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# FUNDAMENTALISM FROM THE PERSPECTIVE OF LIBERAL TOLERANCE

*Leslie C. Griffin\**

“[T]he historical origin of political liberalism (and of liberalism more generally) is the Reformation and its aftermath, with the long controversies over religious toleration in the sixteenth and seventeenth centuries.”<sup>1</sup> Liberals and liberal theorists have never forgotten the Wars of Religion. Although the seventeenth century “has often been called the century of reason and genius”<sup>2</sup> (because of Descartes, Hobbes, Corneille, Pascal, Locke and others), Locke scholar Hans Aarsleff reminds us that:

For the vast majority of the men and women who lived in Europe during Locke’s century, the immediate reality was very different. It was a time of violence, death, rape, war, and devastation on a vast scale. It was years of religious strife caused by sectarian disputes over the right reading of Scriptures and the flaunting of royal despotism justified by the doctrine of the divine right of kings. It was a world of constant religious and political *intolerance* and repression, and of ensuing dislocation that made fugitives wander across the lands of Europe in search of peace and security.<sup>3</sup>

The exhaustion from these wars “eventually led to the formulation and often reluctant acceptance of some form of the principle of toleration.”<sup>4</sup> The acceptance of toleration was reluctant because all sides wanted their vision of the truth to conquer their erroneous neighbors. Nonetheless, despite its limitations, liberal tolerance brought to citizens a truce that

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<sup>1</sup> JOHN RAWLS, *POLITICAL LIBERALISM*, at xxvi (1996).

<sup>2</sup> Hans Aarsleff, *Locke’s influence*, in *THE CAMBRIDGE COMPANION TO LOCKE* 252, 254 (Vere Chappell ed., 1994).

<sup>3</sup> *Id.* (emphasis added).

<sup>4</sup> JOHN RAWLS, *JUSTICE AS FAIRNESS: A RESTATEMENT 1* (Erin Kelly ed., 2001) [hereinafter RAWLS, *JUSTICE*].

religious intolerance had not provided.

Because of this history, liberals fear religious excess and intolerance, and are prone to see it wherever fundamentalism occurs. The preeminent proponent of liberalism, John Rawls, identifies religion as liberalism's ongoing challenge. He asks: "How is it possible for those holding religious doctrines, some based on religious authority, for example, the Church or the Bible, to hold at the same time a reasonable political conception that supports a reasonable constitutional democratic regime?"<sup>5</sup> Although many religious worldviews can support democracy, Rawls concludes that fundamentalisms, whether religious or philosophical, are generally incompatible with liberal democracy, and are "politically unreasonable."<sup>6</sup> Politically unreasonable groups test the limits of our tolerance.

According to Rawls, political liberalism is the theory that emerges from the first original position, which is composed of citizens of liberal societies who choose from behind the veil of ignorance.<sup>7</sup> Four central features of this political liberalism explain why fundamentalism can be incompatible with democracy and thus politically unreasonable. The Warriors of Religion in Europe believed their religion was true, so they fought to establish it as the religion of the state or prince. But Rawlsian liberals accept (first) *pluralism* among people's comprehensive beliefs. To fundamentalists who proclaim one truth, liberals respond that no one comprehensive doctrine compels the allegiance of all citizens. Pluralism is an abiding feature of our lives and will not fade. Therefore, (second) a *political conception of justice* must be found that does not impose one comprehensive doctrine (like Catholicism, Kantianism or Islam) on one's fellow citizens. The political conception of justice will be based on (third) an *overlapping consensus* in which citizens can agree on the political and constitutional essentials of their society, even though they disagree about their comprehensive doctrines. Finally, decisions within the overlapping consensus should be made only on the basis of reasons that appeal to all citizens, and so citizens must employ (fourth) *public reason*. Public reason means that citizens should not appeal to comprehensive religious and philosophical doctrines but to arguments that their fellow citizens may "reasonably be expected to endorse."<sup>8</sup>

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<sup>5</sup> JOHN RAWLS, *The Idea of Public Reason Revisited*, in COLLECTED PAPERS 573, 588 (Samuel Freeman ed., 1999) [hereinafter RAWLS, *The Idea of Public Reason*].

<sup>6</sup> *Id.* at 613.

<sup>7</sup> JOHN RAWLS, *THE LAW OF PEOPLES* 30 (1999).

<sup>8</sup> RAWLS, *supra* note 1, at 225.

These four features of political liberalism explain both the tension between religion and democracy, as well as why toleration is required in a liberal democracy. Believers instinctively want their own comprehensive perspective to govern all aspects of life. Yet pluralism renders this desire impossible, unless force is used to impose one's views on another. Instead of inflicting their views on others, citizens should meet on the common ground of political justice, an independent "module" shared by all. Toleration of different perspectives "mitigates" the "conflict between democracy and reasonable religious doctrines."<sup>9</sup> Instead of establishing one comprehensive doctrine, liberalism recognizes a constitutional right of religious liberty and defends a purely political conception of justice in which religious doctrines are not imposed on citizens. Rawls concludes "that a reasonable comprehensive doctrine accepts some form of the political argument for toleration."<sup>10</sup>

Rawls asserts that his modern vision of liberalism "completes and extends" the old principle of toleration that arose from the Wars of Religion in Europe.<sup>11</sup> Toleration offered only a *modus vivendi* and was inherently unstable. Although it put an end to war, the principle of toleration allowed for the possibility that groups would wait until they gained more members, and then use their power to build a society that was consistent with their comprehensive doctrine. Such tolerant societies, in which groups were always waiting for the opportunity to impose their views on others, were never stable. Modern democracies require more, and so Rawls argues that consensus should replace toleration. Today, citizens need a political, overlapping consensus that does not shift as religions gain adherents. Such consensus provides social stability, which has "very 'great value.'"<sup>12</sup> Imposing one's comprehensive view upsets stability, and so is (morally) forbidden in a constitutional democracy. This means that the political conception of justice has to be "affirmed by citizens irrespective of the political strength of their comprehensive view."<sup>13</sup>

Some comprehensive doctrines simply cannot accept toleration, consensus, a political conception of justice, or democracy. "[F]undamentalist religious doctrines . . . will reject the ideas of public reason and deliberative democracy. They will

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<sup>9</sup> RAWLS, *The Idea of Public Reason*, *supra* note 5, at 611.

<sup>10</sup> *Id.* at 612.

<sup>11</sup> JOHN RAWLS, *The Idea of an Overlapping Consensus*, in COLLECTED PAPERS 421, 437 (Samuel Freeman ed., 1999); *see also* RAWLS, *supra* note 1, at 154.

<sup>12</sup> RAWLS, *supra* note 1, at 139.

<sup>13</sup> RAWLS, *JUSTICE*, *supra* note 4, at 1.

say that democracy leads to a culture contrary to their religion . . . . They assert that the religiously true, or the philosophically true, overrides the politically reasonable.”<sup>14</sup> Rawls “simply say[s]” that such doctrines are “politically unreasonable.”<sup>15</sup> They challenge the stability of democratic institutions by their intolerance.

Who are these politically unreasonable fundamentalists? The term “fundamentalism” has its origins in American Protestantism, from *The Fundamentals: A Testimony to the Truth*, a series of essays about the Bible and Christian faith, which was distributed widely between 1910 and 1915. “The term *fundamentalist* itself was coined by Baptist editor Curtis Lee Laws in 1920 as a designation for those who were ready ‘to do battle royal for the Fundamentals.’”<sup>16</sup> Those Fundamentalists are remembered for their opposition to evolution.

In the 1990s, an era of resurgent fundamentalism, the Fundamentalism Project sought a definition of fundamentalism that could apply to all religions across the world, not only Christianity or American Protestantism. Among the numerous features of fundamentalism, I emphasize five: 1) its opposition to modernity; 2) its selective appropriation of the past; 3) its totalitarian impulse; 4) its “pronounced” commitment to patriarchy; and 5) its militancy.<sup>17</sup> About modernity, (first) fundamentalists dislike especially “the adoption of religious *tolerance* with [its] accompanying tendencies toward relativism.”<sup>18</sup> What the Enlightenment philosophers and Rawls praised as tolerance, consensus and pluralism, the fundamentalists condemn as immoral relativism and godless secularism. Fundamentalists prefer the past to the modern, but their ideal is usually (second) a “selective” history of the past, adopted in support of their anti-modern and anti-feminist ideology.<sup>19</sup> “[F]undamentalism has proven itself *selectively traditional and selectively modern*.”<sup>20</sup> It uses modern technology, for example, to pursue traditional goals. Third, “*fundamentalists seek to replace existing structures with a*

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<sup>14</sup> RAWLS, *The Idea of Public Reason*, *supra* note 5, at 613.

<sup>15</sup> *Id.*

<sup>16</sup> MARK A. NOLL, A HISTORY OF CHRISTIANITY IN THE UNITED STATES AND CANADA 382-83 (1992); *see also* George M. Marsden, *Introduction to THE FUNDAMENTALS: A TESTIMONY TO TRUTH* 1 (George M. Marsden ed., 1988).

<sup>17</sup> *Introduction to FUNDAMENTALISMS AND SOCIETY: RECLAIMING THE SCIENCES, THE FAMILY, AND EDUCATION* 10 (Martin E. Marty & R. Scott Appleby eds., 1993).

<sup>18</sup> *Introduction to FUNDAMENTALISMS OBSERVED*, at vii (Martin E. Marty & R. Scott Appleby eds., 1991) (emphasis added).

<sup>19</sup> *Id.* at ix.

<sup>20</sup> Martin E. Marty & R. Scott Appleby, *Conclusion: An Interim Report on a Hypothetical Family*, in *FUNDAMENTALISMS OBSERVED* 814, 825 (Martin E. Marty & R. Scott Appleby eds., 1991).

*comprehensive system.*"<sup>21</sup> In Rawlsian terms, they want their comprehensive doctrine to provide the complete structure for state, society and family, replacing the liberal institutions of the modern democratic state with one ideology. They are totalitarian in seeking social institutions that reflect their complete perspective on life and modernity. Fourth, fundamentalist groups are usually led by "*charismatic and authoritarian male leaders*" who support patriarchy rather than equality.<sup>22</sup> Because it is easier to control families than states, to date their biggest successes have occurred in preserving and protecting a traditional role for women in the family.<sup>23</sup>

Fifth, finally, and fundamentally, comes militancy. In common with the American Protestant fundamentalists, all fundamentalists do "battle royal," "fighting back" because their core identity is threatened by modernity.<sup>24</sup> Fighting defines them. They "*fight back*" against modernity. They "*fight for*" the restoration of their comprehensive worldview. They "*fight with*" the selective resources of the past and the modern technology that ensures their success. They "*fight against*" the moderates, modernists and secular humanists who oppose their total vision. They "*fight under*" God or "some transcendent reference."<sup>25</sup>

These features constitute the type of anti-liberalism that Rawls deplored. Fundamentalists are believers in one truth who fight to impose that truth on their fellow citizens through the control of social and political institutions—and so are politically unreasonable. In their voices, Rawlsian liberals hear echoes of their intolerant kin who decimated Europe in the Wars of Religion.

In retrospect, the Protestant *Fundamentals* texts of 1910 appear quite moderate, pale precursors of the Fundamentalism of the twentieth century's end. This suggests an important distinction between theological and political fundamentalism. A theological return to basic tenets of faith is quite different from a fundamentalist movement. Historically, "leaders of such fundamentalist movements [have not been] theologians but [were] social thinkers and political activists."<sup>26</sup> In Rawls' terms, theological fundamentalists could have biblical or religious reasons to support democratic institutions. If they do so, they are

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<sup>21</sup> *Id.* at 824.

<sup>22</sup> *Id.* at 826.

<sup>23</sup> *See supra* note 17, at 5.

<sup>24</sup> *See supra* note 18, at ix.

<sup>25</sup> *Id.* at x.

<sup>26</sup> Marty & Appleby, *supra* note 20.

reasonable. The political fundamentalists, for whom “pluralism is not an option,”<sup>27</sup> are not reasonable because they impose their system on others whenever the opportunity arises. This theological and political mix complicates their role in a democracy. “While they are political in nature, fundamentalist movements are also genuinely religious, which puts them in an analytical category distinct from other social protest movements or political opposition parties. We will fail to understand these movements if we neglect their irreducible religious dimension.”<sup>28</sup>

How shall citizens of a liberal democracy treat those who are politically unreasonable? Does justice require the toleration of the intolerant? No, says Rawls, if they threaten our security and public order. But if they “are of no immediate danger to the equal liberties of others,”<sup>29</sup> then the intolerant should be tolerated, not suppressed. One reason for this conclusion is Rawls’ hope that “[t]he liberties of the intolerant may persuade them to a belief in freedom.”<sup>30</sup> However, some intolerant sects “may be so strong” or “grow[] so fast” that they do not learn the lessons of liberty.<sup>31</sup> Their liberty may be limited if they pose a threat to the liberty or equality of others, i.e., “only in the special cases when it is necessary for preserving equal liberty itself.”<sup>32</sup> For Rawls, such cases “present[] a practical dilemma which philosophy alone cannot resolve.”<sup>33</sup> Therein lies the unresolved (or irresolvable?) dilemma about liberalism and the fundamentalists: “[u]nreasonable doctrines are a threat to democratic institutions.”<sup>34</sup>

Recall that the theory of political liberalism arises from the first original position, and proposes an internal, political conception of justice for liberal societies. Rawls employs a second original position to identify an ideal philosophical account of international law—the Law of Peoples—that is adopted by the “Society of Peoples.”<sup>35</sup> Members of the Society of Peoples follow

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<sup>27</sup> Rhys H. Williams, *Movement Dynamics and Social Change: Transforming Fundamentalist Ideology and Organizations*, in ACCOUNTING FOR FUNDAMENTALISMS: THE DYNAMIC CHARACTER OF MOVEMENTS 785, 802 (Martin E. Marty & R. Scott Appleby eds., 1994).

<sup>28</sup> Gabriel A. Almond et al., *Politics, Ethnicity, and Fundamentalism*, in FUNDAMENTALISMS COMPREHENDED 483, 504 (Martin E. Marty & R. Scott Appleby eds., 1995).

<sup>29</sup> JOHN RAWLS, A THEORY OF JUSTICE 192 (rev. ed. 1999).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 193.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> RAWLS, *The Idea of Public Reason*, *supra* note 5, at 614.

<sup>35</sup> RAWLS, *supra* note 7, at 3.

the Law of Peoples. They are not required to have liberal democratic governments, however. Instead, within international relations, there is a pluralism of “cultures and traditions of thought, both religious and nonreligious.”<sup>36</sup> Hence, the Society of Peoples includes all “well-ordered peoples,” namely liberal and “decent but non-liberal” governments, but excludes groups who are “outlaw states.”<sup>37</sup> Reasonable pluralism exists among peoples, as well as within liberal societies.

Decent, nonliberal societies do not have “aggressive aims” against other peoples; if they seek to spread their influence externally, they do so in a way that respects civil liberties. Under this definition, the European Warriors of Religion were not decent.<sup>38</sup> Decent peoples respect human rights, possess a “decent consultation hierarchy” that confers with representatives of their society’s groups, and allow dissent and exodus. They respect the rights to life, liberty, property, formal equality, “and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought.”<sup>39</sup> According to Rawls, this last right does not mandate religious equality; a decent people may favor one religion, as long as all religions have basic freedom. “Although the established religion may have various privileges, it is essential to the society’s being decent that no religion be persecuted, or denied civic and social conditions permitting its practice in peace and without fear.”<sup>40</sup>

Because of the pluralism of liberal and decent nonliberal peoples, “the question of how far nonliberal peoples are to be tolerated is an essential question of liberal foreign policy.”<sup>41</sup> Here too, Rawls recommends tolerance unless security is at stake. Liberal societies should demonstrate their respect for decent, nonliberal societies.<sup>42</sup> Once again, Rawls hopes that the experience of toleration may eventually persuade the decent to become liberal.

Religious peoples may be decent, or not. Neither the European Warriors of Religion nor aggressive Fundamentalists are decent. In contrast, Rawls’ hypothetical hierarchical Islamic people of Kazanistan are decent.<sup>43</sup> Kazanistan lacks separation of church and state, and favors Islam. Although non-Muslims have

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<sup>36</sup> *Id.* at 11.

<sup>37</sup> *Id.* at 89-90.

<sup>38</sup> *Id.* at 64-65.

<sup>39</sup> *Id.* at 65.

<sup>40</sup> *Id.* at 74.

<sup>41</sup> *Id.* at 10.

<sup>42</sup> *Id.* at 59.

<sup>43</sup> *Id.* § 9.3.



some religious freedom and basic civil rights there, government positions are reserved for Muslims. Such a decent government is part of the Society of Peoples and deserves tolerance. In contrast, outlaw states that do not respect these “universal” human rights should not be tolerated; the right of self-defense may be used against them.

Fundamentalists are no more comfortable with the Law of Peoples than they were with Political Liberalism.

Many persons—call them “fundamentalists” of various religious or secular doctrines which have been historically dominant—could not be reconciled to a social world such as I have described. For them the social world envisaged by political liberalism is a nightmare of social fragmentation and false doctrines, if not positively evil.<sup>44</sup>

Fundamentalists cannot reconcile themselves to pluralism in either national or international governments. In summary,

[T]he Law of Peoples uses an original position argument only three times: twice for liberal societies (once at the domestic level and once at the Law of Peoples level), but only once, at the second level, for decent hierarchical societies. Only equal parties can be symmetrically situated in an original position.<sup>45</sup>

There is no first original position in nonliberal societies that do not have the full range of rights that are chosen by liberal states in the first original position.

Post 9/11, it is clearer than ever that liberty and tolerance pose practical dilemmas that “philosophy alone cannot resolve”<sup>46</sup> at either the national or international level. Hence, other speakers at this conference wrestled with the difficult questions surrounding the government’s obligations to protect the nation’s security and to preserve individual liberties.<sup>47</sup> The Society of Peoples now strives to distinguish the real Kazanistans from the outlaw states and to comprehend the varieties of the world’s fundamentalisms.

Within the U.S., religious fundamentalism was resurgent in domestic politics throughout the 1990s. Hence, within liberal societies, there is good reason to remember and reiterate political liberalism’s enduring insight that all religious and philosophical fundamentalisms are politically unreasonable. Today, the focus is Islamic fundamentalism. Yet our analysis must not “prefer one religion over another,”<sup>48</sup> but should contemplate the risks all fundamentalisms pose to liberal institutions. To emphasize this

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<sup>44</sup> *Id.* at 126.

<sup>45</sup> *Id.* at 70.

<sup>46</sup> RAWLS, *supra* note 29, at 193.

<sup>47</sup> See, e.g., Richard Danzig, *Academics and Bioterrorists: New Thinking About the New Terror*, 24 CARDOZO L. REV. 1497 (2003).

<sup>48</sup> *Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947).

point, I turn to the history of American Catholicism to glean some insight about the role of tolerance in our constitutional democracy in the twenty-first century. I recount this history from the perspective of liberal tolerance rather than from the internal theological perspective of the Church, which was addressed by another panel.

The Catholic Church was a leading participant in the European Wars of Religion. Exhausted by warfare, it learned to tolerate its losses of church land, church property and church establishment to new governments across Europe. In some nations, however, it retained the status of establishment. To cope with these changes and the loss of political power, over time the church developed an account of church-state relations that has been summarized by the words “thesis” and “hypothesis.” Thesis: Catholicism is the one true religion. Therefore, it should be the established religion of every nation. Non-Catholics should not have the right to public worship because their religions are not true. Hypothesis: Outside Catholic states, Catholics must enjoy the right to public worship because their religion is true. Catholic citizens must *tolerate* non-establishment when they can do no better, but must change from non-establishment to establishment whenever they acquire the power to do so.<sup>49</sup> In other words, the goal was to change the hypothesis to thesis.

This Catholic position illustrates the liberal concern about the instability of toleration and the *modus vivendi*. A society cannot be stable if its citizens change its institutions to match their religion whenever they have the votes to do so.

American theologians and bishops challenged and changed this Catholic teaching at the Second Vatican Council in 1965. Their experience of the religious liberty protected by the First Amendment persuaded them that the separation of church and state was not an evil to be *tolerated* until it could be changed. In the *Declaration on Religious Freedom*, the Council discarded the thesis/hypothesis theory in favor of the argument that every human person has a right to religious freedom that must be protected by the state. The lead author of the *Declaration*, the New York Jesuit John Courtney Murray, dismissed the old theory of toleration as “archaic.”<sup>50</sup> Toleration was for another era from

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<sup>49</sup> See generally John Courtney Murray, *Current Theology: On Religious Freedom*, 10 THEOLOGICAL STUD. 409 (1949); THOMAS T. LOVE, JOHN COURTNEY MURRAY: CONTEMPORARY CHURCH-STATE THEORY 29-30 (1965).

<sup>50</sup> John Courtney Murray, *This Matter of Religious Freedom*, AMERICA, Jan. 9, 1965, at 40, 42; see also John Courtney Murray, *The Declaration on Religious Freedom*, in 15 WAR, POVERTY, FREEDOM: THE CHRISTIAN RESPONSE 3, 16 (1966) (“Therefore, the *Declaration on Religious Freedom* puts aside the post-Reformation and 19th-century

the past; the new principle was freedom for everyone.

The Council's reform, rooted in the American experience of religious freedom, exemplifies Rawls' hope that if the intolerant are tolerated rather than suppressed, their experience of liberty "may persuade them to a belief in freedom."<sup>51</sup> The American Catholic experience is also consistent with Rawls' summary of the history of religious freedom: "Religious toleration has historically first appeared as a *modus vivendi* between hostile faiths, later becoming a moral principle shared by civilized peoples and recognized by their leading religions."<sup>52</sup> At the Council, the Catholic Church moved from the *modus vivendi* of toleration to the moral principle of freedom.

The Council's *Declaration on Religious Freedom* also addressed the issue of establishment that arises in the Society of Peoples. It stated that both non-establishment and establishment are acceptable forms of church-state interaction, as long as every person possesses a civil right to religious freedom.<sup>53</sup> The Church thus accepted a "pluralism of cultures and traditions" on questions of church and state.

Murray noted that the only supporters of archaic tolerance at the Council were the bishops who opposed any development of church doctrine. People who oppose any development in interpretation of texts are Fundamentalists. Although the majority of Catholic bishops approved an engagement with the modern world for the church at Vatican II,<sup>54</sup> opponents of modernity have retained a powerful Catholic voice. Since 1965, they have battled to limit the range and scope of the Council's reforms. Some of the freedoms of the modern era—especially new freedoms for the laity and women—have been simply unacceptable to traditional Catholics. The Church, to borrow Michael Walzer's explanation of toleration, has experienced a "contradiction . . . [that] lies deep within the idea of religious toleration itself, because virtually all the tolerated religions aim to restrict individual freedom, which is, for liberals at least, the foundation of the idea."<sup>55</sup>

As in many world religions or philosophies, in Catholicism there are Fundamentalists who yearn for a return to a pre-modern

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theory of civil tolerance. The fault is not error but archaism.").

<sup>51</sup> RAWLS, *supra* note 29, at 192.

<sup>52</sup> RAWLS, *supra* note 7, at 113.

<sup>53</sup> *Dignitatis Humanae (The Declaration on Religious Freedom)*, in THE DOCUMENTS OF VATICAN II 675 (NO. 6) (Walter M. Abbott ed., 1966).

<sup>54</sup> See *Lumen Gentium* (The Dogmatic Constitution on the Church in the Modern World) and *Gaudium et Spes* (The Pastoral Constitution on the Church in the Modern World), in THE DOCUMENTS OF VATICAN II (Walter M. Abbott ed., 1966).

<sup>55</sup> MICHAEL WALZER, ON TOLERATION 70-71 (1997).

era when a patriarchal church decided the standards for state, society and family. My own liberal opinion is that the late twentieth century Reformation in technology, women's roles in secular society and concepts of morality has led the current American Catholic church to a new fundamentalism with a new thesis and hypothesis. The new thesis: Catholicism offers the one true morality, which should be established as the law. The new hypothesis: When the law does not reflect Catholic moral values, it must be changed. Hence, the vigorous public campaign by the church over the last thirty years to change American law to reflect Catholic teaching on moral questions such as abortion, homosexuality, contraception, welfare and reproductive technologies. A stark conflict exists between this comprehensive doctrine that opposes women's equality and a civil society where the laws require it. The equality of women is a prerequisite of a liberal society; such equality would be agreed upon in the first original position.<sup>56</sup>

It is no coincidence that the Catholic conflict occurs over women's rights. A common feature of all Fundamentalisms—not only that practiced by the Taliban—is the “pronounced” commitment to patriarchy. Indeed, the Fundamentalism Project concluded that, although fundamentalists (as totalists) seek to reform the state, politics and all social institutions, “with a few important exceptions, [they] have expended the greater portion of their energies, and have enjoyed the greater success, in reclaiming the intimate zones of life,” namely the family.<sup>57</sup> There, they “can shape behavior according to specific norms and traditional patterns, with relatively little resistance.”<sup>58</sup> This emphasis on inequality is troubling to Rawlsian liberalism (and democracy) because the family is part of the basic structure of a liberal society. In a liberal state, “[n]o institution or association . . . can violate [women's] rights as citizens.”<sup>59</sup> Hence, Rawlsian liberals are critical of religious groups who “t[ake] advantage of the openness of secular democracies”<sup>60</sup> to shape family law (not only their own families) to reflect their fundamentalist beliefs. Fundamentalists who seek to impose their opposition to women's rights on their fellow citizens by force of law are politically unreasonable.

This American Catholic experience of conflict between the church's teaching and civil law, plus reluctance to tolerate despite

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<sup>56</sup> RAWLS, *The Idea of Public Reason*, *supra* note 5, at 598.

<sup>57</sup> *Supra* note 17, at 5.

<sup>58</sup> *Id.* at 7.

<sup>59</sup> RAWLS, *The Idea of Public Reason*, *supra* note 5, at 598.

<sup>60</sup> Marty & Appleby, *supra* note 20, at 828.

the official endorsement of toleration, may confirm Michael Walzer's observation of the inevitable discomfort of religious groups with tolerance. A "regime of toleration" threatens their identities:

[T]his regime of toleration is under pressure in the contemporary United States from groups within the (Christian) majority who have no quarrel with the freedom of assembly or worship but *fear the loss of social control*. They are prepared to tolerate minority religions (they are advocates, therefore, of religious liberty), but they have no tolerance for personal liberty outside the house of worship. If sectarian communities aim to control the behavior of their own people, the more extreme members of religious majorities aim *to control everyone's behavior*—in the name of a supposedly common (Judeo-Christian, say) tradition, of 'family values,' or of *their own certainties about what is right and wrong*. This is surely an example of religious intolerance. It is a sign of the partial success of the regime of toleration, however, that antagonism is not directed against particular minority religions but rather against the ambience of freedom that the regime as a whole creates.<sup>61</sup>

9/11 focused the world's attention on the Taliban's brutal campaign against basic human and civil rights for women. After the attacks, for example, the European Parliament passed a resolution on Women and Fundamentalism. It noted that women have been among the "main victims" of fundamentalists and asserted that women's legal rights "cannot be restricted or breached on the pretext of religion." A Vatican spokesman, Roberto Cardinal Tucci, immediately objected to the resolution because it "would enable governments to impose on churches what they should believe and live."<sup>62</sup> Once again, we see a stark contrast between the comprehensive doctrine and civil law. As a matter of religious freedom, within its comprehensive doctrine, the Catholic Church does not want to "believe and live" with women's rights. For that reason, Cardinal Tucci characterized the European Parliament's resolution as "exasperated laicism" and an "example of 'lay fundamentalism.'"<sup>63</sup>

Lay fundamentalism? Like any other comprehensive doctrine, Liberalism can be fundamentalist. For this reason, in *Political Liberalism*, Rawls rejected a political structure based on

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<sup>61</sup> WALZER, *supra* note 55, at 70 (emphasis added).

<sup>62</sup> 'Lay Fundamentalism' Seen in European Parliament Action, Mar. 15, 2002, available at <http://www.zenit.org>.

<sup>63</sup> *Id.*

“comprehensive liberalism”<sup>64</sup> in favor of a *political* conception of justice developed by an overlapping consensus of citizens of different worldviews. Neither Liberals nor Catholics may impose their comprehensive doctrine on their fellow citizens; both must employ public reason. Not even John Rawls may use Kant’s categorical imperative to argue questions of constitutional essentials. Moreover, under the Rawlsian standard, Catholics may justly criticize liberal fundamentalists who would establish comprehensive liberalism.

The Cardinal’s “lay fundamentalism” is not liberal fundamentalism, however. Cardinal Tucci is mistaken to criticize “lay fundamentalism” in the European Parliament’s discussion of women’s rights. The Cardinal’s criticism echoes American Christians who decry the establishment of “secular humanism” in place of their own fundamentalism. Rawls insists, however, that “although the Law of Peoples, like political liberalism, is strictly political, it is *not* secular”<sup>65</sup> or lay. It is political. Period. The “laicism” and “lay fundamentalism” criticized by the Vatican are in fact the political and legal (i.e., non-theological or theocratic) principles of government that remain the valuable and abiding legacy of the Wars of Religion and the principle of toleration. Democracies are governed by common political principles, including the equality of men and women. Such equality must be part of the political conception of justice in a liberal society, despite what the world’s religions “believe and live.”

The legacy of liberal tolerance is the understanding that democracies cannot be governed by religious principles. Accordingly, liberals must oppose efforts to turn religious convictions into law and to re-Christianize our public discourse. This recommendation will appear harsh to some believers who feel bracketed or excluded from, or trivialized in, the public square because of their religion. But fairness to religion does not require that the “politically unreasonable” shape our laws and policies to fundamentalist ends.<sup>66</sup> As Walzer has explained, tolerant societies respect “minorities, where collective identity can be cultivated and pressures to assimilate resisted. And liberal democrats can accept both the cultivation and the resistance, within limits, until that point (whose location is always disputed) where the associations threaten to *repress individual members or diminish their republican*

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<sup>64</sup> RAWLS, *supra* note 1, at xxxix (emphasis added).

<sup>65</sup> RAWLS, *supra* note 7, at 104 n.30.

<sup>66</sup> See, e.g., John Rawls, *The Idea of Public Reason Revisited*, 64 U. CHI. L. REV. 765, 806 (1997); RAWLS, *supra* note 1, at 197 (“No society can include within itself all forms of life.”).

commitment.”<sup>67</sup>

The Wars of Religion persuaded liberal democrats of both the necessity of toleration and its limits. Toleration is unsatisfactory in so many ways. From their different comprehensive doctrines, Rawls and Murray articulated the inadequacies of toleration for a modern democracy. The *modus vivendi* of toleration did not fully protect either social stability or freedom. Rawls replaced toleration with consensus, while Murray favored the freedom of the human person. Moreover, on the religious side, as T.S. Eliot remarked, “[t]he Christian does not wish to be tolerated.”<sup>68</sup> Many tolerated religions echo Eliot because “[t]oleration is always *mere* toleration. It is less than equality just as it is distinct from liberty.”<sup>69</sup> Maurice Cranston interpreted Eliot’s comment to mean that “[t]he Christian wanted something better—to be respected, honored, and loved.”<sup>70</sup>

The desire for respect, honor and love runs deep in human nature, as does the quest for meaning. Religions address those needs. In recent years, resurgent religious fundamentalism has met them most effectively by supplying a comprehensive system that governs all aspects of life, including law and politics. Liberal tolerance offers much less, and much more. It *cannot* cure “spiritual emptiness.”<sup>71</sup> “[S]piritual well-being . . . is not guaranteed”<sup>72</sup> in a liberal state because the political conception of justice is political, not theological, religious or philosophical. Liberal tolerance *can* provide the “very great value[]”<sup>73</sup> of a stable society in which religious freedom is exercised publicly and privately, but not politically.

Preserving stability requires consensus on public reason rather than a *modus vivendi* of warring factions. Consensus depends on the commitment of citizens to employ arguments that others may “*reasonably be expected to endorse*.”<sup>74</sup> Although the enduring strength of Fundamentalism “indicates that there are limits to what public reason can accomplish,” for Rawlsian liberals “[i]t does not diminish the great value and importance of attempting to realize that ideal to the fullest extent possible.”<sup>75</sup>

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<sup>67</sup> WALZER, *supra* note 55, at 85 (emphasis added).

<sup>68</sup> Maurice Cranston, *Toleration*, in THE ENCYCLOPEDIA OF PHILOSOPHY 143 (Paul Edwards ed., 1967) (quoting T.S. Eliot).<sup>69</sup>*Id.*<sup>70</sup>*Id.*<sup>71</sup>RAWLS, *supra* note 7, at 127.

<sup>72</sup> *Id.*

<sup>73</sup> RAWLS, *supra* note 1, at 139.

<sup>74</sup> *Id.* (emphasis added).

<sup>75</sup> RAWLS, *The Idea of Public Reason*, *supra* note 5, at 614.