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THE MULTICULTURES OF BELIEF AND DISBELIEF

*Sanford Levinson**

BATTLEGROUND: ONE MOTHER'S CRUSADE, THE RELIGIOUS RIGHT, AND THE STRUGGLE FOR CONTROL OF OUR CLASSROOMS. By *Stephen Bates*. New York: Poseidon Press. 1993. Pp. 365. \$24.

THE CULTURE OF DISBELIEF: HOW AMERICAN LAW AND POLITICS TRIVIALIZE RELIGIOUS DEVOTION. By *Stephen L. Carter*. New York: BasicBooks. 1993. Pp. vii, 328. \$25.

Sometimes I think the environment in which we operate is entirely too secular. Th[e] fact that we have freedom *of* religion doesn't mean we need to try to have freedom *from* religion. It doesn't mean that those of us who have faith shouldn't frankly admit that we are animated by that faith, that we try to live by it — and that it does affect what we feel, what we think, and what we do.¹

I

In reviewing Stephen Carter's *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion*,² one is also reviewing a cultural event. How many books, for example, are personally endorsed by the President of the United States?³ Surely no recent book written by a law professor has received more reviews and been more the subject of discussion in the general media than has Professor Carter's.⁴ He has received respectful, even lavish, praise from across

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1. *Remarks by President Clinton in a Photo Opportunity During White House Interfaith Breakfast*, U.S. Newswire, Aug. 30, 1993, available in LEXIS, News Library, US file, at *3 [hereinafter *Remarks*]. I have added the italics in accordance with the presentation of this same quotation by Fred Barnes in *Rev. Bill*, NEW REPUBLIC, Jan. 3, 1994, at 11.

2. Stephen Carter is William Nelson Cromwell Professor of Law, Yale University.

3. President Clinton noted that he had taken the book with him on vacation, and he went on to "urge you all to read it, from whatever political as well as religious spectrum you have[,] because at least it lays a lot of these issues out that I am trying to grapple with." *Remarks, supra* note 1, at 3. Clinton also chose to have himself depicted holding Carter's book in his portrait recently unveiled at Yale Law School. See David Bollier, *Who "Owns" the Life of the Spirit?*, TIKKUN, Jan.-Feb. 1994, at 29.

4. I suppose that the most plausible competitor would be ROBERT BORK, *THE TEMPTING OF AMERICA: THE POLITICAL SEDUCTION OF THE LAW* (1990), though I think that in fact Carter's book has penetrated further into general American culture — and, of course, Bork was no longer a law professor when he wrote his polemic.

the political and cultural spectrum.⁵

Carter mounts a vigorous attack on those who would "trivialize" religious faith by confining it, like a dotty old relative, to the attic of our public household. "[O]ur public culture," Carter argues, "more and more prefers religion as something without political significance, less an independent moral force than a quietly irrelevant moralizer, never heard, rarely seen" (p. 9). As a consequence, insists Carter, the surrounding political order treats one's focus on religion as a constitutive aspect of one's life merely as a "hobby,"⁶ similar, presumably, to the interest of the avid philatelist or the builder of model airplanes (p. 22), rather than recognizing it as deeply constitutive of one's very identity. To describe something as a hobby, says Carter, is to label it as "something quiet, something private, something trivial — and not really a fit activity for intelligent, public-spirited adults" (p. 22). All can enjoy their pursuits in "private" while having the good grace and common sense to refrain from more than casual reference to their obsessions when encountering in the civic, heterogeneous, "public square"⁷ those of one's fellow citizens who do not share one's own religious commitments. In the name of his fellow religious believers,⁸ Carter objects to the marginalization purportedly imposed upon them.

I say "purportedly" because, as Oliver Thomas, an official of the Baptist Joint Committee, has written, a contemporary observer of the political scene could quite easily describe "a public square that is not only well clothed in the garb of religion but perhaps a bit overdressed."⁹ Thomas invokes, among other things, the 1988 candidacies of Pat Robertson and Jesse Jackson, both ordained ministers; certainly no one could accuse God, at least as a referent, of being absent from the 1992 political campaign. As illustrated by the prefatory quotation to this review, President Clinton is scarcely unwilling to evoke his own religious beliefs in public, as is also true of Vice-President Gore.¹⁰ As Michael Kinsley suggests,¹¹ it remains suicidal for any politician to suggest that she has no belief in God and finds the idea of prayer to be a childlike reversion to magical thinking.

5. Michael Kinsley registered, however, a thoughtful dissent. See Michael Kinsley, *Martyr Complex*, NEW REPUBLIC, Sept. 13, 1993, at 4.

6. The "hobby" metaphor is spelled out in chapter 2 of the book. Pp. 23-43.

7. The term *public square* was made famous in RICHARD JOHN NEUHAUS, *THE NAKED PUBLIC SQUARE* (1984), a book substantially similar in spirit to Carter's.

8. It is an important part of Carter's own self-presentation that he emphasizes his own status as a "committed Christian." P. 47.

9. Oliver S. Thomas, *Comments on Papers by Milner Ball and Frederick Gedicks*, 4 NOTRE DAME J.L. ETHICS & PUB. POLY. 451, 451-52 (1990).

10. See AL GORE, *EARTH IN THE BALANCE: ECOLOGY AND THE HUMAN SPIRIT* 368 (1992) (referring to his "faith [that] is rooted in the unshakable belief in God as creator and sustainer, a deeply personal interpretation of and relationship with Christ, and an awareness of a constant and holy spiritual presence in all people, all life, and all things").

11. See Kinsley, *supra* note 5, at 4.

Carter rather casually dismisses all such arguments:

In truth, the seeming ubiquity of religious language in our public debates can itself be a form of trivialization — both because our politicians are expected to repeat largely meaningless religious incantations and because of the modern tendency among committed advocates across the political spectrum to treat Holy Scripture like a dictionary of familiar quotations, combing through the pages to find the ammunition needed to win political arguments. [p. 45]

One does not know, of course, whether Carter would apply these same strictures to Clinton and Gore. If so, his critique is powerful indeed — and President Clinton might wish to have his recent Yale Law School portrait retouched;¹² if not, this raises the obvious question as to how one distinguishes the trivial from the authentic — or at least nontrivial — invocation of religious themes beyond one's liking for the politicians in question and for the policies they espouse.

Carter can probably save much of his thesis if he simply restricts it to the particular culture of the academy rather than offering it as a depiction of American culture at large, assuming there is any such thing. It is hard to gainsay the general secularism of the academy — particularly the elite legal academy within which Carter has chosen to spend his own life. It is relatively rare to find even a thoroughly mainstream Episcopalian academic like Carter, let alone an "out" evangelical Christian who is more sympathetic to the claims of "creation science" than to those of Darwinian evolutionism.¹³

Carter's thesis and overall approach are in several important respects similar to Michael Perry's, especially as developed in Perry's recent *Love and Power*.¹⁴ First, both criticize those liberals — including Carter's Yale colleague Bruce Ackerman — who would limit participation in public debate to those willing to obey "a set of conversational rules that require the individual whose religious tradition makes demands on his or her moral conscience to reformulate that conscience — to destroy a vital aspect of the self" (p. 229). This self-destruction results from expressing any public claim in a secularized language that, by definition, omits reference to any religious foundation for that claim. Carter notes Perry's own insistence that acceptance of any such exclusion of explicitly religious convictions and the language in which they are expressed "would be to bracket —

12. See *supra* note 3.

13. Carter offers an extensive discussion of the creation science controversy (pp. 156-82), and he leaves the reader with no doubt that he rejects creationist accounts even as he expresses some sympathy for the parents who support their teaching. But, then, so did Martha Minow, *The Supreme Court, 1986 Term — Foreword: Justice Engendered*, 101 HARV. L. REV. 10, 92-93 (1987). One obviously need not be overtly religious in order to come to this conclusion.

14. MICHAEL J. PERRY, *LOVE AND POWER: THE ROLE OF RELIGION AND MORALITY IN AMERICAN POLITICS* (1991).

indeed, to annihilate —” essential aspects of one’s very self.¹⁵ Instead of offensively requiring any such bracketing, liberals, according to Carter, must “develop a politics that accepts whatever form of dialogue a member of the public offers. Epistemic diversity, like diversity of other kinds, should be cherished, not ignored, and certainly not abolished” (p. 230). Indeed, he points out, correctly, I believe, that liberals who are wont to praise multiculturalism and diversity in most contexts are often hesitant to extend the same welcome to those who speak, and act in accordance with, the language of traditional religion.¹⁶

It is worth noting, though, that Carter, like Perry, in fact seems most comfortable when writing in the standard voice of the liberal academic, even as he calls for greater toleration of epistemic diversity. Indeed, one of the striking aspects of Carter’s book is that not one of its substantive arguments, at least in regard to the issues of conventional politics, is made in what might be termed a specifically religious voice. As Emily Fowler Hartigan well points out, Carter’s book is *about* the importance of religious language rather than written *in* any such language.¹⁷ There is almost no resonance in *The Culture of Disbelief* of the “confessional”¹⁸ voice found in the writing of fellow Christians like Milner Ball,¹⁹ Thomas Shaffer,²⁰ or Hartigan herself.²¹ Carter does refer to his own religiosity and comment on the importance of school prayer for his children,²² and at one point he suggests that he had engaged in “prayerful consideration” of the “will of God” in regard to the controversy over the ordination of women within the Episcopal Church.²³ Otherwise, there is not a single paragraph in *The Culture of Disbelief* that would be out of place in the writings of secular, accommodationist liberals like myself and my colleague Douglas

15. P. 56 (citing MICHAEL J. PERRY, *MORALITY, POLITICS, AND LAW: A BICENTENNIAL ESSAY* 181-82 (1988)).

16. See pp. 180-81. I have assayed some of these issues in Sanford Levinson, *Some Reflections on Multiculturalism, “Equal Concern and Respect,” and the Establishment Clause of the First Amendment*, 27 U. RICH. L. REV. 989 (1993).

17. See Emily F. Hartigan, *Loving the Medium: A Review of Stephen Carter’s The Culture of Disbelief* 1 1993 (unpublished manuscript, on file with author).

18. See Frank S. Alexander, *Speaking Theologically*, 42 EMORY L. REV. 1081, 1083 (1993) (reviewing MILNER S. BALL, *THE WORD AND THE LAW* (1993)).

19. See MILNER S. BALL, *THE WORD AND THE LAW* (1993); MILNER S. BALL, *LYING DOWN TOGETHER: LAW, METAPHOR AND THEOLOGY* (1985).

20. See, e.g., THOMAS L. SHAFFER, *ON BEING A CHRISTIAN AND A LAWYER* (1981).

21. See, most notably, Emily F. Hartigan, *The Power of Language Beyond Words: Law as Invitation*, 26 HARV. C.R.-C.L. L. REV. 67 (1991).

22. See, e.g., p. 185.

23. Carter refers quite often to the controversy within the Episcopal community regarding the ordination of women. See, e.g., pp. 75-80. He vigorously asserts that “the correct answer to the question of ordination of women must be found in prayerful consideration. The answer has everything to do with discerning and then enacting the will of God, and nothing to do with the rights of women.” P. 77.

Laycock. Carter, says Hartigan, "asks for the public to embrace the previously personalized religious sphere, but does not [himself] demonstrate what he advocates space for."²⁴ Whatever Carter's defense of religious devotion, he does not "give . . . witness to its role in his own life,"²⁵ at least insofar as his discussion of public policy is concerned.

The closest he comes to anything that might be labeled "witness" is in a dramatic response to an assertion by Justice Douglas in his dissenting opinion in *Wisconsin v. Yoder*.²⁶ Douglas asserted that, "[w]hile the parents, absent dissent, normally speak for the entire family, the education of child is a matter on which the child will often have decided views."²⁷ Thus, argued Douglas, the state should ascertain the specific desires of the children in question rather than defer to their parents' desires that they receive religiously based education. "It is," said Douglas, "the student's judgment, not his parents', that is essential . . ."²⁸ Carter not only describes Douglas's views as "eccentric" but also, more importantly, goes on to say that if "the state should somehow undertake to learn whether our children really want to attend a religious school," then "I am quite sure that my family, and many others too, will pick up and leave the United States, for no nation that strips away the right of parents to raise their children in their religion is worthy of allegiance" (p. 192). No one can miss Carter's passion on the point, but his very invocation of the language of rights — rather, say, than the God-commanded *duty* to raise his children in the one true path — reveals how very much the basic language of his argument is thoroughly mainstream.

Thus, for better or worse, and regardless of whether one agrees with Carter concerning each and every particular about public policy,²⁹ he does not speak in a voice that is basically challenging, or even "defamiliarizing,"³⁰ to any but the most antireligious secularist. For me, this is for the better; it surely makes his arguments accessible to a

24. Hartigan, *supra* note 17, at 1.

25. *Id.*

26. 406 U.S. 205, 241 (1972) (Douglas, J., dissenting in part).

27. 406 U.S. at 244.

28. 406 U.S. at 245.

29. Perhaps it is predictable that I, a secularist who once was a staff attorney for the Children's Defense Fund, am considerably more sympathetic with Justice Douglas's point. Although, as a parent, I can thoroughly understand the urge to mold one's children, I see no argument in principle for treating them in essence as the property of the parents to do with as they wish in regard to their education. This is, it should be emphasized, not at all an argument that the *state* should be able to do whatever *it* wishes in regard to the education of its young citizens. I will not explore this issue further in this review.

30. *Defamiliarization* has been defined as "the distinctive effect achieved by literary works in disrupting our habitual perception of the world, enabling us to 'see' things afresh, according to the theories of some English Romantic poets and of Russian Formalism." CHRIS BALDICK, *THE CONCISE OXFORD DICTIONARY OF LITERARY TERMS* 53-54 (1990).

far wider audience than might otherwise be the case. Still, this only reinforces Hartigan's observation that the ironic function, albeit surely not the purpose, of Carter's book may be to reinforce the hegemony of standard models of secular academic discourse even if they are employed on behalf of religious adherents.

Finally, whatever Perry's and Carter's critiques of philosophical liberalism and some practitioners of liberal politics, they are themselves relatively unabashed political liberals as that term is used within the spectrum of American politics. Carter speaks throughout his book as a friend of political liberalism³¹ who is worried that the antagonism toward religious discourse on the part of some of its philosophical leaders will drive those who are religious away from liberalism and toward a far more receptive radical right. He clearly views any such prospect as potentially disastrous. It can therefore occasion no surprise that President Clinton has so eagerly embraced his book, as is the case, I suspect, with many other liberals more secular than the President but equally recognizing the political importance of the return to the Democratic Party of evangelical Christians lured away by the Republican Party over the past two decades.³² Perhaps the party will garner some of this support simply by exhibiting a respect for religious discourse that has been lacking; it will gain yet more support, I suspect, by demonstrating a willingness to change at least some traditional political stances associated with liberalism. These include, most prominently, hostility to offering any state aid even to parents of modest means in order to allow them to exercise their constitutional right to educate their children in religious schools³³ or, within the public schools, an unwillingness to allow religious students to opt out of aspects of the curriculum deemed offensive to their religious tenets.³⁴

As already suggested, I substantially agree with Carter's general argument and have publicly endorsed some of the same policies that he advocates.³⁵ Moreover, as I have indicated elsewhere,³⁶ I basically agree that people should be allowed to make whatever arguments using whatever epistemic discourse they find appropriate. One should be able to understand without much effort why resentment might be the

31. Phillip E. Johnson, who is considerably more conservative than Carter, makes a similar point in his review of Carter's book. See Phillip E. Johnson, *The Swedish Syndrome*, FIRST THINGS, Dec. 1993, at 48 (reviewing *The Culture of Disbelief*).

32. See, for example, Barnes, *supra* note 1, at 11; Bollier, *supra* note 3, at 29; Terry Eastland, *Religion, Politics & the Clintons*, COMMENTARY, Jan. 1994, at 40, all of whom include discussions of *The Culture of Disbelief* in their more general analyses of contemporary political exigencies.

33. See, e.g., pp. 192-200.

34. See, e.g., p. 174; *infra* note 69 and accompanying text.

35. See Levinson, *supra* note 16.

36. See Sanford Levinson, *Religious Language and the Public Square*, 105 HARV. L. REV. 2061, 2077 (1992) (reviewing MICHAEL J. PERRY, LOVE AND POWER: THE ROLE OF RELIGION AND MORALITY IN AMERICAN POLITICS (1991)).

response to one's being forced, by the demands of an ostensible system of "public reason,"³⁷ to speak a language that is deeply alien to one's core being.

All of this being said, I find it difficult to agree with Carter's suggestion that listeners of the religious discourse of others who do not share their religious premises should nonetheless accept or, indeed, "cherish" (p. 230) that mode of speech. If someone argues to me that God requires *X*, whether *X* be social justice for the poor or the prohibition of eating pork, it simply cannot count as a reason for *my* doing *X* unless I share a view of the world that includes both the ontological reality of God's existence and the epistemological possibility of ascertaining divine desire. In the absence of the requisite ontology and epistemology, the statements predicated upon them simply can have no real meaning for me. Similarly, that Scripture declaims about creation, morality, or the occurrence of miraculous events provides no reason whatsoever for me to accept the particular account offered. That is, I gather, what it means to be secular. If one *does* accept Scripture — or, for that matter, anything else — as probative evidence of divine revelation, then one is *not* a secularist.

Carter begins his second chapter with the statement that "[o]ne good way to end a conversation . . . is to tell a group of well-educated professionals that you hold a political position — preferably a controversial one, such as being against abortion or pornography — because it is required by your understanding of God's will" (p. 23). I agree with Mark Tushnet, though, that unless the other participants in the conversation "share with you a set of religious beliefs about how people go about discovering God's will and how to tell when you have discerned what God's will really is, it is actually hard to figure out where the conversation might go next."³⁸ Carter himself asserts that "religion is really an alien way of knowing the world" (p. 43), and it is never easy to know how to respond to someone with a sensibility that is truly "alien" to one's own. One can say, in a suitable tone either of condescension or sarcasm, "that's nice," but that surely would not help the conversation along. Otherwise, it seems that all one can do, if one is a secularist, is to say, in a tone either of regret or triumph, that she just cannot make sense of arguments predicated on "God's will."

To be sure, invocation of "God's will" does not always still further discussion, especially when that phrase is used to refer to the teachings of, say, natural law or "right reason," centuries-old, basically rationalist traditions of argumentation that can easily be carried on with minimal reference to theological predicates. These traditions use God principally as an ontological foundation for what is revealed in fact

37. See, e.g., JOHN RAWLS, *POLITICAL LIBERALISM* 212-54 (1993) (reviewed in this issue by Professor Joshua Cohen — Ed.) ("Lecture VI: The Idea of Public Reason").

38. Mark Tushnet 8 (1993) (unpublished, untitled manuscript, on file with author).

through ordinary methods of rational analysis. Revelation as such plays a limited role indeed. For adherents of this position, part of God's benevolence has been to give us a rational capacity — or intuition — to achieve knowledge of moral ends. Indeed, one can predicate even less rationalist recourse to customary norms and conventional wisdom on the notion that they reflect some kind of divine desire.

The dilemma of religious argument arises most strongly, not in these rationalist or quasi-rationalist debates, but, rather, when someone evokes God as ordering, through revelation, something that runs profoundly counter to what is seemingly taught by ordinary methods of reason. Consider, for example, a command to slay a beloved child. Kierkegaard well spoke of the "teleological suspension of the ethical," referring, of course, to Abraham's sacrifice of Isaac.³⁹ At that point one is certainly confronted with an "alien" — some would even say bizarre — sensibility that cannot easily be accepted by someone outside of its domain.⁴⁰

That someone bases her views on divine revelation, rather than, say, presumed messages received from Venusian spaceships, may lead me to wish to accommodate those views, especially if the costs are not very high in regard to other goals I have.⁴¹ Yet it could never lead me

39. SØREN KIERKEGAARD, *FEAR AND TREMBLING* 54-67 (Howard V. Hong & Edna H. Hong eds. & trans., Princeton Univ. Press 1983) (1843) (discussing Abraham's willingness to carry out the sacrifice of Isaac). There is, interestingly, a rich *Midrashic* tradition within Judaism that Abraham in fact consummated the sacrifice — just as God is alleged, within the Christian tradition, to have sacrificed Jesus. Consider, for example, that the Bible describes only Abraham as "return[ing]" from the mountain following the sacrifice. See *Genesis* 22:19. For a stunning exegesis of the *Midrashic* literature, see SHALOM SPIEGEL, *THE LAST TRIAL: ON THE LEGENDS AND LORE OF THE COMMAND TO ABRAHAM TO OFFER ISAAC AS A SACRIFICE: THE AKEDAH* (Judah Goldin trans., Jewish Lights Pub. 1993) (1950).

40. Fairness requires me to note that one might well describe as the "teleological suspension of the ethical" the willingness of persons to accept calls of sacrifice, whether of themselves, their loved ones, or, of course, strangers, issued by the state. Nothing in this review should be read as an endorsement of transferring the commitment formerly felt to a divine presence instead to the secular state.

41. At least two readers have challenged me to specify *why* I would grant more respect — and accommodation — to the believer in religious revelation than to the hearer of commands from Venus. After all, I have announced that I do not in fact believe that religious revelation is any more "real," ontologically, than a command from Venus. I suppose the honest answer to the question is that I would classify myself as an agnostic rather than an atheist. That is, I am unpersuaded by the evidence of God's existence or participation in human history. Yet I cannot find it in me to condemn as "irrational" those who are religious. Perhaps the answer boils down to the fact that some of my best friends, whom I respect both as decent human beings and, more relevantly to the instant discussion, serious intellectuals, are deeply religious, and I am unwilling to dismiss them as being necessarily deluded. When I "look at what is before [my] eyes," 2 *Corinthians* 10:7, I just do not see what they do, but maybe it is my eyesight, rather than theirs, that is deficient. I am obviously not so generously disposed to the person hearing the Venusian commands. Perhaps I would think differently about *that* if I had some friends within the university community who did bear witness to their experience with the Venusians. See Stephen Rae, *John Mack's Abductees*, N.Y. TIMES, Mar. 20, 1994, § 6 (Magazine), at 30, for a profile of "a Pulitzer Prize-winning Harvard psychiatrist named John E. Mack," *id.* at 30, who recently published a book based on his treatment of a number of persons who claim indeed to have been abducted by aliens from beyond Earth. See JOHN E. MACK, *ABDUCTIONS: HUMAN EN-*

to change my mind about the substantive issue for which she offers the revelatory evidence. I might — and do — cherish, for a variety of reasons, some who exemplify a religious sensibility, but that is, I think, different from genuinely cherishing views that, from my own perspective, just do not make sense. Just as committed Christians will often describe themselves as loving the sinner while hating the sin, I can imagine cherishing the person with an alien sensibility — because, for example, that person behaves in a variety of commendable ways — even while I remain thoroughly distanced from — though I certainly do not “hate” — the sensibility itself. I suppose that, when all is said and done, this means that I do view “religiously based moral arguments as inferior to secular ones” (p. 258), at least in the specific sense that the former will prove unavailing to me as reasons for action. Could *anyone* claiming to be a secularist ever *not* treat theologically based arguments as “inferior” — in the operational sense of capacity to persuade — even if one admired their intellectual intricacy? To be persuaded by a theological argument is, I think, just to say that one is not in fact a secularist. Secular arguments, even when offered by someone who is otherwise deeply religious, may in fact persuade the secularist and lead to changes of mind regarding important public issues. This is, of course, no small point, as illustrated by the following example.

I have written publicly of Michael McConnell’s impact on my thinking about such issues as the legitimacy of state aid to parochial education and accommodation of religious sensibilities in public education.⁴² Though McConnell is a devout Christian, what affected me so strongly was his appeal to a thoroughly secular argument about the meaning of equality within the context of the contemporary welfare state. Moreover, as I have already indicated, the most persuasive parts of Carter’s book, at least in regard to most of his fellow legal academics, are those couched in standard rhetorical tropes devoid of theological content.

A second aspect of Carter’s argument that leaves me with decidedly mixed feelings is his description of “two chief functions that religions can serve in a democracy” (p. 36). First, “they can serve as the

COUNTERS WITH ALIENS (1994). In the book, he apparently indicates that he believes the accounts of his patients and suggests that our own rejection of those accounts is generated primarily by a resistance to the enormous implications they have for our most basic beliefs about the world. I remain skeptical, but it is chastening, at the least, to find a certified Harvard professor who is not. Of such developments (sometimes) are paradigm shifts made!

All of this restates the problem rather than answers it. A genuine answer would, no doubt, require a book that I am almost certainly incapable of writing.

42. See Levinson, *supra* note 16, at 999-1002. As to McConnell, see especially his brilliant article, Michael W. McConnell, *The Selective Funding Problem: Abortions and Religious Schools*, 104 HARV. L. REV. 989 (1991). See also Michael W. McConnell, *Religious Freedom at a Crossroads*, 59 U. CHI. L. REV. 115 (1992), reprinted in *THE BILL OF RIGHTS IN THE MODERN STATE* 115 (Geoffrey R. Stone et al. eds., 1992).

sources of moral understanding without which any majoritarian system can deteriorate into simple tyranny" (p. 36). Second, "they can mediate between the citizen and the apparatus of government, providing an independent moral voice."⁴³ Indeed, more strongly, Carter insists that "religions are at their most useful when they serve as democratic intermediaries and preach resistance" (p. 132) — including resistance to the presumably inadequate view of life held by secularists.

As to his first function, the key word is almost certainly *can*. It would be tendentious to deny that particular religious tenets can serve to undergird nonoppressive notions of politics. *Can*, however, is a distinctly different logical operator from *must*. It seems equally tendentious to deny that particular religious tenets can encourage monumental indifference or, indeed, outright hostility to any notion of liberal democracy. As for the indifference, consider only the political implications of St. Paul's assertion that "there is no authority except from God, and those that exist have been instituted by God. Therefore he who resists the authorities resists what God has appointed, and those who resist will incur judgment."⁴⁴ As for active hostility, consider only the triumphalist Catholicism embraced by Ferdinand and Isabella and reflected in the Spanish Inquisition led by Torquemada and the ruthless expulsion of the Jews in 1492. It is, to put it mildly, impossible to view this as contributing to "democracy" or protecting against "simple tyranny."⁴⁵

This point is necessarily interrelated with his second argument emphasizing the "power of resistance" (p. 37) on the part of religions to the overweening demands of the state. "A religion is, at its heart, a way of denying the authority of the rest of the world; it is a way of saying to fellow human beings and to the state those fellow humans have erected, 'No, I will *not* accede to your will'" (p. 41). It is, says Carter, important to accommodate such rebels, though "the reason for accommodation [is] not the protection of individual conscience, but the preservation of the religions as independent power bases that exist in large part in order to resist the state" (p. 134). Carter would, no doubt, agree with Columbia history professor Istvan Deak's description of Roman Catholicism as "a beautiful anachronism in our age of crazed nationalism" insofar as "virtually every devout Catholic pre-

43. P. 36. Carter notes that "from Tocqueville's day to contemporary theories of pluralism, the need for independent mediating institutions has been a staple of political science." Pp. 36-37. See generally GEORGE A. KELLY, *POLITICS AND RELIGIOUS CONSCIOUSNESS IN AMERICA* (1984), for a superb treatment of this point in regard to the interplay between particular notions of religion and the maintenance of a republican political order.

44. *Romans* 13:1-2.

45. On the expulsion of the Jews, see SOLOMON GRAYZEL, *A HISTORY OF THE JEWS* 400-17 (1947). Nor were the Christians more generous when they expelled the Muslims from Spain in the seventeenth century. See ALBERT HOURANI, *A HISTORY OF THE ARAB PEOPLES* 246 (1991).

serves in his heart some remnants of his denomination's transnational loyalty and the duty of Catholics to defy immoral laws."⁴⁶

In the abstract these are powerful, perhaps even thrilling, statements. I have no desire to reinforce the general authority — indeed, what is sometimes little less than the idolatrous claims — of the modern state, and I often admire those who resist in the name of higher authority.⁴⁷ But, of course, the moral valence assigned to *resistance* may well depend on who is resisting what.

As Carter himself notes, the "radically destabilizing proposition" of resistance is "central not only to the civil resistance of Martin Luther King, Jr., and Mohandas Gandhi, but also to Operation Rescue" (p. 41), whose participants not only attempt to disrupt the lawful operations of abortion clinics but also, and more significantly, appear to be quite tolerant of those who would murder doctors who perform abortions.⁴⁸ Similarly, as someone concerned with the future of Jewish-Palestinian relations in Israel and the West Bank, I am less than pleased to read that a former chief rabbi of Israel, Shlomo Goren, has publicly declared that Jewish law requires that soldiers of the Israeli Defense Forces refuse to obey potential orders to uproot Jewish settlers on lands to be given — or, perhaps more accurately, returned — to their pre-1967 Palestinian possessors.⁴⁹ Members of Peace Now, a dovish group of Israeli Jews, described his call as "seditious" and "aimed at undermining the rule of law in Israel"; they urged the government "to place Rabbi Goren on trial for incitement and sedition."⁵⁰ One does not have to endorse this latter call, which evokes some of the worst episodes in the history of American civil liberties, in order to believe that Rabbi Goren and the sensibility he exemplifies are indeed

46. Istvan Deak, *The Incomprehensible Holocaust*, N.Y. REV. OF BOOKS, Sept. 28, 1989, at 66, quoted in Sanford Levinson, *The Confrontation of Religious Faith and Civil Religion: Catholics Becoming Justices*, 39 DEPAUL L. REV. 1047, 1047 (1990).

47. I write these comments on Martin Luther King's birthday, and I have no doubt that the United States would have been significantly worse off had King not challenged, from the foundation of his own deep religious commitments, the legitimacy of American racial relations.

48. After reading a draft of this review, Professor Michael Stokes Paulsen registered exception to this description of Operation Rescue. He commented that even the position described in the text must be understood against the background assumption that abortion is indeed murder and multiple abortions thus quite literally mass murder. No doubt he is right, just as I have no doubt that I would be considerably more accepting of violence directed against abortionists if I shared that view. After all, anyone who supports the bombing of Serbian positions in Bosnia, with the deaths attendant on such a policy, because of outrage at the murders of innocents now taking place in that country, can scarcely claim to be repelled by the infliction of violence on wrongdoers if no other option seems likely to stop the offensive actions. To oppose Operation Rescue, then, requires taking a substantive position on abortion, rather than simply taking refuge in arguments about the obligation always to follow the positive law of the state or, indeed, even to refrain always from committing what the state defines as murder.

49. See, e.g., Herb Keinon, *A-G to Check Goren's Statements*, JERUSALEM POST, Dec. 21, 1993, at 1.

50. *Id.* (quoting petition circulated by Peace Now).

menaces to both democracy and peace.⁵¹ Of course, it is no part of Rabbi Goren's self-description to be "useful" to democracy or even, depending on its nature, to peace itself. Indeed, from certain religious perspectives, there is something almost insulting about Carter's functionalist defense of religion, for it suggests that religion is best tested by its usefulness to basically humanistic concerns rather than by its conformity to divine command, whatever the consequences.

There can be no doubt that many religions have contributed wonderfully to the world even as defined by secularists; there can be as little doubt that many have been the source of great evil and catastrophe. Carter does not doubt this; one of his chapters is titled "Religious Fascism" (p. 263), and, as suggested earlier, he is nearly as hostile in general to the political program of the religious right as to the insensitivity of the standard-model secular liberal. Still, Carter is almost certainly correct when he cautions that the reason to denounce "religious fascism" is that it is indeed fascist rather than that it is religious.⁵² That being said, one ought to be no more tolerant, accepting, or cherishing of religiously founded fascism than of its more secular variants.

II

It should be obvious that both proponents and opponents of religious involvement in public life fundamentally assume that a religious perspective can make a real difference to one's activity in the world.

51. Indeed, since I wrote the above lines, the potential for conflict between at least some rabbis and the Israeli state has grown significantly greater in the aftermath of the Hebron massacre and the growing hints from the Rabin government that at least some settlers may be moved from the West Bank. See, e.g., Clyde Haberman, *Now It's the Israeli Right That Urges Soldiers to Refuse to Evict Settlers*, N.Y. TIMES, Apr. 19, 1994, at A8. The increasing tension is evident in the fact that

three influential rabbis, including a former Ashkenazic Chief Rabbi . . . recently reaffirmed a ruling made last year that said religious law requires soldiers to defy any army order to evacuate Jewish settlers from the territories. "You must refuse it as you would refuse an order to eat pork," said the former Chief Rabbi, Avraham Shapira.

Id. Prime Minister Yitzhak Rabin described such statements as setting in motion "the destruction of the Israeli Defense Forces and the security of the state." *Id.*; see also Hillel Halkin, *When Rabin Ran Into the Rambam: Rabbis Preach Defiance to Soldiers of Israel*, FORWARD, Apr. 8, 1994, at 1.

I must admit that I am now less inclined to equate a governmental crackdown on these rabbis and their allies with the shameful United States prosecution of American communists in *Dennis v. United States*, 341 U.S. 494 (1951). The former threaten a potential civil war within the Israeli Jewish community in a way that the communists never did in this country. Prudence may dictate restraint, but that is obviously different from resting the argument on an abstract principle of the state's duty to tolerate truly incendiary speech when delivered, not by "an unknown man," *Abrams v. United States*, 250 U.S. 616, 628 (1919) (Holmes, J., dissenting), but by persons with the stature of Rabbis Goren and Shapira.

52. See, e.g., p. 266 ("If the Christian Coalition is wrong for America, it must be because its message is wrong on the issues, not because its message is religious."). Similarly, secularists are in error if they "suppose that it is the Christian Coalition's *religiosity* rather than its *platform* that is the enemy." *Id.*

This is certainly true phenomenologically, that is, in terms of the self-understanding of the religious believer. Carter refers at one point to "the centrality of the word of God in the lives of believing Christians" (p. 77). He had earlier referred to "people who live faith-guided lives" as "individuals who look to their religious traditions for instruction, or at least influence, not only about how they should behave, but about moral truth" (p. 18). Moreover, one should note well President Clinton's avowal, in regard to "those of us who have faith," of its "animat[ing]" consequences: Religious faith "affect[s] what we feel, what we think, and what we do."⁵³

Phenomenology, in this account, refers to "internal" understandings.⁵⁴ But there is also, of course, the question of observed behavior. Clinton's statement, for example, suggests that possession of religious faith, as what social scientists call an "independent variable," should at least correlate with—and indeed *cause*—what it is that the possessors "do" in political life. Empirical research certainly does find some correlations between religious identification, on the one hand, and political beliefs and propensity to vote for given political parties,⁵⁵ on the other, even as it is always necessary to remember that, whatever the category, there will always be many "exceptions" who behave contrary to stereotype. Let us assume, then, that Carter and Clinton are correct in asserting that religious faith "matters"—that one indeed discovers something significant about *X*, in terms of predicting *X*'s thought and subsequent behavior, by finding out that *X* is religious. What might follow from this assumption?

One important consequence, I believe, is that one might legitimately be interested in the religious faith of public officials precisely because one would have reason to believe that it does indeed structure

53. Remarks, *supra* note 1, at *3.

54. See, for example, the famous distinction H.L.A. Hart draws between the "internal" and "external" perspectives of law in H.L.A. HART, *THE CONCEPT OF LAW* 86-88 (1961).

55. See KENNETH D. WALD, *RELIGION AND POLITICS IN THE UNITED STATES* 61-101 (1987) (chapter 4: "The Religious Dimension of American Political Behavior"). In a variety of areas, white Protestants, especially if evangelical, are considerably different from those with different religious identities, not to mention secularists. See, e.g., *id.* at 73 fig. 4.6, 74 fig. 4.7 (showing that white Protestants are less likely to support racial integration or increased government spending to help the disadvantaged than are Roman Catholics, Jews, Black Protestants, or secularists). They are also least likely to support "increased governmental spending on health, education, urban areas, and the environment." *Id.* at 71 fig. 4.5. White evangelicals and Black Protestants, moreover, are the most strongly opposed to homosexuality, *id.* at 75 fig. 4.8, just as these two groups, with the addition of Roman Catholics, are most likely to oppose the legalization of abortion, *id.* at 76 fig. 4.9.

More recently, after analyzing the 1992 election, Professor David C. Legee of Notre Dame has suggested, in the words of *Washington Post* reporter Thomas B. Edsall, that "[r]eligion has become a powerful predictor of both political partisanship and ideology." Thomas B. Edsall, *Religious Activity Tied to Party Loyalty: Role as a Political Predictor Is Similar to That of Race or Income, Research Indicates*, WASH. POST, Jan. 6, 1994, at A8. In particular, Professor Legee found that whites who are regular churchgoers, especially if they are members of evangelical Protestant denominations, are considerably more likely to support Republicans than are whites who attend church only irregularly or describe themselves as secular. *Id.*

their actions in the world, including, of course, actions with potentially grave consequences for others. If this is in fact true, it suggests that the presence or absence of religious faith is a matter of legitimate public concern and, consequently, a fit subject for questions and analysis by news reporters. Far more controversially, one might suggest that the same is true of the queries of U.S. senators faced with the task of providing advice and consent in regard to presidential nominees for high office.

Imagine, for example, that President Clinton, altogether plausibly, chooses to manifest his esteem for Professor Carter by naming him to the Second Circuit Court of Appeals or, indeed, the Supreme Court of the United States, for which he is amply qualified in terms of any traditional professional criteria. Were I a senator sitting in judgment on the nomination, I might well be less interested in discussions of Carter's analyses of separation of powers,⁵⁶ constitutional interpretation,⁵⁷ or affirmative action⁵⁸ than in the extent to which his own religious faith could lead him, as a sitting judge, to resist the commands of otherwise valid positive law. I am, for example, particularly interested in what Carter might think of a statement by former Justice William J. Brennan, a Catholic, that he had, when nominated to the Court in 1956, "settled in [his] mind that [he] had an obligation under the Constitution which could not be influenced by any of [his] religious principles"; although he would, "as a private citizen," do "what a Roman Catholic does[,] . . . to the extent that that conflicts with what [he] think[s] the Constitution means or requires, then [his] religious beliefs have to give way."⁵⁹ Does this not reduce Brennan's Catholicism to a "hobby," tamed of any real bite vis-à-vis the overriding secular world and devoid of those features that elicited Professor Deak's admiration? Would Carter, in contrast, devote himself to "prayerful consideration" aimed toward "discerning and then enacting the will of God" (p. 77) rather than to more secular consideration of what the U.S. Constitution means, as interpreted without reference to religiously inspired modalities? Could Carter legitimately rebuff any such questions as to the relevance of his religious faith by reference to Article VI of the Constitution, with its prohibition of religious tests for public office,⁶⁰ or by reference to the First Amendment's Free Exercise and Establish-

56. See, e.g., Stephen L. Carter, *The Independent Counsel Mess*, 102 HARV. L. REV. 105 (1988); Stephen L. Carter, *From Sick Chicken to Synar: The Evolution and Subsequent De-Evolution of the Separation of Powers*, 1987 B.Y.U. L. REV. 719.

57. See, e.g., Stephen L. Carter, *The Constitution, the Uniqueness Puzzle, and the Economic Conditions of Democracy*, 56 GEO. WASH. L. REV. 136 (1987); Stephen L. Carter, *The Right Questions in the Creation of Constitutional Meaning*, 66 B.U. L. REV. 71 (1986).

58. See STEPHEN L. CARTER, *CONFESSIONS OF AN AFFIRMATIVE ACTION BABY* (1991).

59. See SANFORD LEVINSON, *CONSTITUTIONAL FAITH* 56 (1988) (quoting Jeffrey T. Leeds, *A Life on the Court*, N.Y. TIMES, Oct. 5, 1986, § 6 (Magazine), at 25, 79). I discuss this passage and its implications in Levinson, *supra* note 46, at 1063.

60. U.S. CONST. art. VI, cl. 3.

ment Clauses?⁶¹ I see no good reason why the answer should be yes, at least if one accepts his — and Clinton's — own proposition that religion, when not a "hobby," in fact structures one's entire stance toward the world.

Ironically, Carter is one of our leading scholars of the confirmation process, which he has described, indeed, as a "mess."⁶² One can have little doubt that interrogation of nominees as to their religious tenets would make confirmation even messier than it is now, and that problem may be a good reason to veer away from the course described above. But it should at least be clear that any such decision is, like that involving exclusion of certain dispositive evidence from criminal trials, based on second-order policy considerations rather than an argument that religious views are irrelevant in assessing a nominee's fitness for office. *That* argument simply cannot be made by anyone who accepts the main thrust of Carter's thesis.

III

Carter made a deliberate decision, I think it fair to say, to aim his book at a general audience rather than at his fellow academics. As a result, he often paints his arguments with broad brushes; legal doctrines are alluded to rather than carefully analyzed, and contextual nuance is sometimes absent. A discussion of the implications of the welfare state for the flourishing of religion in America (pp. 136-55) is little more than an introduction to a topic that could merit a full book in itself. Carter offers two chapters on the complexities attached to religion in the public schools (pp. 156-210), but he examines only the issue of the teaching of "creation science" in any depth.⁶³ In the course of this discussion, Carter indicates that he would give parents "broad rights to exempt their children from education programs to which they raise religious objections" (p. 174). "Only in this way," he says, can society pay genuine homage to "the epistemological diversity that leads some parents to prefer to learn science from the Bible" (p. 174). It is crucial to emphasize that such "exemption" does *not* simply mean the right to avoid public schools entirely, but, rather, it means the right to refuse to participate in certain aspects of the regular

61. U.S. CONST. amend. I. See generally Howard J. Vogel, *The Judicial Oath and the American Creed: Comments on Sanford Levinson's The Confrontation of Religious Faith and Civil Religion: Catholics Becoming Justices*, 39 DEPAUL L. REV. 1107 (1990).

62. See STEPHEN L. CARTER, *THE CONFIRMATION MESS* (1994) (expanding earlier articles, including *The Confirmation Mess*, 101 HARV. L. REV. 1185 (1988), and *The Confirmation Mess, Revisited*, 84 NW. U.L. REV. 962 (1990)).

63. Pp. 157-82. Interestingly enough, another active Christian law professor, Phillip Johnson, criticizes Carter's portrayal of the dispute for its failure to take with sufficient seriousness "the creationist argument that a theory founded upon an a priori faith in metaphysical naturalism may not be true." See Johnson, *supra* note 31, at 50. Johnson is the author of *Darwin on Trial*, which is cited by Carter as a "thoughtful critique of evolution by a critic of creationism." P. 304 n.26, (citing PHILIP E. JOHNSON, *DARWIN ON TRIAL* (1991)).

curriculum even while happily taking part in such parts of the school day as are otherwise unobjectionable.

The right to opt out of selected parts of the public school was tested in a remarkable case, *Mozert v. Hawkins County [Tennessee] Board of Education*,⁶⁴ which Carter cites in his footnotes⁶⁵ but, rather surprisingly, does not otherwise mention at all. This is a real shame, for no contemporary case better poses the complex questions involving accommodation of those who sharply counterpose a fundamentalist religious ontology and epistemology to the more conventional understandings, not only of secularists, but also, in fact, of most who deem themselves religious. Fortunately, an excellent complement to Carter's book is Stephen Bates's *Battleground: One Mother's Crusade, the Religious Right, and the Struggle for Control of our Classrooms*.⁶⁶ It offers a superb and comprehensive overview of *Mozert* that no one interested in the topics raised by Carter should ignore. Bates offers genuine contributions to understanding both the specifics of *Mozert* and the broader issues of the *Kulturkampf* taking place within the surrounding culture.

The subtitle of *Battleground* is at once unfortunate and illuminating. It is unfortunate in that it might suggest to the casual reader a somewhat sensationalist account, especially given its publication by a subdivision of Simon and Schuster, a leading mass-market publisher with a demonstrated proclivity toward sensationalism.⁶⁷ One suspects that most readers would predict from the subtitle — and, perhaps, from the author's status as a Harvard-trained lawyer — a fairly unsympathetic portrayal of the "religious right" and its "struggle for control of our classrooms." Those expectations, however understandable, are mistaken, for Bates has written a remarkably fair-minded — at least from my perspective — account of a complex human drama. Indeed, the real illumination of the subtitle comes from its emphasis on "one mother's crusade," for the book focuses heavily on Vicki Frost, the guiding spirit, though not the named plaintiff, of the *Mozert* case.

Frost objected strenuously to the assignment by the Hawkins County schools, which her children attended, of materials from a series of readers developed by Holt, Rinehart, and Winston that she said

64. 827 F.2d 1058 (6th Cir. 1987), *cert. denied*, 484 U.S. 1066 (1988). For an unusually fine discussion of the legal and theoretical issues raised by this case, see Nomi Maya Stolzenberg, "He Drew a Circle That Shut Me Out": *Assimilation, Indoctrination, and the Paradox of a Liberal Education*, 106 HARV. L. REV. 581 (1993).

65. See p. 305 n.39.

66. Stephen Bates is a senior fellow at the Annenberg Washington Program of Northwestern University.

67. Simon and Schuster and its subdivisions have published, for example, the sensationalized KITTY KELLEY, NANCY REAGAN: THE UNAUTHORIZED BIOGRAPHY (1991), and JOE MCGINNIS, THE LOST BROTHER (1993) (biography of Sen. Edward M. Kennedy).

called into question tenets of her fundamentalist Christian faith. For example, one story involved mental telepathy, which Frost rejected as contrary to her faith. Other stories suggested that certain ways of life condemned by Frost's own theological understanding, such as "women's liberation," were in fact tolerable and worthy of respect. Yet others seemingly taught that Christianity was not a uniquely privileged road to God.⁶⁸

It is essential to realize what Frost and her colleagues did, and did not, claim. Although at one point they appeared to demand the excision of offensive books from the public school curriculum as such, they in fact dropped any such demands and instead insisted only that their children be allowed to read other, nonoffensive material and be exempted from any class discussions involving the offensive works (pp. 37-38). As Bates makes clear, the schools initially accommodated them. The children retreated to the school library while their classmates discussed the regularly assigned reading (p. 71).

What made all the difference was a policy decision by the Hawkins County School Board itself that any such accommodation was unacceptable (p. 85). In effect, the Board made it a condition of attending public schools that students accept, without exception, the precise curriculum established by the public school system. One might view this as the offer of a classic adhesion contract: the potential consumer of public school services must take it — that is, attend the public schools on the terms offered — or leave it — exercise one's option, protected by Tennessee law,⁶⁹ to opt out of the public schools entirely and attend a private school or, indeed, receive home schooling.

To put it mildly, Hawkins County never demonstrated what besides administrative convenience justified such a limited set of options. Nor, I think, could it have made such a successful demonstration. The reason is simple. As noted by Judge Lively, writing for the majority in the Sixth Circuit, "[t]he state board of education and local boards of education are prohibited from regulating the selection of faculty or textbooks or the establishment of a curriculum in church-related schools."⁷⁰ It seems, therefore, impossible for the State to argue that it has any very high interest in any given facet of its public school curriculum if it in fact allows the opt-out by those who choose nonpublic schooling. In any event, though, the Sixth Circuit proved unsympathetic to any such arguments and upheld the power of the Board,⁷¹ and the Supreme Court denied certiorari without any re-

68. For all of these examples, see pp. 19-29.

69. TENN. CODE ANN. § 49-6-3001(c)(4) (Supp. 1993). The U.S. Constitution presumably protects this option as well. See *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925).

70. TENN. CODE ANN. § 49-50-801(b) (1990), *quoted in Mozert*, 827 F.2d at 1067.

71. Although Judge Boggs, in a concurring opinion, displayed extraordinary sensitivity to the issues raised by the case — a sensitivity almost wholly lacking in the opinions by his col-

corded dissent.⁷²

Bates makes two essential contributions in *Battleground*. First, he conveys, with a minimum of editorial comment, the personalities and views of the major participants in the struggle. He is not interested in creating melodramatic heroes or villains. Second, Bates demonstrates that one of the factors that almost undoubtedly led to the polarization between the parents and the school board was the participation of national organizations driven by their own goals and representing profoundly different sectors of the American class and social structure.

On the part of the parents, the chief organization was Concerned Women for America (CWA), led by Tim and Beverly LaHaye. They provided the parents with their chief lawyer, Michael P. Farris, a Gonzaga Law School graduate who was a "Baptist who believed the Bible is literally true, a recently ordained minister, and a father who taught his children at home in order to safeguard them from the corruptions of the public schools."⁷³ "[T]wo other CWA lawyers and a law student" joined Farris at trial (p. 234). The school board was befriended by People for the American Way (PAW), which led ultimately to its representation by Timothy Dyk, a Harvard Law School alumnus and partner at Wilmer, Cutler, and Pickering, a major Washington law firm. Indeed, working with Dyk were four other lawyers from Wilmer, Cutler, and Pickering, along with three local lawyers and a lawyer representing the State of Tennessee, which had intervened (p. 234).

Bates quotes a member of the team defending the school board as saying that the case "was very much *Concerned Women for America versus People for the American Way*. The local school board officials and the local plaintiffs, while not pawns, were somehow less important" (p. 235). Bates argues that, "[d]espite their mirror-image political convictions, People for the American Way and Concerned Women for America had much in common in the early 1980s" (pp. 149-50), beginning with the fact, as revealed in the very titles of their respective organizations, that each "claimed to represent the truest traditions of the United States" (p. 150). Concomitantly, "[e]ach saw the other as part of a wealthy, well-disciplined cabal aiming to quash dissent: to outlaw Christianity, to outlaw pluralism; to force anti-religious views on everyone, to force religious views on everyone" (p. 150). For Beverly LaHaye, whom Bates describes as challenging Phyllis Schlafly for the status of "the religious right's leading woman" (p. 105), secular humanism is a "pernicious philosophy," and

leagues Judge Lively and Judge Kennedy — he still adopted a posture of extreme judicial restraint that left the plaintiffs, as a practical matter, helpless.

72. 484 U.S. 1066 (1988).

73. Pp. 113-14. More recently, Farris ran unsuccessfully as the Republican candidate for lieutenant governor of Virginia.

"[f]eminism and the sexual revolution are tentacles of the octopus Humanism which is seeking to destroy Christianity and Christian principles in American life" (p. 103). For PAW, groups like CWA and parents like the Frosts and Mozerts were reducible to opponents of "diversity, discussion and just plain thinking," who were, in addition, racist and antisemitic (pp. 150-51). For the PAW attorneys, in particular, there was another brooding omnipresence over the suit: Jerry Falwell, then president of the Moral Majority, at that time the most prominent organization of militantly right-wing evangelical Christians. Bates quotes a member of the team defending the school board as saying that "the enemy was really not Frost or Mozert, but Falwell, lurking in the background" (p. 235).

As Anthony Podesta, the president of PAW, put it, "This one was made to order. Vicki Frost, Michael Farris, Beverly LaHaye, the Gablers — scriptwriters in Hollywood could not have invented a better cast of characters. It just seemed too delicious to believe."⁷⁴ Delicious or not, the suit clearly took on a life of its own that left the actual adversaries, neighbors in Hawkins County, far behind, and Bates tells the courtroom story well. Law students could do far worse than study his tale as an example, for better and distinctly for worse as well, of contemporary American "public interest" litigation in which each side is represented by ideologically zealous organizations who view the actual clients as little more than pawns in larger struggles over control of American culture — and, it must be said, as useful symbols in the endless solicitation of financial contributions from ordinary citizens who share one or the other set of fears and willingness to demonize the opposition.

CONCLUSION

From the very beginning of our national history, the United States has been blessed — or burdened — by an almost astonishing array of religious sects and, concomitantly, by the necessity to decide what measure of toleration or accommodation is due those who deviate from the dominant culture in belief or, more ominously, in practice. Our national motto — *e pluribus unum* — has always carried with it an implicit question mark as to our ability to weave some kind of social unity out of the diversity found in our social fabric. *Multiculturalism* is simply the most recent rhetorical label for this aspect of American reality, with attendant concern about the "fraying"⁷⁵ or "disuniting"⁷⁶ of America being countered by equally heartfelt defenses, as seen in *The Culture of Disbelief*, of the importance of accom-

74. P. 165. The Gablers are a Texas couple who for decades have monitored public school textbooks looking for signs of secular humanist philosophy. Pp. 25-27.

75. See ROBERT HUGHES, *CULTURE OF COMPLAINT: THE FRAYING OF AMERICA* (1993).

76. See ARTHUR M. SCHLESINGER, *THE DISUNITING OF AMERICA* (1992).

modating even "alien" sensibilities and practices. For better or worse, there is no reason to believe that American culture will become more homogeneous or that fewer cases in the future will test the meaning of multiculturalism when culture involves religious dimensions. Each of these two books offers its own contribution to understanding why the issue perseveres and why it is so unlikely, as well, that any genuine consensus will bridge the chasm that now separates the various contenders.