results. On the contrary, against Hand, if a host of Platonic Guardians perfect in knowledge (like the cherubim) and love (like the seraphim) were to dispense law, it would in this respect be proper for them to hold authority. But in the conditions which obtain, where the holders of political authority are distinctly limited in knowledge and

benevolence, and where, we have argued, neither systems with judicial review nor systems without it are indisputably the more accurate than the other, some other presumption-creating criterion must be sought. The most obvious such criterion appeals to the idea that constitutional supremacy must lie with that body which it is least unacceptable for mistakes to be made by.

To discern which body that would be in a North Atlantic democracy such as Britain it would be inadequate merely to appeal to the right of tradition. For, first, it is precisely the claim to the right of tradition that is in question: some find that the principle of electoral accountability places final responsibility with the Congress or Parliament, others that "our" commitment to the rights of individuals and minorities and to constitutional rule should give ultimate say (short of constitutional amendment) to the judiciary. More importantly, second, the right of tradition is merely one consideration, to be balanced by others. The argument cannot proceed simply by accepting inherited beliefs as the only relevant source of judgement; though of course the mere fact of their being inherited and held by the community may have a subordinate place in the argument.

Rather we must look to the structure of the conferral model for the solution. The relevant feature of the model is the vicarious nature of the authority of those in power. Although, as we argued earlier, the transmission of authority from the people means that the conferral theorist has no worries at the deepest level about judicial review of the kind that the confirmation theorist finds, this does not imply that the theory generates no presumption about who should be allowed to make mistakes. Indeed it is here that our initial observation about the conferral theory's inbuilt inclination to democracy takes its place: the body politic's right to full autonomy is expressed (at least in this

society, and perhaps in the best society all things considered) through universal suffrage, and this suggests that if anybody, it should be the people through their elected representatives, who should be allowed to make the mistakes about the common good that inevitably will be made. The proper locus of effectual moral and political debate about this society's commitments is in the legislature, even if the deliberations of that body may typically be distorted by passion, self-interest, and the manifold corruptions of a sin-darkened world.

(c) Conditions for the rebuttal of the presumption

This conclusion is significant, for it brings the conferral model to the same position as the confirmation model. Both theories, that is, generate at least a presumption in favour of the constitutional supremacy of elected assemblies. Such a presumption is important: it would entail the exhaustion of every attempt at reforming the representative assembly before resorting to adoption of judicial review.

Nevertheless accuracy in respect of the common good is still important, and the presumption is ultimately defeasible on grounds of inaccuracy. This raises two questions. The first concerns the level of inaccuracy which would justify a rebuttal of the presumption. To this only a general statement will be given, to the effect that a constitutional change from the present (British) system to a system with a Bill of Rights (and perhaps more) and judicial review would be justified (<u>given that other alternatives had already been deemed inappropriate or inadequate</u>), if the injustices received and unremedied because of defects in the present system were not merely sporadic in frequency but of such a sustained and widespread nature as to cause extensive feeling amongst the public that the system itself were gravely at fault. We do not press the

wording of this statement, only its general sense.

The second question asks who should decide when the conditions mentioned obtain. Again only a general principle will be proposed, that good majorities in both the country (through referendum, probably) and Parliament must be secured: the issue cannot be a mere political football.

It might be thought that these two principles conflict: after all, if, for example, a majority of the country through their elected representatives are serving their own interests by ill-treating a minority, then it is hardly in their interests to adopt a system which will likely prevent them doing so. Such an objection probably owes too much to the emaciated interpretation of problems produced by rational choice theory, and underestimates the complex of human sympathies and allegiances which are not reducible to a simple rank-ordering of preferences. Certainly it is not a major factor in the current British debate. If a situation of the kind imagined were to obtain, and all the legal remedies had been exhausted without avail, it would be appropriate to begin to consider the options for justified revolution.

(d) In the event of judicial review

Finally, it should be noted that the general principle of a presumption in favour of the constitutional supremacy of the legislature defeasible on grounds of accuracy also has purchase in the event that judicial review were instituted. Michael J. Perry has argued in the American context for a functional justification of non-interpretive review in human rights cases.[89] This justification is based on an understanding of America's fundamental commitment as a society to a fallibilist moral evolution, a belief in the existence of a right answer about human rights (and political and personal morality as a whole) without the assumption

that the truth has been found. The virtue of judicial review lies in its capacity for dealing with moral and political problems "non-mechanically", i.e. as a matter of reflection, not of reflex, and by deepening moral understanding through dialogue with Congress. The process of conversation between legislature and judiciary which he envisages is likely to lead to more accurate opinions, and therefore help rather than hinder democracy (understood substantively), because of the self-critical disposition it engenders.

The dialectical nature of the relationship is ensured by the authority of Congress to exert significant political control over the Court. The source of this Perry finds in a rarely used clause of Article III of the Constitution, under which the Court "shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make." Congress may define and thus limit the Court's jurisdiction. Such a power is not one of reversing decisions, which would render the Court a mere delegate of Congress. Nor is it equivalent to constitutional amendment: it is intended to control the value-judgements of justices, not of the original Framers, a distinction which depends on the possibility of distinguishing interpretive from non-interpretive review.[90]

The validity of this last distinction is of course controversial. Nevertheless it is clear that attributing such a power to Congress gives rendering to the principle enunciated above that "judicial review be in some sense an expression of rather than limitation on the will of the people".[91] The Court would not be justified in striking down such jurisdiction-limiting legislation precisely because its own moral legitimacy is tied to its submission to the legislature. Clearly similar provisions could be incorporated into any formal recognition of judicial review in this country. By that means respect for the presumption in

favour of the legislature as supreme bearer of constitutional authority would be maintained, even if the demands of the common good incited general public recognition of the need for fundamental constitutional change. Moreover, it would make clear that the Supreme Court's role in such circumstances is properly one of judicial review, and not of judicial legislation.

(e) Response to Dworkin

We are now in a position to respond to each of the arguments presented by Dworkin in favour of judicial review. He starts, it will be recalled, by dividing courts from legislatures on account of the different kinds of argument appropriate to each and the nature of statutory construction. We will not strongly dissent from the latter here. The former is inadequate: the distinction between arguments of policy and arguments of principle is insufficient to found a distinction between courts and legislatures, we agreed with Finnis, since the distinction between individual or minority right and collective good on which it turned is unsustainable. Courts are distinguished from legislatures by being institutions principally of learning from the relatively determinate sources of law, not of the construction of broadly-worded constitutional documents (although, we argued, this characterization of courts is not by itself an adequate argument against judicial review).

Not all Dworkin's arguments, however, presumed this understanding of the constitutional division. There were three arguments based on the right to treatment as equals which, we argued, were all inadequate by themselves and needed support which Dworkin claimed could be found principally in the superior accuracy of the court. But accuracy, we suggested, is not a conclusive criterion: instead it ought to be

determined which institution should be entitled to make mistakes.

The response to Dworkin's other points, in as much as it is necessary, should by now be obvious. We will comment on only one other feature, namely his treatment of the argument that judicial review and "political" decisions by the courts bring the law into disrepute. His replies to the argument are in differing degrees cogent. But one important source of respect for law which Dworkin does not address is its predictability: the principle of judicial review, by allowing that anybody may challenge the constitutionality of a law and have that challenge judicially examined, must contribute to weakening public confidence in the significance of legislative enactment. The possibility of resort to constitutional adjudication introduces an element of arbitrariness into law in a manner which is not comparable with the ordinary adjudication of hard cases. Stability and predictability of law are important features of the public good, and defences of judicial review must take account of them.

6 Conclusion

In this chapter we have attempted to discern the extent to which theological conceptions of political authority and democracy bear on the question of judicial review. We have argued for a presumption in favour of the constitutional supremacy of the legislature: one model we have discussed bases this on the threat judicial review poses to the right of public speech; the other urges it on the grounds that, if anybody, elected representatives of the people should be those allowed to make bad decisions on behalf of a society.[92] Such a presumption is defeasible, however, should the exercise of power by the legislature exceed certain

limits of tolerability. If judicial review should be installed, there should be some means of increasing the court's responsiveness to the elected assembly short of resorting to the procedures of enhanced majorities or constitutional conventions.

The final question: should a Bill of Rights be introduced into British domestic law? Undoubtedly grievances would be remedied, wrongs righted and rights vindicated. Probably the power of the executive would be restrained. Perhaps the moral consciousness of the nation would be better educated. Sometimes the judiciary would expand law beyond the point to which Parliament or the executive would be willing to take it. But there are difficulties. Not only are there fears to be allayed: that the explicit politicization of judges would be a source of injustice; that the right of appeal to a Supreme Court higher than the legislature would create a litigatory culture; that the legislature would no longer internalize its responsibility to protect rights. There are also significant problems of incorporation to be overcome: entrenchment of a Bill of Rights, let alone an entire constitutional document would require nationwide all-party support significantly greater than a mere numerical majority; the mass of technical legal and procedural details (including the difficulty of how a sovereign Parliament understood in Dicey's terms could bind itself for the future, and the relation of British constitutional instruments to superior European jurisdictions employing a possibly different enumeration of rights) would have to be negotiated; most importantly and controversially, the rights and provisions to be incorporated would have to be specified.

But there are also alternative and intrinsically more democratic improvements compatible with the British system, which would reform Parliament while also ensuring individual and minority rights, without resorting to judicial review: formal recognition of constitutional

functions in the Leader of the Opposition; greater scope for legislative initiatives by other individuals or groups in Parliament than the government; the legislative representation of minorities; a strengthened and reformed House of Lords, allowing special representation of minority and regional interests; mechanisms internal to the legislature to counteract discriminatory legislation; procedures for appointing judges, demarcating constituency boundaries, etc., which would ensure a greater chance of political neutrality; increased powers for the Ombudsman; greater openness of government and access of citizens to executive decision-procedures; systems of checks and balances within government departments.[93]

We do not comment on the plausibility of any of these (or of others not listed) nor on their compatibility with the arguments presented above, but merely mention them as possible alternatives to simply opting for the American system. But they must be taken seriously. For the choice both to entrust to the judiciary the power, which they would be unlikely to relinquish, of construing a text whose time-bound nature may in future lend only increasing implausibility to an already precarious understanding of interpretive method, and to forgo the chance, outside of extreme circumstances, of reviewing the decisions thereby made, cannot be undertaken lightly. It is sometimes said that in the United States every political question is ultimately a legal question. What needs to be asked is whether the institution of judicial review finally betokens the strengthening of justice, or the limiting of the freedom of the Word of God in the public realm, to deny which is the decisive step in the direction of tyranny.

CHAPTER SEVEN

CHRISTIAN THEOLOGY AND LIBERAL SOCIETY

1 Introduction

Dr Josef Goebbels is said to have announced: "You are at liberty to seek your salvation as you understand it, provided you do nothing to change the social order."[1] In this statement, which Jacques Ellul describes as "the great law of the technical society",[2] there can be glimpsed, when set in a different context, both the promise and the danger of the liberal society, both the freedom it offers and the tyranny it portends. A similar tension is expressed in the title of this chapter. By juxtaposing Christian theology and liberal society in this way, we both contrast and unite, both pass judgement and make defence. Yet by suggesting a similarity between liberal and national socialist rhetorics, we also show that this tension between affirmation and denial is not evenly balanced, that no earthly order of politics may be identified with the Kingdom, and therefore that the church's "No" to the rulers of this world must be pronounced before its ever qualified and cautious "Yes". And further, by intimating through Ellul that liberalism as much as fascism may be imprisoned in an iron cage whose bars are the laws of the technical society, we indicate the partial and limited character of the freedoms liberalism can offer, and, moreover, suggest an account of the forces which govern and constrict its motions.[3]

In this final chapter I will start by tracing out and making more fully explicit a line of argument which has threaded through and partly connected the four previous chapters, concerning the ground of political authority in liberal thought and its connection with consent and coercion. I then suggest deeper reasons for this pattern of thought and outline a theological response. Through working out this response, it should begin to emerge how, in relation to liberal political society, a responsible theology will learn to articulate its "No", and a faithful church to construct its "Yes".

2 The impossibility of liberal justice

In chapter three I discussed the progressivism and perfectibilist utopianism of nineteenth-century liberalism, and argued that it was finally incompatible with any Christian conception of history which finds the eshatological manifestation of the Kingdom to be significantly more than the latter stages of a chronological historical evolution. Although liberals in this century have learnt to disown grand speculative philosophies of history and the more simple-minded kinds of optimism, and have replaced them with tentative gradualisms or with no explicit thoughts about the future at all, there is often still implied, I shall argue, a surrogate perfectibilism which vitiates their thought and ultimately makes impossible their understanding of justice.

The argument I shall present was first adumbrated in the discussion of John Rawls in chapter four, although parts of it were later echoed in the problems of pluralism, the coercion of non-consenters, and the nature of public reason mentioned in chapter five, and in the question of the relation of popular consent to political authority examined in

chapter six. The later Rawls, who admits only "political" and not "comprehensive" notions of the good into the terms of public cooperation, gives no reason, I suggested, for thinking that it would be more than a "happy coincidence" if the overlapping consensus were to settle on those moral principles which generate the two principles of justice, and indeed no reason to think that the overlapping consensus should focus on the same moral conceptions at all. Certainly the intrinsic implausibility of this is moderated by the appeal to the values latent in the public institutions of advanced democratic societies, since some will find it a sufficient reason to accept those values precisely because they are the values of the public culture. But while moderated, it is yet not eliminated, and this creates a fundamental problem for Rawls' theory. For, on his account, the idea of an overlapping consensus turns, first, on each citizen being able to justify the public terms of cooperation to himself or herself in terms of his or her comprehensive doctrine (personal philosophy, religion, view of life, etc.); and, second, on the possibility of identifying the overlap with the principles of justice as fairness. Yet in societies with a high degree of de facto pluralism of conceptions of the good, there will likely be those whose comprehensive doctrine does not admit a political doctrine which could be picked out by justice as fairness: religiously conservative Midwesterners (incensed, after a succession of "secular humanist" triumphs in the Supreme Court and elsewhere, at the accusations that they are the ones seeking to impose their values on society),[4] some kinds of residual preconciliar Catholics, and Islamic "fundamentalists" may be amongst the many possible candidates. These groups of people, roughly coterminous with those who think that their own (substantive) values should be the public values, will feel discriminated against in a particularly deep manner. They will have to live, short of emigration, under a set of public institutions which claims to be justified solely by the consensus of those

subject to it, and yet they will not themselves feel party to that "consensus". Not only will the political authority whose commands they suffer be one which they have failed to find acceptable in their own eyes, as in some standard kinds of despotism, but it will also be one which claims no legitimacy beyond its ability to secure that consent from all its subjects equally. Thus to the injury which these people undergo of not having had their way will be added the insult of being told that they had consented to that state of affairs: they will be told that in the liberal society there is peace, when in their minds, and perhaps in their violence, they know there is no peace.

This account of liberal justice given by Rawls depends on the securing of actual consensus: citizens do in fact agree, whether from conviction of its truth or merely for the sake of getting on together, to justice as fairness. The position does not turn on giving a reason to each person for cooperation, but merely wishes citizens to defend justice as fairness to themselves within their own comprehensive doctrines.[5] Thomas Nagel, by contrast, in his article "Moral Conflict and Political Legitimacy",[6] essays a liberal theory which will give to any citizen a rationale for cooperation: "liberalism", he says, "should provide the devout with a reason for tolerance".[7] This reason he finds in the requirement of impartiality. Impartiality is taken to be not merely a particular understanding of the good (autonomy, say) distributed impartially, which would make liberalism just another "sectarian" theory, but, more radically, is to include an impartial interpretation of the goods to be distributed: this alone will allow liberalism to be the "higher-order" theory to which he thinks it aspires.

The details of how he brings this to bear on publically controversial questions of distribution are not our present concern: briefly, he proposes that each person, in view of his reasonableness,

accept an epistemological distinction between public and private, such that from a public perspective his private beliefs are regarded as beliefs and not as truths; a process of public epistemological justification is then applied to each issue, and only on those questions which turn out to be in principle susceptible of impartial rational resolution may people be made liable to coercion.[8]

Rather our present interest lies in the idea, central to Nagel's theory, of providing reasons to each citizen for accepting the political arrangements they have to live under. It might be thought that in giving to each a reason for tolerance and for accepting his version of the public-private distinction, Nagel has done (at least in principle, whether or not his conception of impartiality and the rest of it is correct) all that can be asked of a liberal theory. After all, you can only justify things to people who are going to listen to the claims of reason. But there is a serious difficulty for a liberal theory adopting this approach. This could be exhibited by criticizing without further ado the claims it makes for reason: some might here advert to Marxist or Nietzschean denunciations of the rational as "the essence of the ideological" or as the object of obsession of a now rather uninteresting kind of creature; in keeping with our earlier discussion of Niebuhr, we could be content for present purposes with questioning the pretensions of reason when it claims universality, and pointing up the dangers of self-deception and self-interest which such a project may conceal. However we shall not take for granted the validity of this kind of sceptical argument (or non-argument), despite its power.

Instead, we shall consider Nagel's basic moral premiss:

> we should not impose arrangements, institutions, or requirements on other people on grounds that they could reasonably reject (where reasonableness is not simply a

function of the independent rightness or wrongness of the arrangements in question, but genuinely depends on the point of view of the individual to some extent).[9]

The issue turns on the nature of the reasonableness involved. On the one hand, to the extent that it is dependent on individual point of view, Nagel faces Rawls' problem that there is no reason why, taken in aggregate, these should focus on the same account of reasonableness. On the other hand, to the extent that it is independent of individuals' reasonings, it is liable to require a contrast between the individual's "rational self" or "real self" to which justification has been made, and his or her "empirical self" which is the seat of more or less vain imaginings. But as Jeremy Waldron has noted, coincidentally quoting another essay by Nagel, the liberal account of freedom is anxious about accounts of the self in terms of the "true self" and its like, preferring to identify the self with "what it is like to be me".[10] The danger to liberty of the more idealist account need hardly be elaborated.

The success of Nagel's project depends, then, on the possibility of overlap between the two levels of reasonableness. It assumes both that there is universal reason and that everybody can recognize it in virtue of their reasonableness and incorporate its dictates into their own theories. Now if his account is to avoid the potentially tyrannical separation of universal reason from people's empirical rationalities, it can only make reference to how people in fact do reason: it cannot appeal to what they would think if they were fully rational, and were not blinded by the passions of self-interest, bigotry, or whatever. Yet concerning the likelihood of everybody possessing the kind of rationality demanded within these constraints of Nagel's theory, it is difficult not to be doubtful. However widespread this conception of impartiality is amongst those educated in liberal democracies, it is not universal, and unless

personhood is (partly) defined in terms of the possession of this notion of impartiality, there will (as a contingent truth) be persons who reject it.

It follows from Nagel's approach that those who reject this notion of impartiality as necessary for the political engagement they think right, will be coerced because of their irrationality. Although he rightly allows that reasonable people who accept the requirement of impartiality but whose judgement of what it demands in a particular case differs from that of others, may be coerced without their clearly being unreasonable,[11] those who (for whatever reason) reject his account of political legitimacy through impartiality can only be coerced because, amongst other things, either they fail to see why reasonableness should demand a public epistemological restraint about their beliefs, or they cannot (or will not) recognize the relation between rationality and impartiality. Either Nagel has not given a reason to such people for accepting liberal political institutions, or he has given the reason to some mysterious part of them with which they are unacquainted. Whichever way, to borrow his description of the alternative he would like to escape, it seems "we have to give up the hope of liberal legitimacy."[12]

In the cases of both Rawls and Nagel, then, there will be non-consenters to the system as a whole, those who are "enemies of liberalism". Of course every political system will have such recusants: individuals, communities, or whole tribes or races, who may form a small minority or the overwhelming majority of a political society. But the peculiar nature of liberal thought is its claim to provide justification of political arrangements to every member of society. The "fundamentally" liberal claim, Waldron says, representatively, is that "a social and political order is illegitimate unless it is rooted in the consent of all

those who have to live under it; the consent or agreement of these people is a condition of its being morally permissible to enforce that order against them".[13] More particularly, Waldron notes the centrality of the "transparency" claim, that every society be justified to "every last individual".[14] Yet neither Rawls nor Nagel can achieve this. Rawls allows that people consent within their own comprehensive conceptions of the good, but gives no reason for thinking that agreement will be secured; Nagel, to the extent that he avoids Rawls' problem, gives reasons (in principle) why some measure of public agreement will occur, but no reason for supposing that this must correspond to people's empirical overall understandings of the good. Either way the basic liberal claim to justify a political order to each of those who have to submit to it has not been satisfied. Whether such a claim would be sufficient to justify the exercise of political authority, if per contra it were to be satisfied, will not be discussed here. We merely tender that it cannot be necessary for the existence of just political authority that it secure the consent of each of those under it: the liberal account of justice sets an impossibly high standard for any society to achieve.

To those who do not hold a view of political authority as based on consent the conclusion will have seemed barely worth labouring. Where might those others found the claim to authority, if not in the consent of the governed? Here we only gesture at an answer, returning for a slightly fuller account below. At least one element in genuine authority in the actual conditions which obtain (not if everybody were fully rational, or inhabited a well-ordered society, or whatever) must be the sheer capacity to bring effective force so as to secure a semblance of social peace. The brute fact that a political power's say-so obtains a response, whether that response is rational or irrational, sincere or for outward show, is sufficient to grant it prima facie legitimacy. This is not to say that the

ability to ensure some outward conformity through the possession of force is the only element in true political authority - the claim to authority on this ground is overridable; nor to reduce political authority simply to the possession of the monopoly of the means of force; nor to suggest that use of coercion is always, or even often, preferable to non-coercive means of resolving conflicts. But it is to make evident, concerning those who hold that authority can be conferred by consensus, and that a theory of justice can be constructed on the groundwork of justifying to each the terms of cooperation, that to the extent they believe these conditions obtainable, to the same extent they deny the use of power to be part of the _esse_ of politics.

Augustine, whose awareness of the precarious and broken-backed nature of earthly justice informs this view of political authority, regarded the peace of this life as a _solacium miseriae_ rather than the _beatitudinis gaudium_.[15] His knowledge that people with the deepest possible differences in understandings of the good were obliged to share the same political order only heightened for him the sense of teeming diversities and tensions that underlay the superficial appearance of social peace. These conflicts were not simply the product of different social groupings happening to have different views of the world, who might live together in harmony if only they were a little more reasonable, but rather were rooted in the _libido dominandi_, the sinful attempt to emulate God.[16] Correspondingly, the problem of social order lay in the first place not at the level of intellectual resolution, the possession of a shared conception of justice, but at the level of the will, the desire - prompted if necessary by the ruler's possession of the sword - to live together peacably.

In view of this, when it is claimed by some self-styled opponents of liberalism that properly politics can only proceed on the basis of

shared agreements, and that, because of the incommensurability of value-systems in a pluralist society, modern politics is civil war carried on by other means, and therefore that the modern state is illegitimate, we can only reply that this is a quest for unattainable perfection of precisely the liberal kind, one which demands the existence of consensus before it admits legitimate government. Certainly it is not mistaken to work for such shared agreement about the nature of justice and practical reason as is possible, which may serve as the basis for political discussion about the common good, and no doubt this is part of what Augustine recognizes in his making quaedam compositio voluntatum the limited goal of earthly political order.[17] But if this is corrupted into the belief that no legitimate authority exists before such a consort of wills, there never was such a state.

Again, the attempt to render political arrangements equitable to each citizen, in order for them to confirm the presence of authority, is not a mistaken exercise: any political authority intending the common good will, amongst other things, seek to treat its citizens fairly (though the content of that fairness would require elaboration), to secure the interests of every section of society, and to listen to the contributions of even the menservants and maidservants before reaching decisions.

Rather, what is of concern to the critic of liberalism is the unavowed but fundamental dependence of the liberal state on the exercise of power, and at times of force. Of course liberal writers recognize some of the roles of coercion: Nagel frames the basic problematic in terms of the public legitimation of coercive measures. But, as we have argued above, liberalism has failed to justify to those who refuse consent to the liberal system as a whole its use of power against those same non-consenters, and when it purports in their name to exercise power against them, the dimensions of its tyranny become evident, the more

galling because wholly unrecognized. And one might add that, in view of this, its consequent failure to understand the violence of the fundamentalist becomes wholly explicable.

The correlate of this blindness is the implicit utopianism of this kind of liberalism. This lies not so much in its belief that society will be made historically perfect (although Rawls is pretty hopeful for his well-ordered society), as in the idea that, because authority may be wholly derived from consent, the use of power is not part of the _esse_ of politics as we know it. The difficulties of this we will not expand upon. It is enough to remember that even those who are not non-consenters, and who accept the basic premisses of the liberal system, will in practice find its power-backed rulings from time to time irrational and arbitrary.[18] Perhaps this at least might bring it to their attention that the earthly city was founded on the fratricide of Cain, and that out of its peace there will never grow that eschatological peace which passes and will pass all understanding.

3 The turn to the subject

What lay behind the project of guaranteeing a society which would be justified to all its members? At the centre of liberalism, in common with modernity as a whole, lies the phenomenon often vaguely termed the "turn to the subject". In order to explicate what is here meant by this, I will group together the set of ideas to which this refers under two headings, (a) the centrality of the will, and (b) the loss of transcendence: these, it is hoped, will both illuminate the conceptual background to the problematic we have considered so far, and pave the way for the theological analysis. Many of the themes have been discussed in earlier

chapters, and so will be treated very briefly here. Again, it should be emphasized the extent to which ideal types are being represented.

(a) The centrality of the will

In talking of the centrality of the will, we refer primarily and foundationally to the nature of the self and of human agency. Liberals for the most part have shared in the voluntarist stream of the modern world, identifying the seat of the self in the will or the affections rather than the reason, and connecting this in part to the freedom of action which it is alleged to make intelligible. From this comes the "atomism" of individual agents, in which the self is disengaged from anteriorly-given ends or obligations, and incorporates contingencies only through choice. Whatever the metaphysical commitments of a particular liberal theory, this self is almost always secured a status which prevents it from being decentred into an indefinite web of relations, however composed. Again, the givenness of the self leads in some liberal writers to diminishing the role of training in the virtues and the development of personality, while its detachment from external relations may give rise to neglect of the historicity, particularity and narrative-formed quality of human lives, and likewise of their fundamental constitution in and by community.[19]

Here is rooted the "every last individual" aspect of liberalism: this reflects not just the liberal concern for equality, but also the notion that both the consensual basis of political authority and the range of governmental responsibilities are to be referred to entities more precise than the somewhat vapid "community". Again, equality itself, together with the tendencies of liberalism towards universalism and abstraction, can be related to this dissociation of the self from the contingencies of power and status.

Likewise, the ideas that a liberal society should allow as much liberty to each individual as is compatible with granting such liberty to all equally, and that government derives its authority from consent, may also be derived from this understanding of the self, as can be seen from its interconnections with the notions of freedom and authority. The detachment of the will from the reason, and the association of freedom with the former, is liable to render freedom a matter of empty choice, directionless, indeterminate and independent of ends which might make its exercise in one direction rather than another intelligible. The corollary of this, widely accepted within the liberal tradition, is that an extension of freedom can only be conceived as an expansion in the number of available options for choice; in social and political terms this is represented as the emphasis on the negative freedom not to be interfered with by others, whether individuals or governments, while the positive freedom of rational self-direction is often understated, and the ultimate fulfilment of freedom in the vision of God and the final redundancy of free choice rarely stated at all. Correlative to this conception of freedom is the notion that there is no authority external to the will which may command it; the existence of authority becomes easily construed as a constraint on desire, not as an intrinsically intelligible end of action which might give actions their basic rationality. Consequently all legitimation of political authority is, through the conferral of consent, effectively self-imposed.

Even with the extensive condensation of this account of the centrality of the will, it is apparent how the rationale arises for the various aspects of the claim that social and political arrangements should be justified to everybody who lives under them: the "every last individual" feature, the concern for equality, the abstract and universalizing

mode of thought, the conception of freedom as the absence of externalized constraint, the denial of authority to that which has not been consented to. Thus contemporary exponents of liberalism, such as Rawls and Nagel, can be represented as sharing with earlier liberals (as discussed in chapter two) in a background of thought rooted in a single complex of ideas centring on the will.

This does not imply that they all have identical accounts of every item in that complex. For example, the above analysis could be extended to an acceptance of the putative "fact-value distinction" (an extension made explicitly in our portrait of the structure of liberal beliefs in chapter two), since this account of the relation of the will to its ends does not make necessary any grounding of moral obligations in facts about human nature. Yet, while for many liberals this has led to the denial of moral realism, both Rawls and Nagel have more complex accounts: Rawls, even if he happens to believe constructivism to be correct, tries to abstract from this question for the sake of obtaining public cooperation; Nagel, on the other hand, tries to give everybody, in virtue of their reasonableness, a reason for impartiality, and indeed (elsewhere) defends a version of objectivism in morals.[20]

It would be inappropriate, therefore, to suggest that there are no differences amongst liberals in the nature of their commitment to the various features of this analysis. Nevertheless, even if they disagree amongst themselves, to the extent that they share in the complex of ideas centred on the self as will, and are unaware of the broader implication of those ideas, to that extent they are liable to contribute to the undermining of their own ideals. For, as we argued in chapter four, this voluntarism has generated a technological drive to mastery which is serving to destroy the liberal values of liberty and equality and, in the name of freedom, to weave an ever finer web of tyranny. This tyranny is

not just a consequence of the danger to liberty from a civil society which fails to promote publically the virtue of its citizens, but hopes to ensure justice simply through the excellence of its institutions - a danger which is pertinent to the discussion of judicial review. Nor is it merely that the individualism, universalism, and bent towards abstraction of liberalism may render problematic an understanding of the role of contingency and locality, and of membership of non-voluntary and intermediate associations, important though these are for the stable preservation of freedom. Rather, beyond these, it is mediated through all those aspects of the technological society which were chronicled in Grant's writings: the mutation of the natural world into raw material for human creativity, the overcoming of chance and particularity through the imposition of predictability and standardization, the replacement of politics by administration and of justice by convenience. And permeating it all, there lies the religion of progress towards a universal and homogenized state, the manic reaction to the despair which descends when the burden of meaning is placed on the will.

(b) The loss of transcendence

This last two-fold theme, the immanence of meaning and the drive to progress, leads into the second element in the turn to the subject, namely the loss of transcendence. Indeed it shows how the two elements in the turn to the subject interpenetrate each other. For on the one hand Nietzsche's murder of God, and therewith of all forms of transcendental signification, required that the murderers themselves become gods to make themselves worthy of such a deed; and, on the other, the centrality of the will makes problematic dependence on anything beyond or other than itself. Again, on the one hand, the dynamics of progress conduce to making

eschatological fulfilment otiose, while, on the other, the denial of such an eschaton places great demands on earthly politics. It is this last proposition which we will particularly concentrate on under the subject of the loss of transcendence.

Without an eschatology which transcends and fulfils history, the human aspiration for permanence and stability may translate itself into the project of seeking the Kingdom of God on earth. But such a programme has two kinds of problematic consequence. The first relates to the political order's need for something beyond itself in order to preserve its integrity. For example, in order to make sacrifice for one's country rational, there must exist something of greater apparent value to oneself than one's own life. Yet it is unclear that liberalism can provide this within its own terms. For if people have contracted into, given consent to, justified to themselves the liberal system in their own terms, it is contingent on their comprehensive doctrines whether they will be willing to die for the sake of their country, the political goods of liberalism, or whatever; or more crudely, if I have entered into society and submitted to government to further my own ends, nothing beyond my own will can make it rational for me to die for that society and government. But if Thomas Jefferson was right that the tree of liberty must be refreshed from time to time with the blood of its enemies, then the liberal society cannot remain entirely indifferent to the content of the beliefs of the citizens which constitute it: some must be willing to be soldiers or policemen on its behalf, and the liberal society must foster those views of the world which will give such potential sacrifice at least the fragile semblance of rationality.

The second consequence concerns the nature of political activity under the conditions of immanence. When the use of force can be given no public rationale, politics comes to be thought properly conducted when it

takes the form of negotiation which disclaims any reference to power, with the result that the only worthwhile sacrifice becomes "the sacrificial spirit of statesmen who are resolved to negotiate so that negotiation never fails".[21] And when there is no fulfilment external to this life, the burden of human salvation falls on this-worldly activity and its hectoring necessities: indeed the shrillness of protest-movement rhetoric may be due as much to this as to the incommensurability of, and therefore the impossibility of victory in, public moral argument. Moreover, this kind of naturalism is liable to create epistemological distortions: political activity assumes ultimate value, and cannot be seen for the transient and fragmentary thing it is. Finally, the coming of the kingdom of peace on earth leads to the mind-set of deterrence, the idealist utopianism of a perfect peace supposedly guaranteed by the existence of weapons too horrendous to be of any possible political use.[22]

Against such an immanentization of meaning it must be affirmed that transcendence is necessary to check the potentially tyrannical imperiousness of politics and the danger of its seeking ultimate value for itself. Yet without the restrained and morally governed use of force, which alone (both in its use and its moderation) can desacralize historical projects, not only will there be no possibility of just war, but there will also be threatened the disposition to mutual compromise which is vital for democratic governance,[23] and with it the possibility of a politics confined to the discussion of those things which pertain to this life. Rawls, however, appears to see no problem: in making no stipulation about the content of the different philosophies and religions which might be found in a well-ordered society, he presumably assumes that the practice of piety is unnecessary for the proper running of his constitutional liberal democracy. But this is short-sighted. For if we are right that a limited and liberal politics depends on the existence of some

object which can make self-sacrifice intelligible, transcendence is unavoidable: either it will be provided by the religion or religions of the society, in which case support for them is necessary, or it will be established by the demonic absolutization of the liberal state.[24]

4 Reason and revelation in public life

The sum of a theological response to this two-fold turn to the subject is of course nothing other than a theological account of liberal political thought: in other words, that which has been essayed in the main body of this thesis. By dividing the material into the two elements, we are now enabled to respond at two different levels. In relation to the set of phenomena we have described as the centrality of the will, there corresponds the natural level, that which can be argued and in principle known without the aid of grace, and which therefore admits of (putatively) public reasons. In relation to the loss of transcendence, there lies (though a kind of inversion will be necessary) the supernatural level, that which is given in revelation.

(a) The rational subject

We discuss the natural level first, sketching quickly the outline of a response to the movement of thought centring on the will. This could in principle be supported without appeal to revelation, though here (using an approach which will be defended in the next section) we include some theological pointers.

At the close of the chapter on Grant it was asked whether an integrated account of reason and will were possible. The potential danger

of an account of modernity in terms of voluntarism lay in a reaction which denied any role for the will at all, so stressing contemplation that it was liable to make action unintelligible.[25] A more adequate response would identify the "I" with the composite understanding and willing self, such that the known good would always be pursued, and that alone would be pursued which was known to be good. Instead of divorcing of reason and will, leading to a malformed understanding of each and the misprised alternatives of rationalism and voluntarism, a proper moral psychology would make clear the cognitive aspect of agency and the rational appreciation of intelligible ends, while allowing also a role for the will (in desiring the end, etc.) in its analysis of action.[26] Theologically, the background for this would be represented through an account of the relation in Scripture between knowing God and doing His will, between hearing and responding, and between faith and works; and through a doctrine of the Spirit, by whom the renewal of the creation in Christ is mediated to us, restoring our full noetic relation to reality and giving us moral power through an effectual desiring love for it.[27]

The notion of agency which is integral to this finds both freedom (as the subjective aspect) and authority (as the objective aspect) coinciding in the one reality. Freedom is not in the first instance the negative freedom of lack of external hindrance, but the more positive freedom of the effectual capacity to choose and act in accordance with practical reason. Allied to this, it is not maximised by indefinitely increasing the range of options or refusing them any value other than that imposed by will, but is fulfilled in the rational choice of intelligible goods as an integral feature of genuinely moral agency. Therefore for the one in whom God is at work, there is the freedom to will and to act according to His good purpose (cf. Phil. 2.13). But in the fallen state, when the agent's purchase on reality is compromised, freedom becomes the

exercise of choice in favour of merely apparent goods, the fantastic nature of which may be disguised from the subject by the very thing which is imagined to be their chief virtue, namely the derivation of their value from the will. Likewise authority is not an arbitrary constraint on the naturally expansive human spirit, but that which originates, licenses, and makes possible the rationality of human action. In this sense basic goods, or intrinsically intelligible ends, may be said to authorize action as at once source and goal within the teleological structure of agency. And for those restored to participation in reality, freedom and authority coincide: the Psalmist runs in the path of the commands of the law, the authoritative expression of created moral reality, for God has set his heart free (Ps. 119.32); and the writer of the letter of James echoes the sentiment in his reference to "the perfect law that gives freedom" (Jas. 1.25).

This conception of authority underlies the composite notion of political authority. The implausibility of supposing that the possession of power is not an element of political authority, and that consent by each is sufficient to ground authority, was argued above. Yet political authority is not conferred by power alone: the securing of justice is also an essential element, even though it will never be perfected in this world. In general, classical theological accounts further argue for another element, giving in all a three-fold analysis of the good of government and the basis of its authority, which comprises ordo (the order of power), iustitia (properly understood - both from the connotations of putting right disorder of the Old Testament's use of mishpat, and by association with the principles underlying the notion of subsidiarity - as a reactive rather than "proactive" notion), and lex (the legal order), and articulating the aim of political agency in terms of the highest incidence of the three, such that ideally "every exercise of power is both legal and

just".[28]

Yet the fallen nature of society, to which the providential imposition of government witnesses, has the consequence that the demands of political authority do not always coincide with the realization of the freedom of political society or of the individuals or communities which compose it. Human freedom, the subjective reality, does not find its highest fulfilment at the point of intersection with the claims of political authority, the objective reality: true freedom will not be found in obedience to the state (let alone in the identification of the universal state with a particular historical configuration), nor will the perfect correlation of freedom and authority be enjoyed before the eschatological consummation in the heavenly kingdom. This is not only because earthly politics concern things of this life alone, a matter we return to below, but also because even when going about their proper business the bearers of political authority are thwarted by ignorance and sin: beyond their obligation to make specific and authoritative determinations for the sake of the common good, their judgement is subject to arbitrariness simply because of the limitations of their knowledge and love. The ruler who longs for deliverance from his necessities finally regrets not that his dispositions will not be transparent to all his subjects, but that even if all his subjects were perfectly rational human beings, his judgements would at times remain opaque.

Nevertheless, in this context is to be placed the role of governmental coercion. This is justified in as much as through the sanctions of the law political authority is enabled to direct the actions of its subjects for the sake of the common good: it is not that through some act of consent citizens who suffer punishment should properly recognize in it an actualization of their freedom, as if it were a contract being honoured albeit to their disadvantage. The notion that a

society's arrangements should be justified to each of its members still has a role, however, even if it does not lie in legitimating distributional (and other) provisions and their corresponding sanctions: government must be able to show that in reaching judgements it is acting fairly, treating all with equal concern and respect, never ignoring the preferences of citizens even when overriding them, acting for the common good and not for the good of the governors or their favourites alone. In practice of course, and this was the burden of an earlier argument, the basis of those arguments will not be accessible to every citizen's "empirical self", making seemingly arbitrary coercion necessary in some cases.

Complementing the role of fairness in governmental action is the role of consent as <u>confirming</u> rather than <u>conferring</u> authority. Its incapacity for the latter task, at least when it is placed within a liberal framework, was argued in the first section of this chapter, while the implications of the former for democracy were discussed in the previous chapter. Here we note, first, the connection made by the confirmation model of consent between popular consent, on the one hand, and the freedom of the public realm to be addressed by all, on the other; and, second, the implications of our present discussion for the notion of public reason. The confirmation model, on a plausible interpretation of it, insists that the acquiescence of the people under its government cannot be assumed to be genuine unless it is accompanied by the right of public debate, in which all may contribute to discussion concerning the common good, just as at Pentecost the slave's son was given the spirit of prophecy. This assumes the possibility of public rationality, and yet throughout the discussion in this chapter (and earlier) we have noted that the nature of contemporary pluralism make it plausible that there are several rival and incommensurable moralities, which disagree not only

about first-order moral issues, but also about what would count as an appropriate way of resolving those disagreements. About the possibilities for public conversation, in view of this, we can say little here, beyond three points.[29] First, the presentation of public reasons will never in this world be free of a component of power; but this does not imply either a reduction of reasons to the interplay of forces (a political sociology to which Niebuhr leant in his talk of politics as the balancing of power) or the inappropriateness of such elimination of systematic distortions in rational communication as is possible. Second, the postulation (else acceptance) of the possibility of rationality requires the postulation (or acceptance) of a common world about which discussion is being held, a focus imaginarius towards which our truth-claims strive. Third, in extremity and cases of social breakdown, the conflicts which are normally pursued by the surrogate means of ostensibly rational debate take on a cruder aspect: it is one of the virtues of an Augustinian analysis that it can make sense of the idea that the limiting point of politics lies in war, and can also prescribe moral constraints for the use of power even in times of anarchy.

This completes the barest skeletal framework of a theory of the self, agency, freedom, authority, and political authority, as one possible response to the movement focussing on the centrality of the will in which we argued liberalism has often shared. Yet we must take one further step. For this movement of thought has had a reciprocal relation with its social and material circumstances, the thought being worked out in the reality, the reality forming the thought. And this suggests the need for not only a practice but also a praxis, in order to remove not only ignorance but also illusion: there is a task, that is, not only for obtaining a better understanding of these issues and then acting on that understanding, but

also for acting in order that out of the changed reality a better interpretation of the world and of these issues may in turn further inform practice. What would be the nature of that praxis? Here we can only echo Grant, in referring to the rigorous and demanding action of contemplation, remembering, cultivating the practice of attention, seeking out the dissonances in the cultural totality of technology, and searching through its absences for the elusive marks of the presence of the genuinely other, the transcendent.

(b) Revelation in public life

Whether such a project can be carried through without reference to revelation, whether from this starting-point the transcendent can ever be more than a function of a product of the immanent dialectic of the modern cultural totality, and how revelation can be conceived within this frame of thinking, are questions beyond the scope of the present enquiry. For our purpose it must suffice to accept that through God's self-revelation there has been granted a true knowledge of the world and its Creator which the world has not recognized, and which is not in principle public: although the Light gives light to every man, it is to those who have received Him and believed in His name that He gives the right to become children of God.

The question which arises at the second, supernatural level is how, correlating to the liberal society's need for transcendence, this revelation can be mediated to society; in other words, what the relation is between revelation and public life. Before we address this, two preliminary points must be made. First, theology must finally interpret politics, and not vice versa: in the discussion of Niebuhr we hinted at the criticism that in his thought the need of civilisation for religion

governed the viable options for theology, so that religion was finally in the service of politics. Even if such religion generates a broadly critical or progressivist politics and is not so evidently functional for social stability or conservatism, its identity and authenticity is constantly liable to dilution, if not indeed to betrayal. To avoid this, there is needed the political analogue of Barth's reversal of ninteenth-century culture-liberalism, an inversion of the question such that, if anything, it is the relevance of politics and society to religion which focusses the problematic. In this understanding we begin to see emerging theology's "No" to liberalism.

Second, this does not imply either treating the state as an arm of the church in some kind of clerocracy, with its attendant religious intolerance, or an indifference (careless or studied) to the affairs of the earthly city. Some considerations in defence of religious tolerance were gathered in the chapter on Maritain, and neither they nor the many others will be repeated here. As regards the relation between transcendent truth and public engagement, suffice it to say that if the gospel of Jesus Christ is the gospel of a restored creation, theological reflection on society must extend beyond the elaboration of an ecclesiology: remarks in the spirit of Stanley Hauerwas' comment on the state, "I do not need a theory of its existence",[30] must be deemed inadequate. If therefore there are theological reasons for both religious tolerance and engagement in and support of the public realm, the church must discover how its public contribution is to be made within the conditions of some version of pluralism. In this we can see the context of the church's "Yes" to liberalism.

With these two considerations in mind, we may now ask what is the role of revelation in public life. The answer is in two parts, concerning what is and is not in principle public. (i) The first addresses the

theological justification of the procedure adopted in the last section of giving theological support to claims which are in principle public. If the truth of these philosophical issues can be settled in principle without reference to revelation, what is the point of the theological supplement? And if the theology has a more than simply decorative role, may it not illicitly be directing conclusions which can supposedly be reached on other grounds? In response to this two-fold question, the fundamental principle is that revelation confirms and clarifies natural law. This may be explicated in two propositions.

Without a commitment, on the one hand, to some version of natural law, common to all human beings as fellow-members of a created moral order, the morality declared by the church can have no public value, no claim on those who as yet have not responded to the gospel. Therefore when James McClendon, while rejecting natural law, nevertheless asserts that stability, integrity, liberty and plurality are goods which Christians "may need to urge upon any social order",[31] we should ask on what grounds he thinks he can help himself to them or give any detailed analysis of their content, if they are not to be understood in terms of natural goods of society.

Yet without a belief, on the other, in the distinctiveness of the church's understanding of that natural order, both in its clearer apprehension of the requirements of that order as created but obscured by the fall, and in its unique knowledge of the eschatological transformation of the creation present in Jesus Christ, the proclamation of moral truth by the church becomes redundant, and with it the understanding of ethics as the form of the gospel, as itself good news. Thus in John Habgood's distressing assertion that "[i]n terms of the principles by which people should live and societies order themselves, Christians have little to say that could not be said by any reasonable person of good will",[32] and that

the church has no distinctive moral content to offer society, but only a quality of debate, it is possible to find not only astonishing complacency about the divergencies and moral tensions between different sections of British society, but also an incipient denial of the church's calling to preach the restored moral order as part of the good news.

The form of public address by the church which this account implies must start from a declaration of moral truth, and must not assume that its imagined public unacceptability (at least over some issues) is a reason for diluting moral norms beforehand. It is only after this initial pronouncement that compromise may be entered upon, if such is necessary to reach public agreement. Indeed sometimes it is precisely as the church's statement that it may be of general significance, and precisely as grounded theologically that it may be more than another pressure-group submission. Argument does play a part in public decision-making, and it is the responsibility of the church to ensure that its own voice is clearly heard in that process.[33]

Concerning the right public positions a society should adopt, we gave some guidelines in chapter five. Ideally the church would look for enactment of those aspects of natural law which do form appropriate material for legislation (not every aspect of the church's moral teaching falls within the scope of public purview, of course - not every sin is a crime), with certain derogations where necessary to contrary communal traditions. Yet of course the ideal conditions are far from those which obtain in North Atlantic democracies, and compromises are the stuff of public negotiation. Sometimes it is argued that highly controversial issues, such as the decriminalization of abortion, should be referred to a set of values which are taken to comprise the "sacred canopy" of a society, the basic agreements which give that society its identity.[34] Now certainly it is proper to appeal to the right of tradition, which in

effect this is. But the plethora of interpretations (particularly by Americans) about the true nature of the values of "our" society make clear the truth - mentioned before - of basic disagreement about what that tradition is.[35] Nowhere is this more evident than in the public debate over abortion: save in the unlikely event of a massive migration of opinion, any public resolution of this issue will be unstable, and appeal to the values of a supposed sacred canopy will not prevent this. Such an approach is misprised. Generalizations about "our being a religious people" (or whatever) should be used not as attempts to forestall the public debate but as substantive contributions to that debate. Tradition properly understood is in the first place not an externally-imposed side constraint which regulates legitimate speech, but the continuity over time (and sometimes through rupture) of an argument, part of whose content will indeed be the meaning of that argument's history.

(ii) The second part concerns what is intrinsically not public. While on the basis of revelation certain positions may be reached which could also be attained in principle by reason, though its sin-darkened nature makes that problematic, revelation also gives knowledge that is accessible to faith alone. This again divides into two movements, the one declaring a "No", the other a "Yes", to liberal society.

First, the liberal society is not the Kingdom. Only after it has been wholly recognized that liberalism may take on messianic form, in its philosophy of history and tendency to progressivism, in its susceptibility to technological universalism and utopian pacifism, is it possible to consider the justification of pluralism or the institutions of a liberal society. Indeed, as we argued earlier in this chapter, liberalism's claims to objectivity and fairness are liable to blind it to its own special kind of tyranny and absolutism. Liberal society as much as any other social

order may be sacralized, and stands in as great a need of challenging and, if necessary at times, (to use Goebbels' word) changing.

The institutional form of this standing refusal is the church. The tendency of Niebuhr's approach to place theology in the service of politics is entirely of a piece with his failure to develop any significant ecclesiology. If he had developed an understanding of the church as the unique eschatological sign of the coming Kingdom, as that which by its existence defines the world as world and by its life shows to the world its worldly nature, he might have been able to appeal to it as a living demonstration of the relativity and transient nature of politics, and to do so with an effectiveness which the jeremiads of a single prophetic figure could never hope to achieve alone. Likewise this notion of the church as the sign of the Kingdom also indicates our agreement with Hauerwas against Paul Ramsey that "the church's social task is first of all its willingness to be a community formed by a language the world does not share."[36] When it conceives its primary task as that of forming an ethos or a culture, or creating the virtues by which a liberal democratic (or any other) society will be sustained, it has betrayed its first vocation.

Yet, second, the church is not to be simply a refusing church. Despite the violence and impermanence of political society, political authority is to be affirmed as the divine disposition for violent and unruly creatures. While such affirmation can never preclude the option of selective conscientious objection, when for example a society undertakes to preserve itself at the expense of murder, whether actual (in the case of prenatal abortion) or conditionally intended (in the case of the nuclear deterrent), the "No" to liberal society must be followed, we have argued in this thesis, by a careful and tentative "Yes".

Thus our initial agreement with Hauerwas is followed by disagree-

ment: while he rightly argues that Richard John Neuhaus' definition of democracy as limited government removes the possibility of any empirical tests to show when it becomes unlimited, his pacifism leads him to identify one of the marks of the beast-state with its right to command its citizens' consciences to take up arms in its defence, a right reserved by democratic as much as "totalitarian" states.[37] In making our response to this, we recall our earlier objection, which found that liberalism has an unavowed use of power, one which ultimately makes its justification incoherent even in its own terms, and which lends credence to the idea that coercion is no part of the _esse_ of politics. This idea in turn, we claimed, connects with the kind of utopian idealism embodied in the deterrent and the denial that war can or should be an instrument of politics. That denial places inordinate demands on politics, particularly when the loss of transcendence has given ultimate significance to historical ends. The only way of defusing that kind of absolutization of culture is through the tempered use of force, which liberal society cannot provide within its own terms unless it fosters religion. In this context, then, we reply to Hauerwas that, while the Church can never accept the function of defending liberal (or any other) society as the sole or primary rationale of its being, a consequence of its mission should be the recognition that the goods of justice and political order, however dubious and imperfect particular instantiations of them may be, may require the sacrifice of life, a sacrifice of an infinite good which can never be wholly rationally justified in terms of the finite good in pursuit of which it is made.

Of course the demands of the state in relation to war may become demonic: when for example the defence of a nation is imagined to require participation in the social act of the conditional intention indiscriminately to kill enemy non-combatants. And there are many other respects in

which liberal society may overstep its limitations: when it fancies that progress to an historical perfection is possible, when it represses from its consciousness its inevitable dependence on the possession of power, when it becomes enslaved by its passions in an obeisance to the dynamics of technology. Yet precisely when we use the language of the principalities and powers in the context of such overreaching, we indicate that, as they are fallen angels, so here the struggle is against perversions of divinely-ordained goods. Thus the limited justice secured by political authority is a good, albeit partial and fragmented, and the task of authentic prophetic witness lies both in denunciation, in preaching that the kingdom of this world is not the kingdom of God, and in annunciation, in declaring that those in authority have been appointed by God, and that for conscience's sake (though only as far as conscience judges) they are to be obeyed.

The church has the task of mediating transcendence to society, then, both by its declarations of moral truth in the public realm, and by being "formed by a language which the world does not share", with the courage to stand firm against demonic usurpation and yet the love to seek workable likenesses of justice. It is needed by liberal society precisely because of its orientation to eternity, and fails both itself and the people amongst whom it sojourns if it secularizes itself or becomes so busied with the historical that it becomes mindless of the eternal. However the church is to be subservient not to the demands of society, but only to its call to signify the eschatological kingdom: with regard to the question of a state-established church, for example, the primary question is not whether the church endangers liberal pluralism, but whether establishment compromises the church's purity and faithfulness to its first calling. Therefore we can agree with George Lindbeck that "[r]eligious communities are likely to be practically relevant in the long

run to the degree that they do not first ask what is either practical or relevant, but instead concentrate on their own intratextual outlooks and forms of life",[38] when we affirm that "practicality" or "relevance" are never the first words to which the church listens. And yet the integrity of the church can never be ultimately contrasted with its historical effectiveness, since history is under the government of a providence which vindicates and brings to eschatological fulfilment the order of creation to which the church witnesses. In being faithful, we trust, we can finally never be less than supremely relevant: for the greater our faithfulness, the greater our likeness to the One through Whom the creation came to be and in Whom all things on heaven and earth will be brought together.

5 The Eternal City

Dorothee Soelle writes: "'The real exile of Israel in Egypt was that they had learned to endure it.' The real exile of Christians in the First World is that we have learned to endure it."[39] In attempting a critical theological analysis of liberalism we have sought to confront the dominant political ideology of the modern Western world, and therein to identify some of the kinds of unfreedom to which we have become inured and from which we need liberation. Soelle describes our cultural captivity in terms of "consumerism" and "hedonistic fascism".[40] While it is difficult not to be sympathetic to these descriptions of First World societies, or to recognise the kind of loss of humanity which they portray, we have made use of an analysis which incorporates them into a broader historical and intellectual framework and to some extent relocates the problems. This analysis relates consumerism to the emancipation of the passions and thence to the growth of technology and the triumph of the will. But it

also shows that liberation from our modern forms of bondage may require a remembrance of the eternal and a sense of the transcendant: at the centre of modernity, and tightly entangled with the centrality of the will, is oblivion of anything that is not temporal. Yet, we have argued, liberalism, as one aspect of modernity, cannot finally sustain itself without such a transcendent reference: the question is where that presence of the eternal is to be found, united with the historical in order that historical action may be intelligible, but without being confused with it. "What we need is a life before death and not a life after death", says Soelle,[41] and, we submit, begins to turn away from the answer.

In so far as it is subservient to technology and oriented to historical utopianism, liberalism must be repudiated. In so far as it offers opportunities for contributing to a social order less unjust than its alternatives, it must be affirmed. Some time in the future there may be in the ascendant another constellation of human sins than that we live under now: we do not need to learn to endure subjection to the principalities whose sign is technology. But the fact of continuing sin cannot yet be escaped, even though we are promised that the night is far gone: the present world order must be endured for a little while longer. The need for such endurance does not imply the reification of any particular set of sinful structures or practices. (Augustine was not Constantinian in any sense that includes absolutizing the state: indeed by secularizing and denaturalizing it he profoundly subverted its deepest pretensions.)[42] But it does indicate that we must be grateful for, and ready to assist towards, such precarious justice as this world affords. (The City of God was partly written to ease fears that Christians could not conform to social order at all.)[43] And it also means that we should be gravely sceptical about any final dissolution of the differences between the two Cities before the dawning of the eternal day.

Our limited imaginations do not fondly entertain the thought that the Church presided over the end of one civilization and may now be witnessing the demise of another. It is not a habit of those amongst whom we sojourn to ponder the fact that the Eternal City came to be sacked by the barbarians. Yet, although the nature of our loss may be less graphically impressed on us than it was on the inhabitants of an earlier Western empire, we at least have the benefit of the meditations of one who was there. In finding the saeculum to be the temporary intermingling of the two eschatological cities in an earthly peace, Augustine made clear the limits of political possibility; and in doing so he showed how the heavenly city is to relate this fragile earthly peace to the lasting heavenly peace, that final peace "which is so truly peaceful that it should be regarded as the only peace deserving the name, ... a perfectly ordered and completely harmonious fellowship in the enjoyment of God and of one another in God."[44]

NOTES

Chapter Two: An Interpretation of Liberalism

1. Harold J. Laski, The Rise of European Liberalism (London: George Allen and Unwin, 1936), p. 9.

2. J. C. D. Clark, Revolution and Rebellion: State and society in England in the seventeenth and eighteenth centuries (Cambridge: Cambridge University Press, 1986), p. 102.

3. Indeed the extent to which this is true of the chapter as a whole should be stressed, particularly in respect of the apparent ease of translation of terms between different historical contexts. Constraints of space make the account considerably more "whiggish" and over-simplified than good historiographical principles would dictate.

4. John Plamenatz, 'Liberalism', in Philip P. Wiener, ed., Dictionary of the History of Ideas, 5 vols. (New York: Scribner's, 1973), vol. III, pp. 36-61.

5. Alan Bullock and Maurice Shock, The Liberal Tradition: From Fox to Keynes (London: Adam and Charles Black, 1956), pp. liv-lv. They are referring specifically to British liberalism between 1790 and 1930.

6. For these criticisms see Anthony Arblaster, The Rise and Decline of Western Liberalism (Oxford: Blackwells, 1984), pp. 11-3.

7. See Raymond Williams, 'Liberal', in Keywords: A Vocabulary of Culture and Society (Glasgow: Fontana, 1976), pp. 148-9.

8. Quoted by Robert Eccleshall, 'Liberalism', in Robert Eccleshall, Vincent Geoghegan, Richard Jay, and Rick Wilford, Political Ideologies (London: Hutchinson, 1984), p. 39.

9. On the origins of the political usage of 'liberal' and cognates, see G. de Bertier de Sauvigny, 'Liberalism, Nationalism and Socialism: The Birth of Three Words', in Review of Politics 32 (1970), pp. 147-6, esp. pp. 150-5; James H. Billington, Fire in the Minds of Men: Origins of the Revolutionary Faith (London: Temple Smith, 1980), p. 554, n. 34.

10. It should be noted that the guiding purpose of the essay, which is concerned with liberalism as an historical as well as an ahistorical and timelessly intellectual phenomenon, rules out the interpretation which attempts (on a principle of charity) to produce the most

plausible reading of liberalism as a theory. Although this is evidently a valuable exercise, it is inadequate to present purposes in so far as such a reading is separated from the history of liberalism and therefore tends to weed out some of what is most interesting to the critic of liberalism, namely characteristic irrationalities in the historically prevalent forms of liberal thought.

11. A. O. Lovejoy, 'On the Discrimination of Romanticisms' (1924), repr. in M. H. Abrams, ed., English Romantic Poets: Modern Essays in Criticism, Second Edition (New York: Oxford University Press, 1975), p. 9. For a reply see Rene Wellek, 'Romanticism in Literature', in Philip P. Wiener, ed., Dictionary of the History of Ideas, 5 vols. (New York: Scribner's, 1973), vol. IV, p. 197.

12. It is this multi-focal nature of liberalism reflected in its "varieties" that makes talk of family resemblance in this case preferable to that of "focal meaning" (for which see John Finnis, Natural Law and Natural Rights (Oxford: Clarendon Press, 1980; hereafter abbreviated NLNR), pp. 9-11), though the language I shall use throughout ("nearly liberal", "on the edges of liberalism", etc.) will make clear that notions of focal meaning are also implicit.

13. John Dunn, 'The Politics of Locke in England and America in the Eighteenth Century', in John W. Yolton, ed., John Locke: Problems and Perspectives (Cambridge: Cambridge University Press, 1969), pp. 45-80.

14. J. C. D. Clark, English Society, 1688-1832 (Cambridge: Cambridge University Press, 1985), p. 47; see also esp. pp. 44-50.

15. John Dunn, The Political Thought of John Locke: An Historical Account of the 'Two Treatises of Government' (Cambridge: Cambridge University Press, 1969), pp. 205-8.

16. Ibid., pp. 123.

17. C. B. Macpherson, The Political Theory of Possessive Individualism: Hobbes to Locke (Oxford: Oxford University Press, 1962), esp. pp. 1-4, 263-71; pp. 194-262 are on Locke. For Macpherson's general background, see "Democratic Theory: Ontology and Technology", in Democratic Theory: Essays in Retrieval (Oxford: Clarendon Press, 1973), pp. 24-38.

18. Leo Strauss, Natural Right and History (Chicago: Chicago University Press, 1953), pp. 202-51.

19. Ibid., pp. 87-95. Locke was exercised throughout his intellectual life with the difficulty concerning the epistemology of natural law. He believed that although "Our mindes are not made as large as truth nor suited to the whole extent of things", nevertheless "the candle that is set up in us shines bright enough for all our purposes" (quoted in Dunn, The Political Thought of John Locke, p. 94). The law of nature was intended to be a conclusion of the Essay concerning Human Understanding which would justify his use of it as a premiss of the Two Treatises. He fully hoped to set out a

rationalist understanding of moral obligation and failed not for want of trying but - broadly - because of the impossibility of a knowledge of natural law within a sensationalist framework. See ibid., pp. 187-9.

20. Ibid., p. 48.

21. Ibid., p. 53.

22. Ibid., pp. 203-61, passim.

23. Ibid., p. 249.

24. Ibid., pp. 157-64.

25. Ibid., pp. 218-9, 77-83.

26. Dunn ('Justice and the Interpretation of Locke's Political Theory', Political Studies 16 (1968), pp. 68-87) claims that in respect of justice also, conventional human law is always subordinate to the divine demand.

27. Locke, Epistola de Tolerantia, ed. Raymond Klibansky, tr. J. W. Gough (Oxford: Clarendon Press, 1968), pp. 68-9.

28. Dunn, The Political Thought of John Locke, pp. 27-40.

29. Cited in Hans Reiss, Kant's Political Writings (Cambridge: Cambridge University Press, 1970), p. 8.

30. Kant, 'Perpetual Peace: A Philosophical Sketch' (1795), in Reiss, op. cit., p. 93.

31. Cf. Reiss, op. cit., p. 38.

32. Howard Williams, Kant's Political Philosophy (Oxford: Basil Blackwell, 1983), pp. 1-27; Reiss, op. cit., pp. 35-8.

33. Howard Williams, op. cit., pp. 52-67.

34. Kant, 'The Metaphysic of Morals' (1797), in Reiss, op. cit., p. 133.

35. Howard Williams, op. cit., pp. 67-9.

36. Kant, 'On the Common Saying: "This May be True in Theory, but it does not Apply in Practice"' (1793), in Reiss, op. cit., p. 74.

37. Ibid.

38. Ibid., p. 75.

39. Ibid., p. 76.

40. Howard Williams, op. cit., pp. 149-57.

41. Kant applauded the French Revolution but disapproved of its violence. He squared it with his principles through the claim that

the Estates General did not usurp the Crown's authority: rather, the King resigned his constitutional sovereignty in favour of the people. See Howard Williams, op. cit., pp. 208-14.

42. Kant, 'Theory and Practice', p. 85.

43. Or so Michael J. Sandel claims (Liberalism and the Limits of Justice (Cambridge: Cambridge University Press, 1982), pp. 2-11).

44. "In trying to replace speculative rationalism by a voluntaristic rationalism, Kant attempts to find a via media between the rationalism of Wolff and the stress on individual moral freedom of Pietism. He retains the rationalist criteria of unity, harmony, coherence and consistency; but he applies them to the will, qua practical reason, rather than to reason as a contemplative, intellectual faculty" (Keith Ward, The Development of Kant's View of Ethics (Oxford: Basil Blackwell, 1972), p. 172). Ward argues that the conjunction is inconsistent.

45. Quoted in Bullock and Shock, op. cit., p. xxiv.

46. Mill on Liberty: a defence (London: Routledge and Kegan Paul, 1983): the account given here is his in all essentials. Gray's book, of which his 'John Stuart Mill on Liberty, Utility and Rights' (in J. Roland Pennock and John W. Chapman, eds., Human Rights: Nomox XXIII (New York: New York University Press, 1981), pp. 80-116) is a shorter and earlier version, is part of a trend towards a more generous interpretation of Mill that started with John C. Rees ('A Re-reading of Mill on Liberty', Political Studies 8 (1960), pp. 113-29) and was developed in, e.g., Alan Ryan, The Philosophy of John Stuart Mill (London: Macmillan, 1970); the older interpretations (e.g. Isaiah Berlin, 'John Stuart Mill and the Ends of Life', in Four Essays on Liberty (Oxford: Oxford University Press, 1969), pp. 173-206) usually took him to be guilty of massive inconsistencies between On Liberty and Utilitarianism; for these see Gray, Mill on liberty, pp. 1-9.

47. VI.12: see esp. section vi.

48. Gray, Mill on liberty, pp. 19-47.

49. Mill, On Liberty (1859), in Mary Warnock, ed., Utilitarianism (London: Collins, 1962), p. 226.

50. Rees, John Stuart Mill's 'On Liberty' (Oxford: Clarendon Press, 1985), pp. 156-74, had come to a similar conclusion.

51. Mill, Utilitarianism, in Mary Warnock, ed., Utilitarianism (London: Collins, 1962), p. 310.

52. Gray, Mill on liberty, pp. 48-69. It is debated whether the principle of liberty is to be interpreted as preventing harm or harmful conduct.

53. Ibid., pp. 70-89.

54. Ibid., p. 119.

55. Ibid., p. 88.

56. Michael Freeden, The New Liberalism: An Ideology of Social Reform (Oxford: Clarendon Press, 1978), pp. 7-21.

57. Ibid., p. 17.

58. Ibid., p. 16.

59. Cf. T. H. Green, 'Lecture on "Liberal Legislation and Freedom of Contract"', in Works, ed. R. L. Nettleship, 3 vols., (London: Longmans, Green and Co., 1885-8), vol. III, p. 382: "To uphold the sanctity of contract is doubtless a prime business of government, but it is no less its business to provide against contracts being made, which, from the helplessness of one of the parties to them, instead of being a security for freedom, become an instrument of disguised oppression."

60. L. T. Hobhouse, Liberalism (1911), (New York: Oxford University Press, 1964), p. 50.

61. Ibid., p. 67.

62. Ibid., p. 65.

63. Ibid., pp. 67-8.

64. Ibid., p. 76.

65. Cf. Hobhouse, The Metaphysical Theory of the State (London: George Allen and Unwin, 1918), pp. 32-3, on the relation of parts to the whole.

66. Thus Maurice Cranston, Freedom: A New Analysis (London: Longmans, Green and Co., 1953), p. 29.

67. From Social Evolution and Political Theory (1912), quoted in Stefan Collini, Liberalism and Sociology: L. T. Hobhouse and Political Argument in England, 1880-1914 (Cambridge: Cambridge University Press, 1979), p. 123.

68. Collini, op. cit., p. 123-4. In fact this contrast is too schematic: Mill would never have denied that autonomy was a good in itself. Mill does not come out cleanly on one side of the want-regarding/ ideal-regarding distinction.

69. Hobhouse, Liberalism, p. 57.

70. Collini, op. cit., pp. 245-53.

71. Ibid., pp. 235-44.

72. Ibid., pp. 34-5.

73. Peter Clarke, Liberals and Social Democrats (Cambridge: Cambridge University Press, 1978), pp. 237-8.

74. Hobhouse, Liberalism, pp. 87, 88-91.

75. There was also a difference between liberal and scoialist social reform (Freeden, op. cit., pp. 158-60): liberals retained competition, were concerned to avoid sacrificing liberty to equality, preferred equality of human dignity to economic equality. Cf. also Green's liberal proposal that the law should prevent sale of labour on terms below certain standards, compared with the socialists' general concern for different economic conditions (Melvin Richter, The Politics of Conscience: T. H. Green and His Age (London: Weidenfeld and Nicolson, 1964), p. 285).

76. John Gray, Hayek on Liberty (Oxford: Basil Blackwell, 1984), pp. 4-8, 10-6, 21-6.

77. Ibid., pp. 27-30.

78. Ibid., pp. 33-4.

79. Hayek, 'The Use of Knowledge in Society', pp. 77-91; 'Socialist Calculation I', pp. 119-47; 'Socialist Calculation II', pp. 148-80, in Individualism and Economic Order (London: Routledge and Kegan Paul, 1949). These papers lack the Polanyian twist found later.

80. Gray, Hayek on Liberty, p. 41.

81. Hayek, The Constitution of Liberty (London: Routledge and Kegan Paul, 1960), pp. 399-400.

82. Gray, Hayek on Liberty, pp. 99-101. This of course need not have only conservative implications.

83. Ibid., pp. 56-8; Hayek, Constitution of Liberty, pp. 35-6, 65-7.

84. Hayek, Constitution of Liberty, pp. 397-411.

85. Ibid., p. 409.

86. Ibid., pp. 22-32.

87. Ibid., p. 11.

88. Ibid., pp. 20-1.

89. Ibid., p. 88.

90. Ibid., pp. 85-102. He has a voluntarist justification of equality: "Nothing ... is more damaging to the demand for equal treatment than to base it on so obviously untrue an assumption as that of the factual equality of all men. To rest the case for equal treatment of national or racial minorities on the assertion that they do not differ from other men is implicitly to admit that factual inequality would justify unequal treatment; and the proof that some differences do, in fact, exist would not be long in forthcoming. It is of the essence of the demand for equality before the law that people should be treated alike in spite of the fact that they are different" (p.

86).

91. Ibid., pp. 67-8.

92. Gray, Hayek on Liberty, pp. 58-70.

93. Hayek, Constitution of Liberty, p. 41.

94. Ibid.

95. Ibid., pp. 40-1.

96. The distinctive national traditions of liberalism should be noted here: different political, cultural and philosophical traditions lead to emphases on different aspects of liberalism. In Britain the prevailing empiricist spirit has led to a greater particularism than may be found in France, where rationalist philosophies have generated a commitment to more abstract values. "English liberalism, unlike certain foreign sorts of liberalism, looks for 'the positive' not in freedom, but in the qualities of individual persons" (Cranston, op. cit., p. 71). This empiricism has led it to stress satisfaction of felt wants rather than of externally-determined needs, and to dismiss notions of a rational self superior to the empirical self. Freedom therefore is primarily negative: "[the] English liberal has demanded freedom for the individual from the constraints of the state because he has regarded the individual person as an ethical end, and the state as an instrument, of value only in so far as it could serve the interests of the individual person" (Ibid., pp. 71-2). By contrast, French liberalism of the revolutionary period, apart from being strongly progressivist, tends to be étatiste and Rousseauesque; yet in the nineteenth century, its moderate leaders - Constant, Guizot, and others - try to forget the excesses of the Revolution and to establish what they saw (like Voltaire and Montesquieu) as the balance and sanity of the English constitution. In Germany a peculiar development is the relation of liberalism to the movement for national unity: liberty is related to submission to a strong nation-state, and the result of German liberalism in 1848 was the Declaration of the Rights of the German People. Likewise in Italy, liberalism signalled the self-determination of the united people against Austria, the several petty despots, and especially (reflecting the wholesale anti-clericalism of liberalism in Catholic countries) the Papal estates (Cranston, op. cit., and 'Liberalism', in Paul Edwards, ed., The Encyclopaedia of Philosophy, 4 vols. (New York: Macmillan and Free Press, 1967), vol. 4, pp. 458-61; Irene Collins, Liberalism in Nineteenth-Century Europe (London: The Historical Association, 1957).

97. J. W. Gough, The Social Contract: A Critical Study of its Development, Second Edition (Oxford: Clarendon Press, 1957), analyzes the history of contractarianism in terms of this distinction.

98. In some respects Eric Voegelin has of course been proved wrong in pronouncing such liberalism "dead" ('Liberalism and Its History', Review of Politics 36 (1974), p. 520).

99. The manner in which liberalism forms a tradition should be recognized: later forms of liberalism have developed as self-critical responses to clear difficulties in earlier forms: for example, welfare liberalism grew out of reaction to the inadequacies of laissez-faire liberalism, while the chastened nature of "Cold War" liberalism rose in response to the breakdown of the nineteenth-century world.

100. The following analysis develops ideas owed in part to Steven Lukes. It should be stressed again that the degree of generalization necessary in the present context will make many judgements seem more peremptory than they should be.

101. For one contemporary, liberalism "is itself an answer to the unanswerable but irrepressible question: 'What is the meaning of life?'" (Brian Barry, The Liberal Theory of Justice: A Critical Examination of the Principal Doctrines in 'A Theory of Justice' by John Rawls (Oxford: Clarendon Press, 1973) p. 127).

102. See in general Steven Lukes, Individualism (Oxford: Blackwells, 1973).

103. Gray (Liberalism (Milton Keynes: Open University Press, 1986), p. x) makes meliorism one of his four essential constituents of liberalism, the others being individualism, universalism and egalitarianism. For a more extended account of the liberal belief in progress, see chapter 3 below.

104. In E. K. Bramsted and K. J. Melhuish, Western Liberalism: A History in Documents from Locke to Croce (London: Longman, 1978), p. 235.

105. Freeden, op. cit., p. 258.

106. Ryan, J. S. Mill (London: Routledge and Kegan Paul, 1974), p. 147.

107. See Lukes, 'Power and Authority', in Tom Bottomore and Robert Nisbet, eds., A History of Sociological Analysis (London: Heinemann, 1979), pp. 633-76.

108. Hayek, Constitution of Liberty, p. 103.

109. Dunn, Western Political Theory in the Face of the Future (Cambridge: Cambridge University Press, 1979), p. 80.

110. Guido de Ruggiero, quoted in Arblaster, op. cit., p. 78.

111. Larry Siedentop ('Two Liberal Traditions', in Alan Ryan, ed., The Idea of Freedom (Oxford: Oxford University Press, 1979), p. 153) claims that "the fundamental or root concept of liberalism is equality, and its commitment to liberty springs from that". The most prominent exponent of this account of liberalism is Ronald Dworkin (Taking Rights Seriously (London: Duckworth, ^{2}1978), and A Matter of Principle, (Cambridge, Ma.,: Harvard University Press, 1985; hereafter abbreviated MP), esp. pp. 181-213)), for whom equality of concern and respect is the fundamental liberal value: but surely equality of respect itself can only be understood at least partly in terms of liberty (cf. Jeremy Waldron, 'Theoretical Foundations of

Liberalism', Philosophical Quarterly 37 (1987), p. 130).

112. Iris Murdoch, 'Against Dryness; A Polemical Sketch' (1961), in Stanley Hauerwas and Alasdair MacIntyre, eds., Revisions: Changing Perspectives in Moral Philosophy (Notre Dame, Ind.: University of Notre Dame Press, 1983), p. 46.

113. Hobhouse, Liberalism, pp. 16-28.

114. Berlin, 'Two Concepts of Liberty', in Four Essays on Liberty, p. 134.

Chapter Three: Reinhold Niebuhr and the Liberal Philosophy of History

1. Cf. Ronald H. Stone, Reinhold Niebuhr: Prophet to Politicians (Nashville: Abingdon, 1972), p. 11; Shirley Caperton Guthrie, The Theological Character of Reinhold Niebuhr's Social Ethic (Winterthur: Keller, 1959), pp. 3-6.

2. These are take to extend from the mid-1930s, certainly including Beyond Tragedy. It is assumed here that what Stone calls Niebuhr's fourth stage, his "pragmatic-liberal synthesis", was a change more in the presentation than the structure of his thought. Stone is sometimes more alert to the ambiguities in Niebuhr's development than Richard Wightman Fox admits ('Reinhold Niebuhr and the Emergence of the Liberal Realist Faith, 1939-45', Review of Politics 38 (1976), pp. 244-65: cf. Stone, op. cit., p. 10. In general the changes in direction Niebuhr's intellectual biography should be cast in much more moderate and nuanced terms than is customary: he was less of a liberal in his earliest works, and more of a liberal in his mature works, than he admitted in mid-career. Man's Nature and His Communities (London: Geoffrey Bles, 1963; hereafter abbreviated MNHC), pp. 9-20, should be given prominence in accounts of his development.

3. As will be seen below, the use of this term to cover both Niebuhr and the crisis theologians hides more than it reveals. Niebuhr "refused to study Barth" (Richard Wightman Fox, Reinhold Niebuhr: A Biography (New York: Pantheon, 1985), p. 258).

4. MNHC, p. 13; 'Ten Years That Shook My World', The Christian Century 56/17 (April 26 1939), p. 543; Beyond Tragedy: Essays on the Christian Interpretation of History (London: Nisbet, 1938; hereafter abbreviated BT), pp. 232-3; An Interpretation of Christian Ethics (London: SCM Press, 1936; hereafter abbreviated ICE), pp. 173-5; thus the bourgeoisie had brought about the emancipation of the individual (Faith and History: A Comparison of Christian and Modern Views of History (New York: Scribner's, 1949; hereafter abbreviated FH), p. 231.

5. ICE, pp. 174-5.

6. Moral Man and Immoral Society (New York: Scribner's 1932; hereafter abbreviated MMIS), p. 27: though note the early date.

7. Cf. ICE, p. 181.

8. 'Ten Years', p. 545.

9. 'Intellectual Autobiography', in Charles W. Kegley and Robert W. Bretall, eds., Reinhold Niebuhr: His Religious, Social and Political Thought (New York: Macmillan, 1956), pp. 3-23 at p. 16.

10. Ibid., pp. 15-6. Niebuhr thus holds a form of critical realism: he would not accept with more recent writers that there is nothing in virtue of which an interpretation can be judged correct or incorrect. In keeping with his early distaste for epistemology (ibid., p. 4) Niebuhr did not stop to consider closely the difficulties that surround falsificationism.

11. Ibid., p. 14.

12. Cf. Donald B. Meyer, The Protestant Search for Political Realism, 1919-41 Berkeley and Los Angeles: University of California Press, 1960), pp. 256-7, who also mentions Niebuhr's rejection of social science and conservatism by a similar method.

13. 'Intellectual Autobiography', op. cit., p. 9.

14. ICE, p. 22.

15. ICE, p. 23; FH, p. 46; BT, p. 4.

16. ICE, p. 23; 'Reply to Interpretation and Criticism', in Kegley and Bretall, eds., op. cit., pp. 431-51 at p. 446.

17. Discerning the Signs of the Times: Sermons for Today and Tomorrow (London: SCM Press, 1946; hereafter abbreviated DST), p. 143.

18. ICE, p. 22.

19. The Nature and Destiny of Man, vol. 1: Human Nature (London: Nisbet, 1941; herafter abbreviated NDM I), p. 141.

20. NDM I, pp. 142, 146-60.

21. NDM I, p. 146, my underlining.

22. FH, p. 27.

23. This christologial orientation is not worked through monomaniacally in his theology; he seems quite prepared to use other doctrines, such as creation or eschatology, as sources for the meaning of history without any conspicuous assertion of their christological connection. Pace Paul Lehmann, 'The Christology of Reinhold Niebuhr', in Kegley and Bretall, eds., op. cit., pp. 251-80, who sees Christology as the controlling concern in every phase of Niebuhr's theology, it may be more plausible to see the key to the theology of at any rate his mature period in a conception of the

paradoxical relation between time and eternity, which is reflected in his Christology, as well as in other doctrines.

24. Paul Ramsey, Speak Up for Just War or Pacifism: A Critique of the United Methodist Bishops' Pastoral Letter 'In Defense of Creation' (University Park, Pa.: Pennsylvania University Press, 1988), p. 114.

25. For apposite comments on Niebuhr's typological method see D. D. Williams, 'Niebuhr and Liberalism', in Kegley and Bretall, eds., op. cit., pp. 195-7 (and Niebuhr, 'Reply', p. 441); Golo Mann, 'Reinhold Niebuhr und die Kritik der Liberalismus', Merkur (1958), pp. 131-2.

26. See Harry R. Davis and Robert C. Good, eds., Reinhold Niebuhr on Politics (New York: Scribner's, 1960), pp. 13-4, quoted from 'Liberalism: Illusions and Realities', The Nation 133 (1955), pp. 11-2.

27. Ibid., p. 13. The aspects of liberalism that appeal to him are defended under the title 'democracy'; those that do not are castigated as 'liberalism'.

28. Ibid., pp. 13-4. He also refers (The Nature and Destiny of Man, vol. II: Human Destiny (London: Nisbet, 1943; hereafter abbreviated NDM II), p. 286) to varieties of liberalism in which "the power of government is regarded as a simple rational authority over rational men, which will become more just and more universal as reason is extended". Clearly this is liberal despite not fitting clearly into any of Niebuhr's categories.

29. Ibid., p. 14.

30. See, e.g., MMIS, pp. 78-9; ICE, pp. 13-5, 20, 25-6; 'Ten Years', p. 542; FH, pp. 31-2, 2-7, 207. Pace Bob E. Patterson, Reinhold Niebuhr (Waco, Texas: Word Books, 1977), p. 28.

31. FH, p. 31.

32. NDM II, p. 76.

33. NDM I, p. 5.

34. NDM II, p. 47.

35. ICE, p. 182. For definitions of liberalism and modernism as general theological movements see Stone, op. cit., pp. 35-6; William R. Hutchison, The Modernist Impulse in American Protestantism (Oxford: Oxford University Press, 1976), pp. 2-4.

36. Quoted in Davis and Good, eds., op. cit., p. 15, from "The Blindness of Liberalism", Radical Religion 1 (1936), pp. 4-5; the tone is of course in part ironic. Although this appears before his fully mature period, it fairly represents what he takes himself to be attacking. Certainly he admitted later that many of his attacks on utopianism were overdone (e.g. MNHC, p. 13) but he never recanted on the thrust of his criticism.

37. Niebuhr, 'Intellectual Autobiography', p. 15.

38. See e.g. BT, p. 141; FH, p. 47; 'The Sickness of American Culture', The Nation 166 (March 6 1948), p. 268; NDM I, pp. 289-90, n. 3.

39. FH, pp. 5, 11-3.

40. 'Ten Years', p. 543; The Children of Light and the Children of Darkness: A Vindication of Democracy and a Critique of its Traditional Defenders (London: Nisbet, 1945; hereafter abbreviated CLCD), p. 20.

41. FH, pp. 1-2, 29-30, 33-4, 41; 'A Faith for History's Greatest Crisis', Fortune 26/1 (July 1942), p. 126.

42. FH, pp. 37-8.

43. FH, p. 6.

44. NDM II, p. 166.

45. See Davis and Good, eds., op. cit., pp. 12-3, quoted from 'Two Forms of Utopianism', Christianity and Society 12 (1947), pp. 6-7.

46. 'Ten Years', p. 543; FH, pp. 1-2, 14-6, 30.

47. ICE. See esp. pp. 21-6, 32-44. Lectures delivered Spring 1934. For Niebuhr's understanding of irony - which is irrelevant to the present discussion - as a key to the prophetic interpretation of history, see Gordon Harland, The Thought of Reinhold Niebuhr (New York: Oxford University Press, 1960), ch. 5, s. 3.

48. ICE p. 38.

49. See NDM I, passim, for Niebuhr's theory of the self.

50. See Stone, op. cit., p. 102; FH, pp. 11-3; DST, pp. 12-3; BT, p. 36. Thus his attack on Dewey, NDM I, pp. 118-9.

51. FH, p. 232. It is anomalous in that talk of the "actual" story of history presupposes (at least within Niebuhr's terms) precisely the transcendent perspective he denies to finite creatures. A context for this belief of his is suggested at the end of this section.

52. FH, pp. 33-54.

53. FH, pp. 46-7.

54. BT, pp. 10-3; FH, pp. 121-2.

55. There is of course room (though Niebuhr does not use it) to argue for the role of sin in human ignorance of history).

56. BT, p. 23.

57. Cf. NDM I, p. 161.

58. NDM I, p. 195.

59. NDM I, pp. 254-5.

60. For which he is taken to task by Daphne Hampson, 'Reinhold Niebuhr on sin: a critique', in Richard Harries, ed., Reinhold Niebuhr and the Issues of Our Time (London and Oxford: Mowbrays, 1986), pp. 46-60. This is notably true in BT (e.g. pp. 16-7) and FH. For an earlier view see ICE, p. 102: "a significant portion of human wrong-doing is due to finiteness".

61. 'A Faith for History's Greatest Crisis', p. 126.

62. 'Ten Years', p. 543; CLCD, p. 20.

63. 'The Sickness of American Culture', p. 268.

64. FH, pp. 11-3; BT, p. 141; NDM II, p. 91.

65. NDM I, p. 261.

66. NDM II, pp. 327-30; 'A Faith for History's Greatest Crisis', p. 122; FH, pp. 15-6.

67. BT, p. 168. The logic of the passage from which this is taken is inperspicuous.

68. NDM II, p. 302.

69. FH, pp. 116-9, 218.

70. BT, pp. 34-6, 115-6.

71. NDM II, p. 331.

72. BT, p. 237. This passage is expounded with reference to the Nazi treatment of the Jews by Stanley Hauerwas (Against the Nations (Minneapolis: Winston Press, 1985), pp. 84-5).

73. FH, pp. 8, 27-8.

74. BT, pp. 25-46; cf. also his treatment of the Temple, ibid., pp. 47-68.

75. NDM I, p. 150; cf. FH, p. 104.

76. NDM II, p. 332.

77. FH, p. 214.

78. NDM II, p. 310.

79. NDM II, pp. 310-2.

80. NDM II, pp. 319-20.

81. FH, p. 26.

82. NDM I, p. 153.

83. FH, pp. 26, 47; NDM II, p. 74.

84. NDM II, pp. 69-70, 85.

85. NDM II, p. 318.

86. FH, p. 34.

87. NDM II, p. 63

88. NDM II, pp. 316-7.

89. BT, p. 302.

90. BT, pp. 249-69; NDM II, pp. 302-3.

91. NDM II, p. 322, n. 1.

92. This is rightly recognized by Langdon Gilkey, 'Reinhold Niebuhr's Theology of History', Journal of Religion 54 (1974), pp. 360-86; see esp. p. 369, n. 22 for refs.

93. The criticisms of progressivism presented here do not render null other kinds of progress between Pentecost and Parousia: notably, progress in the spread of the Gospel, development (perhaps) in the understanding of doctrine, and the growth of demonic world empires. For John of Patmos's account of this last theme, see Oliver O'Donovan, 'The Political Thought of the Book of Revelation', Tyndale Bulletin 37 (1986), pp. 61-94.

94. Stone, op. cit., pp. 38-9, 105.

95. Antoine Nicolas de Condorcet, Sketch for a Historical Picture of the Progress of the Human Mind (1795), tr. J. Barraclough (London: Weidenfeld and Nicolson, 1955), p. 4.

96. Ibid., p. 193.

97. Ibid., p. 208.

98. See A. R. J. Turgot, 'A Philosophical Review of the Successive Advances of the Human Mind' (1750), in Turgot on Progress, Sociology and Economics, tr. and ed. by Ronald L. Meek (Cambridge: Cambridge University Press, 1973), pp. 41-59.

99. William Godwin, Enquiry Concerning Political Justice (1793), abridged and ed. by K. Codell Carter (Oxford: Clarendon Press, 1971), p. 59; cf. his comment on the book: "[the] great doctrine of the treatise is ... the perfectibility ... the progressive nature of man, in knowledge, in virtuous propensities, and in social institutions" (ibid., p. 326). Carter's counterexample (pp. xxi-xxii) hardly qualifies very seriously the degree to which Godwin believed in progress.

100. Morris Ginsberg, 'Progress in the Modern Era', in P. P. Wiener, ed.,

Dictionary of the History of Ideas, 5 vols. (New York: Scribner's, 1973), vol. III, pp. 633-50, who also mentions belief in laws of development and evolution, and differing opinions about the determinism and non-determinism of progress. Niebuhr attacked all of these.

101. A System of Logic, VI.x.3.

102. Neatly illustrated by John Passmore, The Perfectibility of Man (London: Duckworth, 1970), p. 174n.

103. Walter Rauschenbusch, A Theology for the Social Gospel (1917) (Nashville: Abingdon, 1945), p. 98.

104. Ibid., p. 32.

105. Rauschenbusch, Christianity and the Social Crisis (1907), (excerpts in Benson Y. Landis, A Rauschenbusch Reader: The Kingdom of God in the Social Gospel (New York: Harper, 1957)), pp. 27-8.

106. ICE, p. 7.

107. Hutchison, op. cit., pp. 251-6.

108. 'Reply', p. 441, to D. D. Williams, op. cit., pp. 196-7. Cf. Hutchison, op. cit., pp. 301-2, for other complaints of misrepresentation.

109. Dewey, 'Philosophy and Civilization', in Philosophy and Civilization (New York: Putnam's, 1931), pp. 3-4.

110. Dewey, Reconstruction in Philosophy (1920), (Boston: Beacon Press, 1948), p. 196.

111. From 'My Pedagogic Creed', quoted in Richard J. Bernstein, John Dewey (New York: Washington Square Press, 1966), p. 42.

112. Bernstein, op. cit., pp. 167-85.

113. Dewey, 'The Democratic Faith and Education', in Problems of Men (New York: Philosophical Library, 1946), pp. 23-33.

114. Ibid., p. 33.

115. In fact liberals were not wholly put out by the First World War. Hobhouse's response is typical: "in the long run and at a greater depth there is harmony" (Social Evolution and Political Theory (New York: Columbia University Press, 1928), p. 154); cf. ibid., p. 162, "the halting, broken, and uneven nature of progress".

116. Although many others share it: Hayek, as was seen earlier, and Berlin, 'Historical Inevitability', in Four Essays on Liberty, pp. 41-117.

117. Popper, The Open Society and Its Enemies, 2 vols., 6th ed. (London: Routledge and Kegan Paul, 1966), vol. 1, pp. 7-8.

118. Ibid., p. 19.

119. Ibid., vol. 2., pp. 259-80. N.B. Charles Frankel who claims in Dewey-like terms that the idea of progress, considered as a moral standard requiring open enquiry, "would appear to be an indispensible belief for a fully liberal civilization" ('Progress, The Idea of', in Paul Edwards, ed., The Encyclopaedia of Philosophy, 8 vols. (New York: Macmillan and Free Press, 1967), vol. 6, p. 487).

120. In chapter seven we discuss the sense in which they are utopian.

121. 'Reply', p. 441; though Louis Hartz (The Liberal Tradition in America (New York: Harcourt, Brace and World, 1955)) seems to reserve beliefs in this kind of progressivism for various massively marginalized groups of European-style socialists. But Hartz may be polemically defending liberalism from just the kinds of attacks Niebuhr brought.

122. For this interpretation of Augustine see R. A. Markus, Saeculum: History and Society in the Theology of St Augustine, Revised Edition (Cambridge: Cambridge University Press, 1988), esp. chs. 1-3.

123. For Niebuhr's theology, see further Dennis P. McCann, Christian Realism and Liberation Theology: Practical Theologies in Creative Conflict (Maryknoll: Orbis Books, 1981), pp. 52-78.

124. NDM II, p. 58.

125. NDM II, p. 63.

126. Ibid.

127. NDM I, p. 156.

128. NDM II, p. 62.

129. BT, p. 14.

130. NDM II, p. 103.

131. NDM II, p. 116.

132. FH, p. 168.

133. The term is Rachel Hadley King's.

134. NDM I, p. 158.

135. FH, p. 148.

136. Cf. NDM I, p. 157.

137. BT, p. 22.

138. NDM II, p. 51.

139. NDM II, p. 319.

140. NDH II, pp. 51-2.

141. Cf. King's Appendix B: 'Reinhold Niebuhr's Redefinition of Standard Christian Terms (Theologically Arranged)' (The Omission of the Holy Spirit from Reinhold Niebuhr's Theology (New York: Philosophical Library, 1964), pp. 195-9).

142. Stone, op. cit., p. 319: see also pp. 318-44; the Niebuhr reference Stone is presumably thinking of is Leaves from the Notebook of a Tamed Cynic (1928), (Cleveland, Ohio: Meridian Books, 1957), pp. 50-1. For civilization's need of religion as a major concern of NDH read between the lines of vol. II, ch. X, esp. p. 316. James Gustafson is right to see Niebuhr's theology in the service of his ethics ('Theology in the Service of Ethics: An Interpretation of Reinhold Niebuhr's Theological Ethics', in Harries, ed., op. cit., pp. 24-45): cf. Niebuhr's own claim, MNHC, p. 16. Niebuhr's religion as projection was no doubt assisted by his late association with Erik Erikson, but cf. BT, p. 113, written in the late 1930s. Heaven for Niebuhr was "a symbolic expression of the fact that 'our reach is beyond our grasp'" (Nations and Empires: Recurring Patterns in the Political Order (London: Faber, 1960), p. 298): King talks of "the strange joylessness" that characterizes his writings, connected perhaps with his evasiveness about the Christian hope (cf. Emil Brunner's comments, 'Some Remarks on Reinhold Niebuhr's Work as a Christian Thinker', in Kegley and Bretall, eds., op. cit., pp. 31-2).

143. This claim about apologetics would have to be made out more fully than is presented here: certainly it should not be taken (as Barthians have been prone) to imply abandoning apologetics.

Chapter Four: George Grant and the Basis of Liberal Values

1. Robert Nozick, Anarchy, State and Utopia (Oxford: Basil Blackwell, 1974), p. 183.

2. See Philip Pettit, Judging Justice: An Introduction to Contemporary Political Philosophy (London: Routledge and Kegan Paul, 1980), pp. 31-42; and D. W. Haslett, 'What is Wrong with Reflective Equilibria?', Philosophical Quarterly 37 (1987), p. 305n. Robert Nozick, Rawls' chief critic, never provides any grounds for believing his own theory to be true: the size of this lacuna in his theory (admitted, Nozick, op. cit., p. xiv; cf. his Philosophical Investigations (Oxford: Clarendon Press, 1981), pp. 498-9n.) can scarcely be overstated.

3. George Grant, English-Speaking Justice (Sackville, N.B.: Mount Allison University Press, 1974; repr. Notre Dame, Ind.: University of Notre Dame Press, 1985 [to which page references are made]; hereafter abbreviated ESJ), p. 3.

4. ESJ, pp. 5-8.

5. Grant, Lament for a Nation: The Defeat of Canadian Nationalism (Toronto: McLelland and Stewart, 2 1970; hereafter abbreviated LN), p. 53, n. 15.

6. 'Enucleation' is a term of art coined by Grant, used to refer to the extraction of the animating source of an entity, beyond its purely phenomenal or behavioural aspects (Grant, Time as History (Toronto: Canadian Broadcasting Corporation, 1969; hereafter abbreviated TH), p. 8).

7. ESJ, pp. 63-4.

8. Jacques Ellul, The Technological Society (New York: Vintage Books, 1954), p. xxv; quoted by Grant, Technology and Empire: Perspectives on North America (Toronto: Anansi Press, 1969; hereafter abbreviated TE), pp. 11, 113.

8a. Grant, Technology and Justice (Toronto: House of Anansi Press, 1986; hereafter abbreviated T&J), pp. 11-4. It is this purported etymology which attracts Grant to the word 'technology' for the modern reality, despite the multiplicity of inappropriate connotations it invokes: like many Heideggerians, he sometimes attaches particular significance to what is unveiled through such etymologies. For the record, the word technologia is found in Philodemus, and the cognate verb technologeo in Aristotle (George Henry Liddell, Robert Scott, and Henry Stuart Jones, A Greek-English Lexicon, Ninth Edition (Oxford: Clarendon Press, 1940), s.v.).

9. ESJ, p. 82.

10. TE, p. 137.

11. Grant, 'A Conversation on Technology' (with Gad Horowitz), Journal of Canadian Studies 4/3 (1969), p. 3.

12. ESJ, p. 4.

13. ESJ, p. 5.

14. TE, p. 114, n. 3.

15. LN, p. 95. Grant submits to Strauss in his interpretation of past political philosophers.

16. ESJ, p. 95.

17. ESJ, p. 70.

18. Grant, 'How deception lurks in The Secular City' (Review of Harvey Cox, The Secular City), United Church Observer (1 July, 1966), pp. 17, 26.

19. LN, p. 56: the three interpretations are (in fact) compatible once some distinctions are made clear.

20. LN, pp. 54-66. The relation of Canada to the American project has been one of Grant's abiding concerns: cf., for example, The Empire: Yes or No? (Toronto: Ryerson Press, 1945); 'Have We a Canadian Nation?', Public Affairs (Institute of Public Affairs, Dalhousie University) 8 (1945), pp. 161-6; LN; and 'Canadian Fate and Imperialism', in TE, pp. 63-78.

21. See in general 'In Defence of North America' in TE, pp. 15-40.

22. See Joan E. O'Donovan, George Grant and the Twilight of Justice (Toronto: University of Toronto Press, 1984), pp. 100-1, for the relation of charity and contemplation.

23. See, for example, TE, pp. 18-9; TH, pp. 21-2; Joan O'Donovan, op. cit., pp. 129-30, for the resolution of Grant's apparent contradictions. in later writings he suggests that Hildebrand's victory in the Investiture controversy contributed to the technological society by turning the church "from its traditional role of holding forth the mystery of perfection, to the role of control in worldly affairs" (T&J 58).

24. TE, p. 23.

25. Joan O'Donovan, op. cit., p. 94.

26. TE, p. 25.

27. Grant, 'Ideology in Modern Empires', in J. E. Flint and G. Williams, eds. Perspectives of Empire (London: Longmans Group, 1973), pp. 190-1; 'Nationalism and Rationality', Canadian Forum 50 (1971), pp. 336-7.

28. LN, p. 67; cf. the introduction to 'Religion and the State', TE, pp. 43-5.

29. LN, p. 54; TE, p. 67.

30. TE, p. 115; 'Faith and the Multiversity', The Compass 4 (1978), pp. 3-14.

31. TE, p. 115.

32. 'Research in the Humanities', T&J, pp. 97-102.

33. TE, p. 25. Cf. Philip Rieff, The Triumph of the Therapeutic: Uses of Faith after Freud (Chicago: University of Chicago Press, 1966, ^{2}1987), pp. ix-x: "Now the bureaucrat sits behind his impersonality, an expert at redistributing jargon and managing case history files. Any good bureaucrat knows his true end: enlarging his own little piece of power. The bureaucrat is the master organizer of our passionate indifference to the real needs of given individuals, each different from every other in his identity, his incommunicability, his inwardness."

34. Grant, '"The computer does not impose on us the way it should be used"', in Abraham Rotstein, ed., Beyond Industrial Growth (Toronto: University of Toronto Press, 1976), p. 122; cf. T&J, pp. 19-31.

Grant further claims that because computers can only exist in societies with larger corporations, they limit the forms of community now practicable, whatever political or social ideals people may have (T&J, pp. 32).

35. TE, p. 24.

36. ESJ, p. 11.

37. Grant, 'The Uses of Freedom - a word and our world', Queen's Quarterly 62 (1956), p. 524.

38. TE, p. 26.

39. See in general, 'Tyranny and Wisdom', in TE, pp. 81-109.

40. See 'Religion and the State' in TE, pp. 43-60; Joan O'Donovan, op. cit., pp. 62-8, 162-3.

41. TE, p. 43.

42. TE, p. 129.

43. ESJ, p. 82.

44. ESJ, p. 75.

45. ESJ, pp. 48-68.

46. ESJ, p. 57.

47. ESJ, p. 62.

48. Friedrich Nietzsche (The Gay Science, tr. Walter Kaufmann (New York: Vintage Books, 1974)) has his own account:

> Wie jeder, der einst Ketten trug,
> Hort uberall er - Kettenklirren. (Prelude 32)

Cf. section 108: "God is dead: but given the way of men, there may still be caves for thousands of years in which his shadow will be shown".

49. ESJ, p. 75.

50. TH, pp. 22, 28; TE, pp. 129-30n.

51. TH, pp. 29-30.

52. TH, p. 30.

53. TH, p. 32.

54. ESJ, pp. 83-4. For Nietzsche's version of justice, cf. Grant, 'Nietzsche and the Ancients' in T&J, pp. 79-93.

55. 'The Triumph of the Will', in Denyse O'Leary, ed., The Issue is Life: A Christian Rsponse to Abortion in Canada (Burlington, Ont.: Welch Publications, 1988), p. 157.

56. ESJ, pp. 32-3.

57. ESJ, p. 41.

58. ESJ, p. 42, cf. pp. 43-4.

59. ESJ, pp. 46-7.

60. ESJ, pp. 25, 32.

61. ESJ, p. 22.

62. ESJ, pp. 22, 23-4, 30, 37.

63. 'Faith and the Multiversity', The Compass 4 (1978), p. 9.

64. Norman Daniels, review of ESJ (Canadian Journal of Philosophy 9 (1979), pp. 563-7): Grant does not distinguish the self-interest of the contractors and that of those without such motivational constraints. No attempt here is made to expound Rawls' theory (see, amongst the vast secondary literature, esp. Daniels, ed., Reading Rawls: Critical Studies on Rawls' 'A Theory of Justice' (Oxford: Basil Blackwell, 1975); but also Barry, op. cit., and Robert Paul Wolff, Understanding Rawls: A Reconstruction and Critique of 'A Theory of Justice' (Princeton: Princeton University Press, 1977)), though it must be emphasized that A Theory of Justice (Oxford: Oxford University Press, 1972; hereafter abbreviated TJ) is approached through Rawls' later self-interpretation shadowed in 'Kantian Constructivism in Moral Theory', Journal of Philosophy 77 (1980), pp. 515-72), but most explicitly developed in 'Justice as Fairness: Political not Metaphysical' (Philosophy and Public Affairs 14 (1985), pp. 223-51), 'The Idea of an Overlapping Consensus' (Oxford Journal of Legal Studies 7 (1987), pp. 1-25), and 'The Priority of the Right and Ideas of the Good' (Philosophy and Public Affairs 17 (1988), pp. 251-74. These were of course not available to Grant, and his argument is therefore also to some extent a construction by the present writer to meet Rawls' newer direction; nevertheless the criticism of Grant's interpretation made here is still applicable.

65. Dworkin, 'The Original Position', in Daniels, ed., op. cit., pp. 16-53.

66. Lyons, 'Nature and Soundness of the Contract and Coherence Arguments', in Daniels, ed., op. cit., pp. 141-67.

67. Scanlon, 'Rawls' Theory of Justice', in Daniels, ed., op. cit., pp. 169-205.

68. Op. cit.

69. Op. cit.

70. Op. cit.

71. 'Political not Metaphysical', p. 225.

72. Ibid., p. 227.

73. Ibid., p. 229.

74. Ibid.

75. Ibid., p. 233.

76. Ibid.

77. 'Kantian Constructivism', pp. 526-7.

78. TJ, p. 21. Note that the reference to persuasion by philosophical reflection is superfluous in the newer "political conception" of justice as fairness, where it is replaced by the notion of what citizens are willing to accept (for whatever reason) in order to achieve social co-operation; nevertheless agreement with Rawls' "metaphysical conception" still counts as an acceptable reason, should anyone be persuaded by it.

79. 'Kantian Constructivism', pp. 523-4.

80. 'Political not Metaphysical', p. 238. Failure to appreciate the continuing importance of the original position in Rawls' political conception of justice as fairness is one of a number of misunderstandings of Rawls by L. Gregory Jones ('Should Christians Affirm Rawls' Justice as Fairness? A Response to Professor Beckley', JRE 16 (1988), pp. 251-71.

81. Rawls is nearest here to Scanlon's interpretation, though he makes clear that the ideal of individual rational choosers is a public ideal, and not a report on our private self-representations.

82. 'Kantian Constructivism', p. 564.

83. Dworkin, 'The Original Position', pp. 27-37.

84. Hare, 'Rawls' Theory of Justice', in Daniels, ed., op. cit., p. 82.

85. Bloom, 'Justice: John Rawls Vs The Tradition of Political Philosophy', American Political Science Review 69 (1975), p. 649.

86. Schaefer, Justice or Tyranny? A Critique of John Rawls's 'A Theory of Justice' (Port Washington, NY: Kennikat Press, 1979), p. 18.

87. 'Political not Metaphysical', p. 230.

88. 'Kantian Constructivism', pp. 518-9.

89. Ibid., 519.

90. Rawls thus disowns the universalism that is discernible in some passages in TJ and which Grant, ESJ, p. 19, finds.

91. 'Political not Metaphysical', p. 247. Rawls thus has a higher view of human motivation than Hobbes or Strauss' Locke: cf. Nagel, 'Moral Conflict and Political Legitimacy' (Philosophy and Public

Affairs 16 (1987)), pp. 218-21.

92. 'Overlapping Consensus', p. 6.

93. Rawls' attempt (ibid., pp. 18-23) to show that an overlapping consensus which supports justice as fairness need not be a "happy coincidence" is massively naive.

94. 'The Case against Abortion', Today Magazine (3 October 1981), p. 13. 'Abortion and Rights' (written with Sheila Grant) (T&J, pp. 117-30) is the nearest approach to an extended treatment of abortion that Grant provides; but cf. also 'The Triumph of the Will'.

95. 'Political not Metaphysical', p. 233; cf. TJ, section 77.

96. ESJ, p. 29.

97. See note 90.

98. Rawls also appears to make an affirmation of the same kind: he has a thin theory of the good which is necessary for specifying the primary goods. But clearly this is insufficient for the present task; he would have to say the same about persons; and anyway it also could be construed as an ideal.

99. 'Kantian Constructivism', p. 534.

100. Bernard Williams, Ethics and the Limits of Philosophy (London: Fontana Press, 1985), p. 76.

101. Thus Dworkin, 'The Original Position', pp. 37-53.

102. With Harlan R. Beckley, 'A Christian Affirmation of Rawls's Idea of Justice as Fairness - Part I', JRE 13 (1985), pp. 228-9.

103. Sandel, op. cit., p. 48.

104. Ibid., pp. 47-8.

105. 'Poltical not Metaphysical', p. 241.

106. Ibid., p. 239.

107. Rawls, 'Fairness to Goodness', Philosophical Review 84 (1975), pp. 542-5.

108. 'Kantian Constructivism', p. 531.

109. Cf. Grant, '"The computer does not impose"', p. 127, the modern view of goodness looks to richness of life, not what we are fitted for.

110. 'Fairness to Goodness', pp. 545-6.

111. ESJ, p. 85; cf. T&J, p. 54, where justice is understood as "rendering due", to oneself, to others, to the non-human world, to God, thereby including and integrating both personal and political justice. Contrast Hare, Moral Thinking: Its Levels, Method, and

Point (Oxford: Clarendon Press, 1981), p. 54: "For cases where the interests of others are not affected, I make no claim to provide canons of moral reasoning." Rawls, 'The Basic Structure as Subject', American Philosophical Quarterly 14 (1977), pp. 159-65, discusses Nozick's attack on end-state distribution, not the present issue. Finnis, NLNR, pp. 161-97, correctly makes justice primarily a function of practical reasoning not a feature of the basic structure of society.

112. ESJ, p. 11.

113. LN, p. 57.

114. TE, p. 59.

115. Joan O'Donovan, op. cit., p. 65.

116. 'Kantian Constructivism', p. 553.

117. 'Fairness to Goodness', p. 519.

118. Nagel, 'Rawls on Justice', in Daniels, ed., op. cit., pp. 9-10.

119. 'Fairness to Goodness', pp. 542-5.

120. Though not unreasonably. Rawls admits his unclarity in TJ on many of these points ('Political not Metaphysical', pp. 223-4).

121. It is not a pleasant game for the culturally impotent (LH, p. 94, n. 36).

122. 'Political not Metaphysical', pp. 223, 226.

123. For vitriol, see Bloom, op. cit., who suggests the title "A First Philosophy for the Last Man" (p. 662).

124. TE, p. 141.

125. TH, p. 52: for interpretation, see Joan O'Donovan, op. cit., p. 131 ("Our present darkness must have meaning even as darkness").

126. TH, p. 51; it has involved "a great achievement of the intellect" ("Faith and the Multiversity", p. 13; cf. T&J, pp. 59-60), and has in part realized the hope of relieving famine, toil, disease and war (T&J, p. 15).

127. ESJ, p. 86. John Badertscher, 'The Prophecy of George Grant', Canadian Journal of Social and Political Theory 4 (1980), pp. 183-9, helpfully indicates the tensions in Grant's account here.

128. For theological criticism, see esp. Joan O'Donovan, op. cit., pp. 166-80.

129. Grant, Conversation in Larry Schmidt, ed., George Grant in Process: Essays and Conversations (Toronto: Housse of Anansi, 1978), p. 102.

130. Grant Tape 1 (Canadian Broadcasting Association): "that's what one

means by God".

131. Grant, Conversation, p. 102.

132. Ibid., pp. 102-3.

133. See esp. Joan O'Donovan, op. cit., pp. 176-7; Edwin B. Heaven and David R. Heaven, 'Some Influences of Simone Weil on George Grant's Silence', in Schmidt, ed., op. cit., pp. 68-78.

134. Grant Tape 3.

135. Expounded in 'Faith and the Multiversity', pp. 3-5, and T&J, pp. 35-77. On Weil, see ibid., pp. 54-6.

136. Grant, Conversation, p. 105; Tape 3.

137. Grant Tape 2.

138. Grant's Augustine is the author of "Quid sumus nisi voluntates?" (TH, p. 34).

139. TH, p. 44.

140. TE, p. 35.

141. Arthur Kroker, Technology and the Canadian Mind: Innis/McLuhan/Grant (Montreal: New World Perspectives, 1984), pp. 48-51.

142. Grant, 'A Conversation on Technology', p. 5.

143. TH, pp. 45, 48.

144. 'Conceptions of Health', in Helmut Schoek and James W. Wiggins, eds., Psychiatry and Responsibility (Princeton: Van Nostrand, 1962), p. 122.

145. TE, pp. 102-3.

146. 'How deception lurks', p. 16.

147. Laurence Lampert, 'The Uses of Philosophy in George Grant', Queen's Quarterly 81 (1974), pp. 509-10.

148. 'Faith and the Multiversity', p. 5.

149. See T&J, pp. 103-30, 'Triumph of the Will'.

150. T&J, p. 55.

151. See Joan O'Donovan, op. cit., pp. 100-1; the tension was explicit from his earliest work (cf. ibid., pp. 15-7), though during his Hegelian phase in Philosophy in the Mass Age (Toronto: Copp Clark, ^{2}1966) he thought it rationally resolvable within history. It is to the Christian emphasis on charity that Grant attributes (and defends against Strauss' elitism) the Western belief in the equality of all human beings.

152. 'Overlapping Consensus', p. 14.

153. Joan E. O'Donovan, 'The Battleground of Liberalism: Politics of Eternity and Politics of Time', The Chesterton Review 11 (1985), pp. 134-5.

154. Ellul, op. cit., p. 306. This is compatible with technological fate working through rather than despite human decisions: if a field of choice is weighted such that for a particular agent only one course of action is acceptable, the outcome will be inevitable, on the assumption of that agent's rationality; "technological fate" is what weights the alternatives. Cf. in a Marxist context, G. A. Cohen, Karl Marx's Theory of history: a Defence (Oxford: Clarendon Press, 1978), p. 147, n. 1.

155. In Heidegger's terms, the call in the unconcealment of Being is a challenging claim, a Ge-stell, to order the self-revealed as standing-reserve, to turn Gegenstand into Bestand. See the essays collected in The Question Concerning Technology and Other Essays, tr. William Lovitt (New York: Harper and Row, 1977). Grant's title Time as History may be an ironic quotation from Heidegger: thus, under the sway of technology, "time has ceased to be anything other than velocity, instantaneousness, and simultaneity, and time as history has vanished from the lives of all peoples" (Heidegger, An Introduction to Metaphysics, tr. Ralph Manheim (New Haven: Yale University Press, 1959), p. 38).

156. T&J, p. 22.

157. LH, p. 94, n. 36.

158. ESJ, p. 47.

159. Cf. Joan O'Donovan, George Grant, p. 171.

160. See, at different levels of theological and exegetical depth, Karl Barth, The Christian Life, tr. Geoffrey W. Bromiley (Grand Rapids: Eerdmans, 1981), pp. 213-33; Hendrik Berkhof, Christ and the Powers, tr. John H. Yoder (Scottdale, Pa.: Mennonite Publishing House, 1962); G. B. Caird, Principalities and Powers: A Study in Pauline Theology (Oxford: Clarendon Press, 1956); James Wm. McClendon, Jr., Systematic Theology: Ethics (Nashville: Abingdon, 1986).

161. For further theological discussion of technology see, for example, Oliver O'Donovan, Begotten or Made? (Oxford: Clarendon Press, 1984); Egbert Schuurman, Technology and the Future: A Philosophical Challenge, tr. Herbert Donald Morton (Toronto: Wedge Publishing Foundation, 1981); Stephen V. Monsma, ed., Responsible Technology (Grand Rapids: Eerdmans, 1986); Carl Mitcham and Jim Grote, Theology and Technology: Essays in Christian Analysis and Exegesis (Lanham, Md.: University Press of America, 1984).

Chapter Five: Jacques Maritain and the Liberal Defence of Pluralism

1. For Maritain's influence on John Courtney Murray, and thence on the Vatican II Declaration of Religious Freedom, see Faith E. Burgess, The Relationship between Church and State according to John Courtney Murray, S. J. (Dusseldorf: Rudolf Stehle, 1971), p. 23; that he also influenced writers of the Christendom group is evidenced by, for example, T. S. Eliot, The Idea of a Christian Society (London: Faber, 1982), p. 42.

2. See esp. the essays in Philosophy and the Human Sciences: Philosophical Papers 2 (Cambridge: Cambridge University Press, 1985), pp. 1-12, 187-337. The most celebrated example of this trend is Michael Sandel, Liberalism and the Limits of Justice (Cambridge: Cambridge University Press, 1982). Alasdair MacIntyre has (in discussion) rejected the title "communitarian" as a description of his own position, dismissing communitarian politics as "the children of the bourgeoisie playing with themselves". It is, he says, politics in the head - an imagined engagement with reality which, like most political pronouncements of professors, is ultimately fruitless: genuine community is not achieved by being chosen as an end in itself, but is supervenient on wholehearted commitment to some other activity. Some notion of the kind of community he is looking for is given in 'The Idea of an Educated Public', in Graham Haydon, ed., Education and Values (London: Institute of Education University of London, 1987), pp. 15-36. For some cogent criticisms of Sandel and earlier MacIntyre, cf. Amy Gutmann, 'Communitarian Critics of Liberalism', Philosophy and Public Affairs 14 (1985), pp. 308-22. It should be noted that despite a certain amount of posturing, communitarians are still within the broad stream of Western liberalism: pinch a communitarian and you find a liberal.

3. Thus he argues that the seventeenth-century revolution should be read as being motivated by the desire for freedom from an external given order, rather than by the desire to manipulate the material world (Hegel (Cambridge: Cambridge University Press, 1975), pp. 3-9).

4. For example, Taylor does not make very clear (at least in the essays cited above) his understanding of the relationship between persons and personality, or of the different levels of socialization that occur in a pluralist society, or of the basis of moral reasoning.

5. Maritain's principal works that address issues in political theory are, in order of publication (English translation published in London by Geoffrey Bles, unless otherwise indicated): The Things That Are Not Caesar's, tr. J. F. Scanlan (1927; ET London: Sheed and Ward, 1930); Religion and Culture, tr. J. F. Scanlan (1930; ET London: Sheed and Ward, 1931); Freedom in the Modern World, tr. Richard O'Sullivan (London: Sheed and Ward, 1935) (FMW); True Humanism, tr. M. R. Adamson (1936; ET 1938) (IH); Scholasticism and Politics, tr. Mortimer J. Adler (1940); 'The Conquest of Freedom' in Ruth Nanda Anshen, ed., Freedom: Its Meaning (1940), repr. in Joseph W. Evans and Leo R. Ward, The Social and Political Philosophy of

Jacques Maritain: Selected Readings (1956), pp. 28-46; Redeeming the Time, tr. Harry Lorin Binsse (1941; ET 1943); The Rights of Man and Natural Law (1942; ET 1944) (RMNL); Christianity and Democracy, tr. Doris C. Anson (1943; ET 1945); The Person and the Common Good, tr. John J. Fitzgerald (1947; ET 1948) (PCG); The Range of Reason (1947; ET 1953); Man and the State (Chicago: University of Chicago Press, 1951) (MS); On the Philosophy of History, ed. Joseph W. Evans (1959) (PH). But see also: 'Introduction' and 'On the Philosophy of Human Rights' in UNESCO, Human Rights: Comments and Interpretations (London and New York: Allen Wingate, 1948), pp. 9-17, 72-7; and The Peasant of the Garonne: An Old Layman Questions Himself about the Present Time, tr. Michael Cuddihy and Elizabeth Hughes (1966; ET London: Geoffrey Chapman, 1968).

For secondary literature on Maritain see especially, in addition to works cited later in the chapter: Joseph W. Evans, 'Jacques Maritain's Personalism', Review of Politics 14 (1952), pp. 166-77; essays in Recherches et Débats (Centre Catholique des Intellectuels Français) 19 (July 1957), esp. Joseph de Finance, 'La philosophie de la liberté chez Maritain' (pp. 95-116), and Louis Gardet, 'La culture chrétienne et le dialogue des cultures' (pp. 148-65); Hwa Yol Jung, The Foundations of Jacques Maritain's Political Philosophy (Gainsville, Florida: University of Florida Press, 1960); Henry Bars, La Politique selon Jacques Maritain (Paris: Les Éditions Ouvrières, 1961); essays in Joseph W. Evans, ed., Jacques Maritain: The Man and His Achievement (New York: Sheed and Ward, 1963). But see also: Gerald B. Phelan, Jacques Maritain (London: Sheed and Ward, 1937); Walter Marshall Horton, Contemporary Continental Theology: An Interpretation for Anglo-Saxons (London: SCM, 1938), pp. 48-65; essays in The Thomist 5 (1943) ('The Maritain Volume of the Thomist'), esp. Waldemar Gurian, 'On Maritain's Political Philosophy' (pp. 7-22); G. G. Coulton, 'The Historical Background of Maritain's Humanism', Journal of the History of Ideas 5 (1944), pp. 415-33; William J. Grace, 'Jacques Maritain and Modern Catholic Historical Scholarship', Journal of the History of Ideas 5 (1944), pp. 434-45; E. L. Allen, Christian Humanism: A Guide to the Thought of Jacques Maritain (London: Hodder and Stoughton, 1950); Charles A. Fecher, The Philosophy of Jacques Maritain (Westminster, Maryland: Newman Press, 1953); Norah Willis Michener, Maritain on the Nature of Man in a Christian Democracy (Hull, Canada: Éditions "L'Éclair", 1955); Joseph W. Evans, 'A Word on Maritain', Review of Politics 19 (1957), pp. 131-4; essays in The New Scholasticism 46/1 (Winter 1972); Brooke W. Smith, Jacques Maritain: Antimodern or Ultramodern? (New York: Elsevier, 1976); Jean Daujat, Maritain: un maître pour notre temps (Paris: Tequi, 1978), esp. pp. 166-92; Bernard E. Doering, Jacques Maritain and the French Catholic Intellectuals (Notre Dame, Ind.: University of Notre Dame Press, 1983); John W. Cooper, The Philosophy of Freedom: The Legacy of Jacques Maritain and Reinhold Niebuhr (Macon, Ga.: Mercer University Press, 1985).

In all this secondary literature the paucity of sympathetic criticism is very striking. At the opposite extreme to the widespread deference, see as examples of hostile secular criticism: Sidney Hook, Reason, Social Myths and Democracy (New York: Harper and Row, 1940), pp. 76-104; Francis H. Myers, The Warfare of Democratic Ideals (Yellow Springs, Ohio: Antioch Press, 1956), pp. 85-135; Charles Frankel, The Case for Modern Man (London: Macmillan, 1957), pp. 40-74.

Maritain's thought remained remarkably consistent through out his

life, as is evidenced by his frequent self-quotation. With some exceptions (for example, The Things ... shows the residue of an earlier view of Church and State, allowing the church to intervene because of ratio peccati (pp. 21-5), and accepting the double standard (p. 144); and the later development of the Democratic Charter) it is possible to pay less attention to the date of writing than with many writers.

6. IH, p. 202.

7. Ibid.

8. IH, pp. 27-62, 71-87 for Marxism; pp. 271-81 for fascism.

9. Ibid., pp. 184-6.

10. Cf. Maritain's role in the UNESCO volume (1948). MS also engages with these questions.

11. Maritain cites and dismisses Paul Blanshard, MS p. 184, n. 36.

12. First Amendment issues were discussed explicitly by John Courtney Murray; see especially 'Civil Unity and Religious Integrity: The Articles of Peace' in We Hold These Truths: Catholic Reflections on the American Proposition (London: Sheed and Ward, 1960), pp. 45-78. For Maritain's influence on post-war American Catholicism, see Jay P. Dolan, The American Catholic Experience (Garden City: Doubleday, 1985), p. 352. On the background to this, see, amongst many other works, John Tracy Ellis, American Catholicism (Chicago: University of Chicago Press, 2 1969), pp. 124-62, and George Weigel, Tranquillitas Ordinis: The Present Failure and Future Promise of American Catholic Thought on War and Peace (New York: Oxford University Press, 1987), pp. 46-73.

13. See the comments at the end of note 5.

14. Reflections on America, pp. 174-5, quoted in Michael Novak, The Spirit of Democratic Capitalism (New York: Simon and Schuster, 1982), pp. 363-4.

15. IH, pp. 127-31.

16. Ibid., p. 131.

17. MS, pp. 148-54.

18. Ibid., pp. 151-2.

19. Ibid., p. 153.

20. Ibid., p. 154.

21. Ibid., p. 160.

22. IH, p. 137.

23. Ibid., pp. 140-7.

24. Ibid., p. 141.

25. Maritain does not make clear how this relates to the non-instrumental nature of the temporal order as mentioned above.

26. Ibid., p. 147.

27. Ibid., p. 156.

28. MS, p. 160; cf. III, p. 171.

29. III, p. 159.

30. Ibid., pp. 156-201.

31. What Reinhold Niebuhr was to call a "type of guild socialism" (review of FMW in Saturday Review, 8 August 1936, repr. in Cooper, op. cit., p. 172.)

32. III, p. 160.

33. Ibid., p. 165, n. 1.

34. MS, pp. 162-7.

35. See John Courtney Murray, SJ, The Problem of Religious Freedom (London: Geoffrey Chapman, 1965), pp. 7-45, for an excellent overview of the traditional and (his) revisionary views. Cf. Charles E. Curran, 'The Distinction Between the Moral and the Juridical Orders in the Declaration', in Law and Justice 82/3 (Trinity /Michaelmas, 1984), pp. 93-7.

36. FMW, p. 68.

37. MS, pp. 162-7.

38. FMW, p. 68.

39. Ibid., p. 181.

40. Ibid., pp. 173a-b, n. 27.

41. Ibid., p. 181.

42. MS, p. 169, n. 25 (a quotation from III, p. 160). Note further that this is a later work.

43. Ibid., p. 180, n. 30.

44. FMW, p. 69.

45. Hook, op. cit., pp. 80, 83.

46. FMW, p. 112. Clearly such an attack also has some force against Niebuhr's general position.

47. Ibid.

48. MS, p. 155.

49. Ibid., p. 156.

50. III, pp. 133-5.

51. Ibid., p. 134; Humanisme integral, p. 146.

52. Ibid.

53. These considerations would form the basis of Maritain's reply to the criticism, which we do not here discuss at length, that he provides merely a rhetoric for the new Christendom, but no analysis of the social causality which would actualize his ideal. The criticism is nevertheless powerful, and his discussion of historical constellations and their underlying ontology clearly would require considerable development to allay doubts.

54. Ibid., p. 133.

55. Jules Meinvielle, De Lammenais à Maritain (Paris: La Cité Catholique, 1956), p. 79. Meinvielle continues: "comment se peut-il que B et C, identiques avec A, soient essentiellement divers entre eux si l'on n'attribue pas a A les différences qui specifient la diversité?"

56. Cf., for example, III, p. 132.

57. FMW, p. 65. For the common good, cf. MS, p. 184.

58. Pietro Pavan, 'Declaration on Religious Freedom', in Herbert Vorgimler, ed., Commentary on the Documents of Vatican II, 5 vols. (London: Burns and Oates; New York: Herder and Herder, 1967-9), vol. IV, p. 51.

59. IH, p. 172.

60. Quodlibetales XII, qu. 13.

61. Ibid., ad 2.

62. In Evangelium Lucae, 22.35-8.

63. For a text of Aquinas which might be interpreted to suit Maritain's end, see John Mahoney, SJ, The Making of Moral Theology (Oxford: Clarendon Press, 1987), p. 314.

64. PH, pp. 65-7.

65. Walter M. Abbott, SJ, The Documents of Vatican II (London: Geoffrey Chapman, 1965), pp. 672-700, with footnotes by John Courtney Murray.

66. Declaration, n. 51.

67. Ibid., n. 7.

68. Enda McDonagh, 'Religious Freedom and the State', in The Declaration

of Religious Freedom of Vatican Council II (London: Darton, Longman and Todd, 1967), pp. 76-99, seems to think that they were.

69. Declaration, n. 1: a suspicion further aroused by Murray's belief that the issue between the two views boils down to that of "classicism" against "historical consciousness" (The Problem, pp. 85-110).

70. For which see, for example, Sacramentum Mundi, vol 5, pp. 295-8.

71. Although we would wish to see an emphasis on the acceptance of wrong.

72. The Peasant of the Garonne, pp. 12-4.

73. PH, pp. 87-91.

74. The gospel leaven as the inspiration of democracy is a principal theme of Christianity and Democracy.

75. PH, p. 91.

76. Ibid., p. xi.

77. FHW, pp. 164-7.

78. Ibid., p. 165.

79. He allowed, at least earlier on (IH, p. 204), for "the hypothesis of an eventual cycle of culture in which it [sc., a consecrated christian conception] will once again prevail, under conditions and with characteristics which we cannot foresee".

80. PH, p. 83. His idea that Christianity can purify, in order to save, "the truths towards which the modern age is striving [s'est efforcé] in the cultural order" (IH, p. 201; Humanisme integral, p. 212) may refer to the same historical movement.

81. IH, p. 123.

82. Ibid., p. 124.

83. Maritain could escape by arguing for historical progress in moral conduct, or for a development ("organic growth") in natural law itself. The former he will not commit himself to (PH, p. 83); the latter he never explicitly accepts: whether or not his thought leads in this direction, considerable polemical difficulties would have arisen from consigning the ideals of mediaeval Catholic Christendom to the childhood of the human race.

84. MS, p. 74.

85. De regno, I.i.4. See Markus, op. cit., p. 222, n. 3, for the development of Aquinas' terminology for human social nature.

86. Comm. in eth. nic., I.i.

87. ST I.96.4.

88. Ibid., 96.3.

89. Ibid., 96.4. Cf. Summa c. gent., III.81.

90. Ibid., 92.1, ad 2. Markus, 'Augustine and the Aristotelian Revolution of the Thirteenth Century', op. cit., pp. 219-227, argues that Thomas at first distinguished the directive and coercive aspects of political authority and attributed the latter to the fall, but later assigned both to the natural human state and made the fall responsible for tyranny.

91. De regno, I.xiv.106; xv.117-8.

92. Ibid., xiv.107-8.

93. Ibid., xiv.108, 111.

94. ST II.ii.10.8. Cf. De regimine Judaeorum for Thomas' attitude to the Jews.

95. ST II.ii.10.11.

96. Ibid., 10.8, 11.3.

97. The paradigm account of Augustine's social thought is R. A. Markus, Saeculum, op. cit. Augustine's thought is of course much more nuanced and richly-textured than will be evident either in this overview or in the use of him made later in this chapter.

98. See in general Markus, '"De Civitate Dei", XIX, 14-5 and the Origins of Political Authority' in Saeculum, pp. 197-210.

99. De civitate Dei, XIX.15.

100. Markus, op. cit., p. 151.

101. Ibid., p. 173.

102. For coercion as a pastoral strategy, see for example Retractationes II.5. Augustine's attitude to coercion was peculiarly complex: see esp. Markus, op. cit. pp. 133-53, and Peter Brown, 'St. Augustine's Attitude to Religious Coercion', in Journal of Roman Studies 54 (1964), pp. 107-16 (repr. in Religion and Society in the Age of Saint Augustine (London: Faber and Faber, 1972), pp. 260-78); but see also Brown, Augustine of Hippo: A Biography (London: Faber and Faber, 1967), pp. 236-40; and W. H. C. Frend, The Donatist Church: A Movement of Protest in Roman North Africa (Oxford: Clarendon Press, 1952), pp. 237-43.

103. Markus, op. cit., p. 72. We discuss Markus' account further, below.

104. The Things ..., pp. 135-51.

105. Ibid., p. 138.

106. Ibid., p. 139.

107. FIIW, pp. 3-73. Cf. also 'The Conquest of Freedom', op. cit.

108. Ibid., p. 42.

109. Ibid.

110. Ibid., p. 30.

111. Ibid., p. 33.

112. Ibid., p. 31.

113. Ibid., pp. 34-6.

114. Ibid., p. 41.

115. Ibid., p. 40.

116. Ibid.

117. PCG, p. 34.

118. Ibid., p. 29.

119. Ibid., pp. 23-33.

120. Ibid., p. 36.

121. Ibid., p. 37.

122. Ibid., pp. 38-9. For John Finnis the common good is "fundamentally the good of individuals" (NLNR, p. 168) and could in principle be wholly specified in terms of individual human rights, though such a specification would not be useful for other (partly linguistic) reasons. This position implies that there is no separable entity which is subject of the common good beyond the individuals whose common good it is. Maritain would have rejected this on the grounds that "6 is not the same as 3 + 3" (PCG, p. 37). What does the difference between them turn on? Finnis' grounds his legal theory on an account of individual practical reason, while Maritain looks to Aristotelian metaphysics. Although the practical outworking of each of these positions (ceteris paribus) does not affect the logic of the relation of individual and common good for either, it may be that in practice the one view may lead to the subordination of the individual and the other to the loss of public goods. Is this a case where a metaphysical issue may be decided on practical grounds?

123. The Things ..., pp. 139-42.

124. IH, p. 128. Cf. p. 131; MS, pp. 54-5.

125. Ibid., p. 176.

126. Ibid., p. 167.

127. Ibid.

128. IH, p. 200. The criticisms given here, taken from IH, appears to confront not only those philosophers who sought common acceptance of "substantial" truths of reason, but also those who have pursued social unity through the joint acceptance of "formal" rules of co-operation. It does not conflict with the democratic charter presented below, which requires "a fundamental agreement between minds and wills on the bases of life in common" (MS, p. 109), since Maritain assumes there the background of an ethically and religiously rooted civic friendship.

129. Ibid., p. 168.

130. Ibid., p. 198.

131. Ibid., p. 168.

132. The Things ..., p. 140.

133. PCG, p. 44.

134. Ibid., pp. 43-6.

135. MS, p. 159.

136. IH, p. 161, n. 1.

137. MS, p. 111.

138. Ibid., p. 121.

139. Ibid., p. 110.

140. Rawls, 'Political not Metaphysical', op. cit., p. 230.

141. MS, pp. 91-2: "obscure, unsystematic, vital knowledge by connaturality or congeniality, in which the intellect, in order to bear judgement, consults and listens to the inner melody that the vibrating strings of abiding tendencies make present in the subject." On Maritain's theory of natural law, see Germain G. Grisez, 'The First Principle of Practical Reason', in Anthony Kenny, ed., Aquinas: A Collection of Critical Essays (London: Macmillan, 1969), pp. 347-8, n. 11.

142. In The Range of Reason, pp. 64-85.

143. Ibid., p. 83.

144. MS, p. 78.

145. Ibid., p. 80.

146. Ibid., p. 111.

147. Ibid., p. 93.

148. Ibid., pp. 114-9; PMNL, p. 50.

149. The difficulty arises because for Maritain a genuinely democratic society cannot impose creeds on its citizens (MS, p. 110).

150. 'Introduction' to UNESCO, Human Rights, pp. 15-7.

151. MS, pp. 106-7.

152. Ibid., p. 113. His feelings are no doubt understandable when it is remembered that he was writing at a time when organizations such as the Committee to Frame a World Constitution were being spawned.

153. MS, pp. 167-8.

154. MS, p. 171.

155. FMW, pp. 65-6; MS, p. 170.

156. Ibid., p. 66, n. 1.

157. Joseph W. Evans, 'Jacques Maritain and the Problem of Pluralism in Political Life', Review of Politics 22 (1960), pp. 322-3.

158. IH, p. 161.

159. MS, p. 109.

160. Ibid., p. 113.

161. Ibid., p. 177.

162. IH, p. 161, n. 1.

163. MS, p. 10.

164. MS, pp. 172-3.

165. For communitarianism and political romanticism, see Charles E. Larmore, Patterns of Moral Complexity (Cambridge: Cambridge University Press, 1987), pp. 91-131.

166. Louis Gardet, 'La culture chretienne et le dialogue des cultures', op. cit., pp. 155-6.

167. Markus, Saeculum, p. 101, quoting J. S. Mill on Bentham.

168. Augustine, Ep. 153.6.16.

169. MS, p. 10.

170. Cf. Markus, Saeculum, pp. 228-30.

171. Basil Mitchell, 'Introduction' to Law and Justice 82/3 (Trinity/ Michaelmas, 1984), pp. 86-90.

172. Id., Law, Morality and Religion in a Secular Society (Oxford: Oxford

University Press, 1967), p. 98.

173. 'Introduction', op. cit., p. 87.

174. Markus, Saeculum, p. 72.

175. Against for example Michael Wilks in, e.g., 'St Augustine and the General Will', in Studia Patristica 9 (= Texte und Untersuchungen 94) (Berlin: Akademie Verlag, 1966), pp. 487-522.

176. Markus, p. 102.

177. De civitate Dei, V.24: "suam potestatem ad Dei cultum maxime dilatandum maiestati eius famulam faciunt".

178. Oliver O'Donovan, 'Augustine's City of God XIX and Western Political Thought', Dionysius 11 (1987), pp. 89-110.

179. Ibid.

180. De civitate Dei, XIX.24.

181. Michel Foucault, The History of Sexuality: An Introduction, tr. Robert Hurley (London: Allen Lane, 1979), p. 93.

182. Stanley Hauerwas, 'Politics, Vision, and the Common Good', in Vision and Virtue (Notre Dame, Ind.: University of Notre Dame Press, 1981), pp. 222-40, discusses these alternatives in relation to Niebuhr. David Tracy, 'Religion and Human Rights in the Public Realm', Daedalus 112/4 (Fall 1983), pp. 237-54, curiously thinks that Maritain rejects the ideal of politics as conversation because he holds that parties to the Democratic Charter are not to ask each other why they subscribe to it. But the Charter is to be regarded as itself an instrument for circumscribing the limits of conversation: the question addressed here is whether that conversation can be rational or is condemned to being a mask for the underlying play of power.

183. Larmore, op. cit., pp. 40-68. For another example, cf. Thomas Nagel, 'Moral Conflict and Political Legitimacy', Philosophy and Public Affairs 16 (1987), pp. 215-40.

184. Richard John Neuhaus, The Naked Public Square: Religion and Democracy in America (Grand Rapids: Eerdmans, 1984).

185. Tracy, op. cit.

186. Ibid., p. 243.

187. Augustine, De civitate Dei, 19.6.

Chapter Six: The Central Problem of Liberal Constitutional Theory

1. MS, p. 65; Maritain's defence of the formal component of democracy is discussed in more detail below. That it is termed a "formal" component does not imply that a commitment to democratic procedures shares every dimension of value-neutrality.

2. MS, p. 109.

3. The Range of Reason, p. 167.

4. 1 Cranch 137 (1803). For an analysis of five different meanings of the phrase "separation of powers", see Geoffrey Marshall, Constitutional Theory (Oxford: Clarendon Press, 1971), pp. 96-124, esp. p. 100.

5. For the issues concerning the adoption of the European Convention, see The Home Office, Legislation on Human Rights with particular reference to the European Convention: a Discussion Document (London: HMSO, 1976), pp. 8-19.

6. Text in New Statesman and Society (2 December 1988), pp. 10-11. For a dissenting voice, see Jonathan Clark, "Where Chartists go wrong", Sunday Telegraph 1444 (29 January 1989). For a full list of reasons for adopting a Bill of Rights and a history of the British debate, see Michael Zander, A Bill of Rights?, Third Edition (London: Sweet and Maxwell, 1985), pp. 1-42.

7. With the interesting exception of Reinhold Niebuhr, who criticizes both Catholic (including explicitly Maritain) and Enlightenment liberal demands for charters of rights for failing to recognize "the perennial corruptions of interest and passion which are introduced into any historical definition of even the most ideal and abstract moral principles" (The Children of Light and the Children of Darkness (London: Nisbet, 1945), pp. 51-8, at p. 52), and thus neglecting the time-boundedness and ideological contamination of such charters.

8. Throughout this chapter the phrase 'the Court' refers to the US Supreme Court.

9. For references, see Michael J. Perry, The Constitution, the Courts, and Human Rights: An Enquiry into the Legitimacy of Constitutional Policymaking by the Judiciary (New Haven and London: Yale University Press, 1982), p. 15.

10. 198 US 45 (1905) (limited hours for workers in bakeries are arbitrary interferences with freedom of contract).

11. 410 US 113 (1973) (Texas criminal abortion statutes unconstitutional; etc.).

12. See John Hart Ely, Democracy and Distrust: A Theory of Judicial

Review (Cambridge, Ma., and London: Harvard University Press, 1980), p. 7; Alexander Bickel, quoted in Perry, p. 171, n. 7; Robert A. Dahl thinks the electoral process of "decisive importance" for democracy (A Preface to Democratic Theory (Chicago and London: University of Chicago Press, 1956), p. 125). Evidently it is also Jon Elster's position (in Jon Elster and Rune Slagstad, eds. Constitutionalism and Democracy (Cambridge: Cambridge University Press, 1988), pp. 1-17) when he enquires why a political assembly should want to bind itself (pp. 8-14), though he thinks it a "three-cornered" rather than "two-cornered" tension.

13. 347 US 483.

14. Not Perry's position, but entertained by him (p. 10n).

15. Rawls, TJ, pp. 221-34, 353-62; also Ronald Dworkin, whose position is discussed below.

16. See J. A. G. Griffith, The Politics of the Judiciary, Third Edition (London: Fontana Press, 1985).

17. See, e.g. Perry, pp. 126-8.

18. Dahl provides evidence for the conclusion that "law-making majorities have generally had their way", though there may have been policy delays of up to 25 years due to Court action ('Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker', Journal of Public Law 6 (1957), p. 291). Dahl's argument can be turned either in favour of judicial review (it does not ultimately defeat democracy), or against it (it makes little difference).

19. Cf. Dahl, ibid.

20. Dworkin's work has been developed largely through scattered essays, the most relevant of which are collected in Taking Rights Seriously (London: Duckworth, 1978; hereafter abbreviated TRS), and A Matter of Principle (Oxford: Clarendon Press, 1986; hereafter abbreviated MP).

21. New Haven: Yale University Press, 1921.

22. Ibid., p. 120.

23. Dworkin, TRS, p. 82.

24. Ibid.

25. Ibid., p. 91.

26. See 'A Reply by Ronald Dworkin' in Marshall Cohen, ed., Ronald Dworkin and Contemporary Jurisprudence (London: Duckworth, 1984), p. 263.

27. Cohen, ed., pp. 266-7; TRS, pp. 84-8.

28. See in general 'Hard Cases', in TRS, pp. 81-130. Dworkin has

elaborated his position considerably since this paper, but not in ways which affect the present discussion.

29. It should be noted that a number of interpretive difficulties have been elided in this account: Dworkin is not fully clear, for example, that if a judge's theory of the history of precedents, meshed with his theory of the law's provisions, underdetermines a case, the judge's principles will be used to decide the case, and these may clash with the community's convictions.

30. 'A Bill of Rights for Britain? The Moral of Contemporary Jurisprudence' in Proceedings of the British Academy 72 (1986), p. 315.

31. The Federalist Papers, no. 78.

32. See Dworkin, Law's Empire (London: Fontana Press, 1986), p. 297.

33. TRS, p. 180; cf. p. 227.

34. Ibid., p. 273.

35. MP, p. 32.

36. Ibid., pp. 65-6.

37. Ibid., p. 66. Ely provides an extended argument in favour of treating legislative or administrative motivation as an appropriate reason for counting something unconstitutional, in cases such as "suspect classifications" (pp. 135-79). Of course proof may be mighty difficult: certainly not all offences will be as unsubtle as that of the City of Tuskegee in Alabama, whose boundary lines, having originally been on a square plan, were redrawn so as to form an "uncouth twenty-eight-sided figure", thereby excluding nearly all the city's black voters (ibid., pp. 139-40).

38. MP, pp. 27-8. Dworkin talks of equality of political power, though he is probably referring to treatment as equals rather than equal treatment: even though it appears to be an argument about redistribution (and therefore perhaps concerned with equal treatment), it is better read as an attempt to remedy distortions in the access to power caused by poverty.

39. Ibid., p. 70.

40. Finnis, p. 309, n. 1.

41. Ibid., pp. 309-11.

42. MP, p. 70.

43. On this interpretation Dworkin's talk of "political power alone" (my italics) is reductive and misleading.

44. By questions of "speculative consistency" Dworkin means "questions that test a theory of rights by imagining circumstances in which that theory would produce unacceptable results" (MP, p. 24).

45. Ely, p. 1.

46. MP, pp. 28-31.

47. Ibid., p. 25.

48. Ibid., p. 26.

49. Finnis, pp. 318-21. For the incommensurability of goods, cf. Finnis, NLNR, pp. 113-5; Fundamentals of Ethics (Oxford: Clarendon Press, 1983), pp. 89-90; and Charles Taylor, 'The Diversity of Goods', in Philosophy and the Human Sciences, op. cit., pp. 230-47.

50. TRS, p. 83.

51. Finnis, pp. 321-2. Cf. Finnis, NLNR, pp. 21-21, 223-6; Paul Ramsey, Deeds and Rules in Christian Ethics, Scottish Journal of Theology Occasional Papers, No. 11 (Edinburgh: Oliver and Boyd, 1965). The point is just a logical extension of Dworkin's own distinction between abstract and concrete rights (TRS, pp. 93-4).

52. NLNR, p. 125.

53. Ibid., pp. 210-8.

54. Finnis, p. 317, n. 1. Cf. Dworkin: "I doubt that in the end any package based on any familiar form of utilitarianism will turn out to be best" (MP, p. 370).

55. Dworkin in Cohen, ed., p. 281. Finnis takes "neutral utilitarianism" as the working theory, for Dworkin, behind current political practice, and rightly argues that this is "both flatly unacceptable, and regarded as such in every civilized community" (p. 317), because of the evil preferences it admits into the calculus. But properly it is restricted utilitarianism (i.e. one which admits personal but not "external" preferences into the calculus) which Dworkin regards as, if not finally the best normative political theory, at least better than unrestricted utilitarianism as a descriptive theory of North Atlantic constitutional states (Cohen, ed., p. 281). However, even so, restricted utilitarianism, whatever its normative merits as against unrestricted utilitarianism, still fails to capture our political practice of rejecting out of hand the evil personal preferences of the kind Finnis mentions (p. 318).

56. MP, p. 414.

57. TRS, p. 365.

58. Finnis, pp. 328-9.

59. Ibid., p. 329 (his italics).

60. Joseph Jaconelli (Enacting a Bill of Rights: The Legal Problems (Oxford: Clarendon Press, 1980), pp. 25-34) reviews a number of alternatives possible in the British context. Jaconelli thinks a form of indirect judicial review most appropriate for Britain in so far as direct judicial review would most likely need a full written

constitution and possibly reform of the House of Lords (pp. 61, 36-7); indirect judicial review would also be marginally less undemocratic (p. 201). For present purposes, however, we assume direct judicial review.

61. An assumption which will not be defended here, but which would be satisfied by the kind of moral realism assumed throughout the thesis. Note that (i) this reference to a "right answer" need not imply that a particular piece of legislation would be uniquely correct, and (ii) that the point about imperfect procedural justice would be supported by the mere belief that there are independent criteria.

62. TJ, pp. 84-6.

63. For the distinction see Cass R. Sunstein, 'Constitutions and democracies: an epilogue', in Elster and Slagstad, eds., pp. 327-8.

64. Another resolution of the tension might be through the claim that the formal commitment to electoral democracy and the substantial commitment to the common good refer to different stages in the process of government, the former addressing the question of who will make the decisions, the latter the question of what they decide. But the same problem arises here: may or may not the government elected do whatever they wish, without side constraint?

65. "I am no legislator, nor an inventor of constitutions" (Scholasticism and Politics, pp. 115-6).

66. NB: of course the common good will include fairness of procedure, in terms of (for example) treating all with equal concern and respect; there is no tension at the level of the exercise of authority between soundness of outcome and fairness of procedure. Rather the problem arises at the level of electoral participation: here there is a real question, addressed below, concerning whether the common good includes electorally fair - i.e. majoritarian democratic - procedures.

67. MS, p. 128 (his italics).

68. Ibid.

69. Ibid., p. 129.

70. In Scholasticism and Politics, pp. 89-117.

71. Ibid., p. 113.

72. This model approximates that defended by, for example, Oliver O'Donovan in a major forthcoming treatise of political theology. Clearly it resembles the "designation" theory, in contrast to the "transmission" theory, of the traditional discussion (see Yves Simon, The Philosophy of Democratic Government (Chicago: Chicago University Press, 1951), pp. 157, 163-4); though the confirmation model makes clear the distinction between the human means of designating those who will exercise authority, which need not be popular, and the necessarily popular (though not necessarily

formally instituted) confirmation of that authority.

73. Acts 2.17-18.

74. This is not to say that, for example, Finnis thinks this is the nature of the problem.

75. Ibid., p. 108.

76. Ibid., pp. 99-103.

77. The tyranny here is in the first place purely formal: merely by insulating from public speech, the judiciary becomes tyrannical, even if no decisions are taken which would have been otherwise without such insulation. But of course in practice that will not always be so, and unchallengeable power is liable to augment itself.

78. The argument given in this paragraph is one suggested to me by Oliver O'Donovan: all responsibility for misrepresentation is of course mine.

79. Albrecht Alt, 'The Origins of Israelite Law' (1934), in Essays on Old Testament History and Religion, tr. R. A. Wilson (Oxford: Basil Blackwell, 1966), pp. 70-132. Of course his thesis has been subject to much criticism and amendment since, though this does not affect our use of it.

80. Indeed Walter Harrelson (The Ten Commandments and Human Rights (Philadelphia: Fortress Press, 1980), having claimed that the Decalogue is not law in its ordinary sense (pp. 12-3), explicitly compares the United States Bill of Rights and the Decalogue (p. 191).

81. 1 Cranch 137 (1803), at 178.

82. The Universal Declaration of Human Rights and the American Declaration of the Rights and Duties of Man (both 1948) are two international human rights instruments which were not intended to create binding obligations in international law on their signatories: for their juridical status see Paul Sieghart, The International Law of Human Rights (Oxford: Clarendon Press, 1983), pp. 53-5.

83. Certainly it is not arguing the Rousseauist denial that any authority is properly transmitted: there is genuine authority and superordination over others, and not all authority is simply that of individuals over themselves.

84. TJ, p. 230.

85. Sexual autonomy is Perry's example, p. 120.

86. Henry J. Abraham, The Judiciary: the Supreme Court in the Governmental Process (Boston: Allyn and Bacon, 6 1983), p. 167. Cf. Thomas Nagel, "The Supreme Court and Political Philosophy", New York University Law Review 56 (1981), pp. 519-24, at pp. 522-3.

87. Ely, p. 59.

88. The quotation is Dworkin's (MP, p. 27); the internal quotation is Hand's phrase.

89. Perry, esp. pp. 91-145.

90. Ibid., pp. 128-39.

91. Supra, p. 214.

92. The question which of the two models is preferable is left to the final chapter.

93. See esp. Jaconelli, pp. 3-4, n. 1.

Chapter Seven: Christian Theology and Liberal Society

1. Quoted in Ellul, The Technological Society, p. 420.

2. Ibid.

3. "When fascism comes to America it will come in the name of democracy" (Huey Long, quoted in Grant, 'The Triumph of the Will', p. 156).

4. For the question of who is imposing on whom, see Neuhaus, The Naked Public Square, pp. 52-3.

5. Though Rawls could count the "metaphysical" interpretation of TJ as a reason for anybody to accept justice as fairness.

6. Op. cit.

7. Ibid., p. 229.

8. Nagel thinks that religious issues would not be public in this sense, and so would not be coerceable, but that "most empirical and many moral disagreements" would be (p. 232), though he is aware that each type of case would have to be argued out individually (p. 236). But the issues here are scarcely small matter: Pannenbergian theology might be coerceable, Feyerabendian science might not be. Again, the coincidence of those moral issues which are not rationally resolvable with those that Nagel thinks private ("abortion, sexual conduct, and the killing of animals for food" (p. 233)), and of those which are rationally resolvable with those that the state has to make public dispositions about (capital punishment, nuclear weaponry), seems too good to be true.

9. Ibid., p. 221.

10. Waldron, 'Theoretical Foundations of Liberalism', p. 132. The Nagel

essay he refers to is 'What is it like to be a bat?', in Mortal Questions (Cambridge: Cambridge University Press, 1979), pp. 165-80. For the same theme see also my remarks on the liberal notion of freedom in chapter two.

11. Nagel, 'Moral Conflict', pp. 234-6.

12. Ibid., p. 229.

13. Waldron, op. cit., p. 140.

14. Ibid., p. 128.

15. De civitate Dei, 19.27.

16. Markus, Saeculum, pp. xvi-xix.

17. De civitate Dei, 19.17.

18. One is reminded of the remark (by Tom Wolfe?) that "a liberal is a conservative who has been beaten up by the police." (Though note that this uses 'liberal' in a different but overlapping sense from the one we are using.)

19. There are a number of suggestive parallels between this account of the liberal self and Rowan Williams' portrait of Arius' God in Arius: Heresy and Tradition (London: Darton, Longman and Todd, 1987).

20. See The View from Nowhere (New York: Oxford University Press, 1986), pp. 138-63.

21. Paul Ramsey, 'The Uses of Power', in The Just War: Force and Political Responsibility (Lanham, Md.: University Press of America, 1968), p. 17.

22. See Oliver O'Donovan, Peace and Certainty: A Theological Essay on Deterrence (Oxford: Oxford University Press, 1989). For related issues, see John Finnis, Joseph M. Boyle, Jr. and Germain Grisez, Nuclear Deterrence, Morality and Realism (Oxford: Clarendon Press, 1987); and my review in Studies in Christian Ethics (forthcoming, 1989).

23. Ramsey, The Just War, p. xii.

24. For a sustained critique of many of the arguments of this section, particularly about the need for transcendence, see Richard Rorty, Contingency, irony and solidarity (Cambridge: Cambridge University Press, 1989).

25. Of course it is over-simplified to say that a stress purely on contemplation would have no role for the will: St. Thomas says that the contemplative life belongs to the intellect quantum ad ipsam essentiam, but that it is the will that moves the intellect to contemplation; moreover the contemplative life terminates in delectatio, which is in affectu (ST II.ii.180.1).

26. See Finnis, NLNR, pp. 337-42, for a clear introductory outline to these issues.

27. O'Donovan, RMO, pp. 109-20.

28. Ramsey, 'The Uses of Power', p. 12.

29. See my 'Rival Versions of Moral Enquiry', op. cit., for a longer consideration of one approach.

30. In his 'Epilogue: a Pacifist Response to the Bishops', in Paul Ramsey, Speak Up for Just War or Pacifism, p. 175. Hauerwas' theory is of course much more nuanced than this brisk comment suggests.

31. McClendon, op. cit., p. 236.

32. John Habgood, Church and Nation in a Secular Age (London: Darton, Longman and Todd, 1983), p. 168.

33. See Oliver O'Donovan, Principles in the Public Realm: The Dilemma of Christian Moral Witness (Oxford: Clarendon Press, 1984). On other aspects of church pronouncements see especially Paul Ramsey, Who Speaks for the Church? A Critique of the 1966 Conference on Church and Society (Edinburgh: The Saint Andrew Press, 1969), and Speak Up for Just War or Pacifism, pp. 125-47. For some pertinent comments, see David Nicholls, 'Christianity and Politics', in Robert Morgan, ed., The Religion of the Incarnation: Anglican Essays in Commemoration of 'Lux Mundi' (Bristol: Bristol Classical Press, 1989), pp. 172-88.

34. Thus Neuhaus, The Naked Public Square. Cf. Robert Bellah et al., Habits of the Heart: Individualism and Commitment in American Life (Berkeley: University of California Press, 1985); and at a popular level in the British context, David Holloway, A Nation under God (Eastbourne: Kingsway Publications, 1987). The thesis of David Martin's A Sociology of English Religion (London: SCM Press, 1967) was that England (and no doubt by extension Britain) is less secular than the prophets of the secular age admitted.

35. In the judicial review context, the variety of opinions about the true values of the United States offered by Perry, Ely and Dworkin, is symptomatic.

36. Hauerwas, Against the Nations, p. 11.

37. Ibid., pp. 126-30.

38. George A. Lindbeck, The Nature of Doctrine: Religion and Theology in a Postliberal Age (London: SPCK, 1984), p. 130.

39. Dorothee Soelle, '"Thou Shalt Have No Other Jeans Before Me" (Levi's Advertisement, Early Seventies): The Need for Liberation in a Consumerist Society', in Brian Mahan and L. Dale Richesin, eds., The Challenge of Liberation Theology: A First World Response (Maryknoll: Orbis Books, 1984), p. 5. The internal quotation is from Martin Buber.

40. Ibid., p. 7.

41. Ibid., p. 16.

42. Cf. John Milbank, 'An Essay against Secular Order', JRE 15/2 (Fall 1987), p. 208.

43. Markus, Saeculum, pp. xi-xii.

44. De civitate Dei, 19.17.

LIST OF ABBREVIATIONS

BT	Niebuhr, Beyond Tragedy (1938)
CLCD	Niebuhr, The Children of Light and the Children of Darkness (1944)
DST	Niebuhr, Discerning the Signs of the Times (1946)
ESJ	Grant, English-Speaking Justice (1974)
FH	Niebuhr, Faith and History (1949)
FMW	Maritain, Freedom in the Modern World (1935)
ICE	Niebuhr, An Interpretation of Christian Ethics (1935)
IH	Maritain, True Humanism (1936)
JRE	The Journal of Religious Ethics
LN	Grant, Lament for a Nation (1965)
MMIS	Niebuhr, Moral Man and Immoral Society (1932)
MNHC	Niebuhr, Man's Nature and His Communities (1963)
MP	Dworkin, A Matter of Principle (1985)
MS	Maritain, Man and the State (1951)
NDM I, II	Niebuhr, The Nature and Destiny of Man, vol. I: Human Nature (1941); vol. II, Human Destiny (1943)
NLNR	Finnis, Natural Law and Natural Rights (1980)
PCG	Maritain, The Person and the Common Good (1947)
PH	Maritain, On the Philosophy of History (1957)
RMNL	Maritain, The Rights of Man and Natural Law (1942)
RMO	O'Donovan, Resurrection and Moral Order (1986)
ST	Aquinas, Summa Theologiae

T&J	Grant, Technology and Justice (1986)
TE	Grant, Technology and Empire (1969)
TH	Grant, Time as History (1969)
TJ	Rawls, A Theory of Justice (1972)
TRS	Dworkin, Taking Rights Seriously (^{2}1978)

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