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Book Review: Religion in Public Life: A Dilemma for Democracy. Ronald F. Thiemann.

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more important, Griffin identifies the constitutional issues that law schools tend to ignore. At the very least, then, this book should teach constitutional law professors and their students that their field of study is limited; that the Constitution is more than the legalized Constitution; and that the Supreme Court's claims to the contrary are profoundly mistaken.

RELIGION IN PUBLIC LIFE: A DILEMMA FOR DEMOCRACY.

Ronald F. Thiemann.[1] Washington, D.C.: Georgetown University Press. 1996. Pp. xiii, 186. Cloth, $55.00; Paper, $17.95.

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It is ironic, but not entirely surprising, that our constitutional jurisprudence of religion has substantially evolved to date without the serious influence of those, such as theologians and clergy, who are most learned in the nature and practice of religion. Although religious experts are occasionally summoned for testimonial purposes and courts occasionally advert to authoritative works on religion—and while there are, to be sure, a handful of legal professionals who actually have formal training in religion—by and large these are exceptions to the self-styled autonomy of the law. Indeed, despite suggestions to the contrary, law remains the lawyer's dominion, and the law of religion is no exception.[3]

It is precisely this context that makes Ronald Thiemann's *Religion in Public Life: A Dilemma for Democracy* all the more interesting and valuable a contribution to the field.[4] An ordained Lutheran minister and a theologian of genuine caliber, Thiemann poses in his book the familiar question: "What role should religion and religiously based moral convictions play

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2. Assistant Professor, Marquette University Law School. I would like to thank Elizabeth Staton Idleman and Daniel P. Meyer for their insightful comments.

3. For a recent exhortation to the legal community to engage in a deeper understanding of religion and its relationship to culture and society, see Winnifred Fallers Sullivan, *Paying the Words Extra: Religious Discourse in the Supreme Court of the United States* (Harvard U. Press, 1994).

4. Thiemann is also the author of *Constructing a Public Theology: The Church in a Pluralistic Culture* (Westminster/John Knox Press, 1991) and *Revelation and Theology: The Gospel as Narrated Promise* (U. of Notre Dame Press, 1985), as well as the editor of *The Legacy of H. Richard Niebuhr* (Fortress Press, 1991).

within American public life?"[5] (p. 2) Weaving together a wide range of disciplines (from history to theology to law to political and moral philosophy), Thiemann ultimately responds to the inquiry by articulating both a reconceptualization of the First Amendment religion clauses and a revised theory of modern political liberalism. This revised theory, according to Thiemann, would exalt the central values of classical liberalism, yet comprehend public life not as a neutral forum, but as a process by which citizens search for relative commonality among competing visions of the good. And, together with his overhaul of First Amendment jurisprudence, it would provide "a principled way of thinking about religion in public life that will allow the courts, constitutional scholars, and legal practitioners to identify the situations that require separation and those in which cooperation is to be encouraged." (p. 66)

I

Religion in Public Life begins with the premise that built into the American constitutional order, consistent with James Madison's theologically grounded conception of religious liberty and manifest in the First Amendment religion clauses, are the core values of liberty, equality, and toleration. Effectively omitted from the founders' constitutional design, however, was an operative mechanism that would foster and sustain, over time, a citizenry who would embrace and actuate these values in the nation's public life. Madison's theory of political factionalization, for example, seems to negate any hope that the necessary virtue resides in the citizens themselves, while Madison's apparent faith that representative government would sustain these values is functionally deficient without some accompanying nonstructural theory of virtuous governance. (pp. 24-26) In short, says Thiemann, the founders bestowed upon us a blueprint for constitutional democracy that is "conceptually incomplete and thus politically flawed" (p. 26)—a machine that would possibly, but not assuredly, go of itself.[6]

Central to this omission, he maintains, is the founders' specific failure to address the place of religion in public life, particu-

5. Earlier expositions of his thinking on the subject include Ronald F. Thiemann, *Beyond the Separation of Church and State: Public Religion and Constitutional Values*, 66 N.Y. St. Bar J. 48 (May-June 1994), and *'Wall of Separation' Outmoded*, Christian Sci. Monitor 18 (Nov. 26, 1993) (interviewing Thiemann).

6. For an interesting and recent examination of specific framers' views toward the role of religion in the new republic, see John G. West, Jr., *The Politics of Revelation and Reason: Religion and Civic Life in the New Nation* 11-78 (U. Press of Kansas, 1996).

larly the systematic role of religion, at the institutional and cultural level, in sustaining these core values. Until this century, as one might have predicted, this void was effectively filled by an "unofficial 'established piety'"—a quasi-Rousseauian civil religion drawn largely from the symbols and substance of American Protestant Christianity. (pp. 27-32) Yet, "[a]s Christianity began to decline in cultural influence and secularism and religious pluralism began to increase, the American civil piety lost its ability to shape civic virtue within the republic." (p. 32) In turn, this "fragmentation of American civil religion had a dual effect: it allowed the emergence of voices that had long lay silent under the stifling influence of the majority tradition, and it exposed the founders' failure to articulate a vision by which civic virtue could be nurtured in a truly diverse population." (pp. 32-33)

Thiemann's ultimate goal (and it is no modest endeavor) is once again to fill the void created by the framers' omission. Rather than pursue the reestablishment of a de facto civil religion, however, Thiemann advocates the recognition of the importance of social institutions, including religious communities and other public but nongovernmental associations, in sustaining the values of the liberal tradition (liberty, equality, and toleration) and contributing to meaningful political dialogue concerning the welfare of society. What is needed, he contends, is "a revised liberal conception of constitutional democracy, one that welcomes the voices of those religious individuals and institutions committed to the fundamental values of democratic politics." (p. 90) Obstructing his ideal, however—and from his perspective merely compounding the founders' error of omission—are two related and rather formidable impediments: first, the Supreme Court's conceptualization and interpretation of the First Amendment religion clauses over the past half-century, and second, the modern liberal tenet that religious arguments, in order to further these core values, should be substantially if not totally excluded from the public discursive sphere.

II

On the constitutional front, Thiemann defines the problem as the Court's fixation on separation and neutrality, among others, as the governing motifs of its First Amendment religion jurisprudence. "The phrase 'the separation of church and state,' and its attendant metaphor 'a wall of separation between church and state,'" are, he contends, hopelessly cramped and misleading in their formulation. (pp. 42-43)

> While the phrases identify one aspect of government's relation to religion, they deflect our attention from other fundamental features of the first amendment guarantees. By focusing on religious and governmental institutions they obscure the essential concern for individual freedom and equality that undergirds both the "no establishment" and the "free exercise" clause. By speaking of "church and state," they seduce us into thinking of these complicated and textured organizations (communities of faith and governmental agencies) in singular and monolithic terms. By defining the relation between religion and government with the simple word "separation," these phrases conceal the variety of ways in which these two entities interact, and the phrase consequently constrains our ability to imagine new possibilities for their relationship.

(pp. 42-43) Moreover, the notion of "separation" is often quite unhelpful in the actual disposition of First Amendment controversies, as illustrated by the internally inconsistent body of Establishment Clause precedent, both before and especially after its doctrinal articulation in *Lemon v. Kurtzman*.[7]

Thiemann also has little regard for the Court's other principal buzzwords of the religion clauses, particularly "neutrality" and "accommodation." Like separation, neutrality is a highly relative and elusive term—Thiemann calls it a "protean concept" (p.60)—and indeed "[m]uch of the conceptual confusion surrounding the interpretation of the religion clauses has resulted from the different, and often contradictory, construals of the meaning of neutrality." (p. 57) Even the notion of accommodation is vulnerable to broadly differing interpretations depending upon the disposition of any particular interpreter. In short, argues Thiemann, "[t]he principle, 'the separation of church and state,' and the associated concepts, accommodation and neutrality, have been subjected to such diverse and contradictory interpretations that they have been rendered virtually useless for the task of reconstructing a proper concept of the role of religion in public life." (p. 66)

Accordingly, Thiemann urges that the Court discard, in part or in whole, the concepts of separation, neutrality, and accommodation as the reigning rhetorical commitments of First Amendment religion jurisprudence and that it move beyond the constraining concepts of "church" and "state" as the principal

7. 403 U.S. 602, 612-13 (1971). Thiemann invokes *County of Allegheny v. ACLU, Greater Pittsburgh Chapter*, 492 U.S. 573 (1989), as a clear illustration of "the complicated and contradictory pattern of reasoning that characterizes current judicial deliberations on issues of religion in public life." See pp. 45-54.

descriptors of the complex and variable relationship between religion and government. Additionally, the Court should no longer interpret the Establishment and Free Exercise Clauses independent of one another, but should instead seek an integrated interpretation grounded in those values—liberty, equality, and toleration—which gave rise to both clauses.[8] The Court should "ask not simply about the *intentions* of the framers of the Constitution but about the *values* they sought to inscribe in the text" and how "the historical and cultural changes of the past two hundred years affect the way we apply those values to our current policy problems . . . ." (p. 45)

Four principles, in particular, should guide this reformation of First Amendment jurisprudence.

> First, religious freedom should be protected as a fundamental right to be constrained only if there is a compelling governmental interest at stake. . . . Second, religious traditions should be dealt with equally under the law. . . . But this principle does not justify the "secular purpose" criterion, or prohibit government from supporting initiatives that allow for the equal flourishing of diverse religious practices. Third, if religion is to play a larger role in American public life, the courts must take special care to note whether apparent "facially neutral" regulations actually create an unfair burden for religious communities. . . . Fourth, minority religions are particularly vulnerable to the "tyranny of the majority," and their freedoms must be guarded with especial care.

(p. 167) Thiemann contends that, if applied, these principles would increase both the protection of nonmainstream religious practices and the quality of reasoning of Establishment Clause cases. Under his reformed jurisprudence, prayer in public schools would still be prohibited insofar as it restricts the religious liberty of some students, but moments of silence would be permitted. Governmental aid for religious schools, if identical to aid offered to nonreligious private schools, would be permitted

> as long as such aid does not directly contribute to the advancement of the religious subject matter taught in the school. Additionally, governments would be prohibited from sponsoring religious observances of any kind, though they should take no

8. "[S]ince the same three values [liberty, equality, and toleration] provide the basis for both religion clauses, the Supreme Court's practice of adopting independent traditions of adjudication for those clauses is simply indefensible." (p. 74) Moreover, "[b]y adopting parallel and independent standards for interpretation, the Court . . . has . . . created a heightened and artificial sense of the conflict between the clauses, thereby obscuring the unifying elements that hold them together." (p. 60)

> steps to constrain the ability of communities of faith to display their own symbols on religious holidays.

(pp. 167-68) Before proceeding to his companion analysis of modern political liberalism, it seems necessary to inject a few remarks about Thiemann's critique of extant First Amendment jurisprudence and his corresponding outline for reform. While hardly unreasonable in the abstract,[9] there is something ultimately unsatisfying about his prescriptive framework for adjudication under the religion clauses. It is not that the depth of his critique meaningfully differs from other portions of the book (which are quite good), but rather that the particular subject of the critique—the interpretation of a provision of the federal Constitution—necessarily demands more specificity, and perhaps more innovativeness, than Thiemann offers.[10] Judges are in many respects the final interpreters of the religion clauses and, as such, typically need more than generalized policy mandates. Although it is true that they seek doctrines that allow for some measure of judgment and flexibility, they also seek doctrines that can produce (or at least appear to produce) predictable results within the confines of particular controversies. The much-maligned *Lemon* test, even if farcical in substance, is hardly aberrational in form. It was crafted (and to some extent survives) because it minimally provides both this doctrinal structure and this residual flexibility, however inconsistent its results may be.[11] Without providing some comparable degree of structure, the value of Thiemann's normative proposals is necessarily diminished within the actual context of constitutional interpretation.[12]

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9. Similar critiques abound. See, e.g., Stephen L. Carter, *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion* 105-210 (Basic Books, 1993); Frederick Mark Gedicks, *The Rhetoric of Church and State: A Critical Analysis of Religion Clause Jurisprudence* (Duke U. Press, 1995).

10. Although it is true, as Steven Smith notes, that legal scholarship need not be normative to be either sound or useful, see Steven D. Smith, *Foreordained Failure: The Quest for a Constitutional Principle of Religious Freedom* vii (Oxford U. Press, 1995), it is doubtless also true that once one crosses the normative threshold, the worth or persuasiveness of one's position may hinge on the specificity of its formulation and the concreteness of its application.

11. Cf. Daniel O. Conkle, Lemon *Lives*, 43 Case W. Res. L. Rev. 865, 866-70 (1993).

12. Cf. Margaret O'Brien Steinfels, *Civic Virtue*, N.Y. Times Book Review, Sec. 7, at 21 (July 14, 1996) ("Mr. Thiemann's philosophical diagnosis is persuasive, but his practical remedies are obscure. The variables in play—the Court, judicial appointments, the religious right, the secularization of America, etc.—are so complex that it is hard to judge, without greater detail, how his revised liberalism might work."). This is perhaps somewhat ironic given Thiemann's assertion that "[j]udgments about whether a religious argument should be introduced into public debate or about the kind of warrant that is appropriate are always situation-specific." (p. 171)

Moreover, it is not clear that Thiemann's prescription is truly revolutionary, or that he actually departs too far from the present situation. Thiemann proposes that government aid to religious schools should be forbidden if it "directly contribute[s] to the advancement of the religious subject matter taught in the school" and that the government is forbidden from "sponsoring" religious observances. (pp. 167-68) But what does it mean to "directly contribute" to an object's "advancement"—ought one to look legislative purpose or to effect?—and does this really differ from the standards articulated in *Lemon*? Likewise, what does it mean to "sponsor" a religious observance? Most would agree that the government cannot purchase and supply the creche or the menorah, for example, but what about the provision of public property on which to locate the religious symbol (especially if the property is exclusively set aside for that use), or the nongovernmental placement of a lone religious symbol, say, on the steps of the county courthouse or in the rotunda of the state capitol? And what about the religious expression of government employees? May a judge place a crucifix in her courtroom, or a teacher place the same in his classroom, as a seasonal Christian observance? Is this governmental sponsorship of religion, or merely a private religious display? Even the prospect of outright governmental financing of religious observances is not clear-cut. Is the military, or are prisons, forbidden from employing clergy to conduct religious holiday services? These are doubtless difficult questions, but that is precisely the point. Just as a metaphor will not resolve them, neither will a set of abstract principles and nonspecific terms. In short, while Thiemann's criticisms and his accompanying proposals are well-taken, and even granting that his principal goal is to effect change at the conceptual level, it is not clear that his efforts fulfill the special demands of constitutional interpretation or that they would truly move one beyond the standards and limitations found in the existing doctrinal regime.

III

Thiemann's critique of the Court's religion jurisprudence, especially the concepts of separation and neutrality, leads him immediately into his critique of modern political liberalism.[13]

13. In fact, he explicitly associates the two:

> The difficulties facing the Court are not sui generis; rather, they derive from fundamental problems in the liberal political philosophy on which the Court regularly draws. In particular, the notion of neutrality, a fundamental concept of

His core complaint concerns the insistence, by some of modern political liberalism's most articulate or noted representatives, that religious arguments be substantially or thoroughly excluded from public discourse. Many such philosophers posit that the state must be "neutral" with regard to conceptions of the good or of the "good life," and that public discourse, correspondingly, should be accessible to all able-minded members of the political community. Religion, in their estimation, produces arguments that necessarily inject (contested) conceptions of the good into the public realm and that necessarily involve inaccessible or unduly inflexible forms of reasoning and authority.

Thiemann, for his part, finds these foundational claims to be questionable at best. Governmental neutrality, he contends, is fundamentally a myth—"to pretend that the defense of liberty is an exercise in 'neutrality' seems an act of folly" (p. 79)—and a socially destructive one at that. "When, under the guise of neutrality, government actually prefers one conception of the good over another, it misleads the public concerning government's roles in the adjudication of volatile moral and political matters . . . [and] contributes to the growing public suspicion about deception in government." (p. 78) As for the corollary notion that religious arguments are intrinsically too inaccessible or inflexible for inclusion within public dialogue, Thiemann remains likewise unconvinced. A great deal turns, he observes, on one's conceptualization of religion and religious faith. For Thiemann, "faith is not primarily an individual phenomenon; it is, rather, an aspect of the life, practice, and world view of a religious community"—"the set of convictions that defines the identity of a community and its members." (p. 132) Yet these convictions "do not dwell in some private inaccessible realm; they are present 'in, with and under' the myths, narratives, rituals, and doctrines of the community." (p. 132) Accordingly, "[i]f you seek to understand the faith of a religious community, you must inquire into its literature, lore, and liturgy." (p. 132)

Given this understanding, even "the faith that Jesus Christ is risen and present within the contemporary Christian community" is

> not private, inaccessible, or hidden from public scrutiny. While few people outside the Christian community have undertaken the study necessary to understand this belief, that is

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liberal philosophy, bedevils every attempt of the Court to develop a consistent and coherent judicial framework for interpretation of the first amendment religion clauses. (p. 60)

> not because the belief itself is private or inaccessible. Even though it is not a widely shared belief . . ., it is still a genuinely *public* belief, namely, a belief available for public analysis.

(pp. 132-33) Nor can it be said that religious beliefs are excludable on the basis of their alleged incorrigibility, that is, their unamenability to modification, where amenability is presumably a key ingredient of the public dialogic process. While it is true, he acknowledges, that certain "fundamental beliefs resist revision, they are not in a logically strong sense incorrigible. The history of religion is replete with examples of fundamental restructuring of communal identity that have occurred when basic convictions have been revised or jettisoned."[14] (p. 134) Moreover, while it is also true that

> [t]he convictions of faith may . . . call forth from the religious person a distinctive level of commitment and devotion, . . . the fact and function of such basic orienting convictions is common to every human life. . . . [R]eligious convictions, though they are directed toward a distinctive "object" or "horizon of meaning," do not differ in kind or in function from the fundamental commitments that orient the lives of nonreligious persons.

(p. 155) Finally, and in all events, the attempt to disqualify incorrigibility runs contrary to the tradition of dissent, which has played such a crucial role in our constitutional and national moral development, and which "is precisely what the religion clauses of the first amendment are designed to protect."[15] (p. 134)

Even John Rawls's modified version of modern liberalism, according to Thiemann, does not convincingly establish the ne-

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14. See also pp. 159-64 (critiquing the "mythology of religious absolutism").

15. Thiemann does not entertain the thesis that religious arguments may prove uniquely alienating to nonbelievers because the relevant source of normative authority is typically of an extrahuman or supernatural sort. See, e.g., Abner S. Greene, *The Political Balance of the Religion Clauses*, 102 Yale L.J. 1611 (1993) (advancing this position). Such a thesis, however, necessarily rests on a controversial empirical-philosophical assumption about the relative subjective perception of arguments in the public sphere and an equally controversial assumption that there exist meaningful moral claims which do not advert to sources of authority that are not in some sense extrahuman, supernatural, or otherwise beyond material sensibility. Why a particular religious (or nonreligious) citizen, for example, would or should find any less alienating the claim by a nonbeliever that physician-assisted suicide or pornography or abortion is wrong "because my heart tells me so" or "because I feel it to be wrong" is not obvious. Indeed, as Thiemann notes, at least the religious citizen is usually capable of concretely articulating the nature and source of normative authority undergirding her political arguments, which may not be the case with nonbelievers who may rely on nothing more than ungrounded or nonsystematic moral intuition.

cessity or legitimacy of excluding most religious arguments. Rather than employ the rhetoric of neutrality, Rawls depicts the substantive structure of the democratic constitutional order in relation to certain principles (such as fairness or equality) that may be deemed authoritative, not because they form part of a single, fully comprehensive conception of the good or because they are inherently neutral, but because they reflect an overlapping consensus or common ground. The first principles of Rawls's political liberalism are thus supposedly "free-standing"; they are political, not philosophical. In turn, Rawls would exclude religious arguments to the extent they undermine the overlapping consensus with competing comprehensive notions of the good, assert values inconsistent with those embodied in the overlapping consensus, or otherwise deviate from Rawls's ideal of public reason, which, in all but a handful of circumstances, must govern civil debate.[16] (pp. 82-86)

Though praiseful of Rawls's efforts, particularly the attempt to transcend the emptiness of neutrality, Thiemann nevertheless finds Rawls's model of public life insufficient. He points out, for example, that Rawls's vision is predicated on the existence of a "well-ordered society," in which the overlapping consensus is sufficiently established and meaningful so as to be operative. But, notes Thiemann, even the United States is not, and perhaps should not be, a "well-ordered society" in that sense of the term. The values of justice and equality, though collectively embraced in the abstract, find their meaning and application through constant revision and critique, especially by those citizens and institutions, like religious ones, that bear allegiance to competing sources of normative insight and authority. (pp. 87-88, 147) More generally, Thiemann calls into question the entire notion that a viable set of free-standing principles can truly subsist apart from, or remain conceptually independent of, one or more comprehensive schemes or notions of the good.

From Thiemann's perspective, then, Rawls errs in attempting to seal off his overlapping consensus from these ambient sources of moral influence, including those of a religious nature. Just as problematic in Thiemann's view, however, is the effort of

16. Public reason, corresponding to Rawls's "conditions of publicity," entails an "appeal only to presently accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not controversial." (p. 84) (quoting John Rawls, *Political Liberalism* 224 (Columbia U. Press, 1993)). For criticism, see Michael J. Perry, *Religion in Politics: Constitutional and Moral Perspectives* (Oxford U. Press, forthcoming 1997); Kent Greenawalt, *Some Problems with Public Reason in John Rawls's* Political Liberalism, 28 Loy. L.A. L. Rev. 1303 (1995).

communitarians (what he calls "sectarian communitarians") to discredit modern liberalism *in toto* because of certain perceived fundamental deficiencies (e.g., that liberalism entails a cramped view of the self and of political community, and essentially reduces politics to unrestrained self-interest). While not unsympathetic to the communitarian critique, he suggests that often it rests on an incomplete caricature of liberalism and that communitarians have not provided (and perhaps cannot provide) an acceptable alternative that tempers certain key aspects of community, namely, the emphasis on exclusionary homogeneity and the reliance on external threats. (pp. 103-04)

Thiemann ultimately situates himself within an emerging movement of "liberal revisionism," composed of "philosophers and political theorists who are seeking to find a middle way between classical modern liberalism and sectarian communitarianism."[17] (p. 105) The liberal revisionist, according to Thiemann, accepts *both* the liberal commitment to a noncomprehensive, political, descriptive model of society premised on the values of liberty, equality, and tolerance *and* the communitarian commitment to "a more robust sense of civil obligation and virtuous citizenship." (p. 105) But the revisionist departs from the view, held in common by both modern liberalism and communitarianism, that "moral disagreements in a pluralistic society are inadjudicable because competing moral arguments emerge from incommensurable premises and values." (p. 107) From a revisionist standpoint,

> Moral disagreements . . . are often vigorous and occasionally irresolvable in practice, but such disagreements take place against a broad background of fundamental consensus concerning the goods that ought to be pursued in a liberal democracy. That consensus is itself revisable and open to critical questioning, but the elements comprised by it are never simultaneously and universally called into question. Indeed, genuine disagreement requires *some* common premises or else the contending positions would simply "talk past one another" rather than engage in true conflict.[18]

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17. For another recent and insightful book situated more or less within this movement, see Michael J. Sandel, *Democracy's Discontent: America in Search of a Public Philosophy* (Harvard U. Press, 1996).

18. There may, however, be a point beyond which disagreement is functionally indistinguishable from incommensurability, e.g., where the discourse, though shared, is nonetheless intrinsically incapable of producing genuinely persuasive arguments. See, e.g., Louis Michael Seidman and Mark V. Tushnet, *Remnants of Belief: Contemporary Constitutional Issues* (Oxford U. Press, 1996) (proposing that contemporary constitutional discourse has possibly reached this point).

(p. 107) Finding untenable the notion of pervasive incommensurability, revisionism thus seeks to maximize the normative commonality among all citizens, rather than simply to maximize it among subgroups of citizens, as with communitarianism, or to minimize it among all citizens, as with unrevised liberalism.

In so doing, revisionism necessarily contemplates the inclusion within the realm of public discourse of arguments (including religious arguments) about the good. And this of course simply resurrects the liberal concern, perfectly valid in Thiemann's view, about the limits of imposing through the state and other public institutions a conception of the good, particularized in the form of law, upon less-than-amenable citizens. To be sure, Thiemann recognizes that the "central challenge of revisionist liberal politics is to develop a polity that honors personal freedom and yet appeals to a sense of common obligation freely offered by the citizenry." (p. 109) The solution, he says, entails moving away from the notion that pluralism necessitates a near-exclusive commitment to individualism, and achieving a more "proper balance . . . between personal and civic freedom, between individual and associative pluralism." (p. 111) Such a balance is necessary if only for the sake of individualism itself, as "[t]he personal freedom so prized by modern classical liberalism *presupposes* a social network of corporate life." (p. 111)

Within the revisionist paradigm, both the function of social institutions and the nature of citizenship would reflect this balance. "[A] revised liberal polity would provide support and encouragement for those communities that foster the skills of pluralist citizenship: the ability to function virtuously and effectively within a diverse society." (pp. 112-13) This pluralist citizen would possess

> neither the "unencumbered self" of classical modern liberalism nor the "constitutive self" shaped within a single intact community. Rather, the self of the pluralist citizen [would be]—to use a religious metaphor—the "pilgrim self," a person shaped within inherited communities of character but free to enjoy the mobility of liberal society.

(p. 113) And public life, including not only the government but also other public but nongovernmental associations, would "provide[ ] the forum within which the ongoing discussion concerning

the goods and purposes of liberal society [would take] place."[19] (p. 113)

As for the specific role of religion in public life (or "public religion") within the revised liberal political order, Thiemann acknowledges that this is a more complex matter. After all, simply because one can demonstrate the legitimacy, necessity, or even the inevitability of permitting arguments about the good into public discourse does not mean that all such arguments, including those of a religious nature, are of equal propriety or standing. In fact, Thiemann does advocate that the public discursive sphere should be governed, though not steadfastly so, by certain "conditions of publicity." Far from being rigidly exclusive, Thiemann's conditions constitute an attempt not only to locate common or shared beliefs, but also to "respect the particularity of each citizen's commitments and convictions," that is, "to address issues of *dissent* as well as *consent* within democratic conversation." (p. 124)

Thiemann proposes three such conditions or norms of publicity—the norm of public accessibility, the norm of mutual respect, and the norm of moral integrity—all of which derive legitimacy from their congruence with the core values of liberty, equality, and toleration. First, the norm of public accessibility urges (but, as with the other norms, does not require[20]) that arguments be grounded in premises that are open to public examination and scrutiny, not necessarily for the purpose of persuasion but, at the very least, for the purpose of understanding. Adherence to this norm contributes both to "the democratic goal of peaceful and reasonable resolution of conflict and disagreement" and to "the mutual understanding and respect so essential to the development of the pluralist citizen." (p. 135) The norm of mutual respect, in turn, encourages citizens to

> grant to those with whom they disagree the same consideration that they themselves would hope to receive. . . . Citizens who manifest the virtue of mutual respect acknowledge the moral agency of those with whom they disagree and thereby

19. Thiemann advances a broad conception of what qualifies as "public," and would include within the term's ambit not only government entities, but also influential corporations and a wide range of voluntary associations, including unions, civic clubs, citizen action groups, communities of faith and religious service agencies, and the like. See pp. 96-97, 151-53.

20. Although the practical distinction is not entirely clear, he contends that these norms "should function not as threshold requirements but as . . . criteria that democratic citizens should employ to evaluate arguments in the public domain." (p. 135)

> treat their arguments as grounded not simply in personal preference or self-interest but in genuine moral conviction.

(p. 136) Finally, the norm of moral integrity (drawn from the work of Amy Gutmann and Dennis Thompson) entails three subnorms: (1) consistency of speech (i.e., the articulation of positions that genuinely reflect one's moral principles), (2) consistency between speech and action (i.e., the actual implementation of one's stated positions), and (3) integrity of principle (i.e., adherence to one's underlying principles "consistently across a variety of cases").[21] (p. 137)

Religious arguments, in Thiemann's view, are fully capable of satisfying these conditions of publicity no less than their nonreligious counterparts. The norm of moral integrity, in particular, may even be exemplified by the dissenting religious argument. (p. 138) Religious citizens hold dual allegiances that serve both to connect them to the enterprise they criticize (they are "connected critics" in Michael Walzer's words) and, yet, to distance themselves from that enterprise and thereby maintain a less temporally and politically contingent perspective. (p. 139) But the right to dissent must operate "in concert with the other two basic criteria: the criteria of public accessibility and mutual respect. Citizens engaged in acts of dissent should seek, so far as possible, to make the moral reasons for their actions available to a broad democratic public." (p. 139) Likewise, "[w]hile they may vigorously oppose the practices, behavior, and policies of those with whom they disagree, they should avoid behavior that denies the moral agency of their opponents. To dehumanize one's opponents in the process of dissent is to undermine the moral integrity of the very conscience that motives these actions." (p. 139)

Having established that arguments about the good must be permitted to shape public discourse, and that religious arguments may not categorically be excluded as a matter of principle or prudence,[22] Thiemann asserts that the critical question "is not

21. In addition to the conditions of publicity that Thiemann offers as guideposts for citizen participation in public discourse, he also suggests that government officials who advert to religious values or rely on religious arguments have an independent obligation to employ such values or arguments with some measure of criticalness, (pp. 5-9) and that religious beliefs "cannot be decisive," (p. 8) at least in the adjudicatory context.

22. Thiemann rounds out the case for religious arguments in law and politics by time-honored appeals to democracy, tradition, and inevitability. "Given the pervasiveness and importance of religious convictions within the American populace, it would indeed be odd to deny such profound sentiments any role in public life." (p. 3) Moreover, "[g]iven the historic significance of religion in shaping our national political culture, the removal of religion from the 'public square' would seem to violate our most ancient tradi-

whether religious arguments qualify as genuinely public, but what kind of religious arguments so qualify." (p. 150) "The important issue," in other words, "is not whether an argument appeals to a religious warrant; the issue is whether the warrant, religious or not, is compatible with the basic values of our constitutional democracy." (p. 156) In this regard, Thiemann suggests that there are certain substantive stances, such as those which espouse racial or religious bigotry, (p. 156) or certain states of mind, such as those which do claim absolute and exclusive truth and thoroughly deny the possible validity of competing positions, (pp. 159-64) that ultimately appear incompatible with core democratic values. But their incompatibility is not a consequence of the fact that they may happen to be (or not to be) arguments of a religious or religiously motivated nature.

What, then, ought to be the role of religion in public life? By allowing arguments about the good in general, and religious arguments in particular, to enter public debate, one role of religion is plainly to inform public policy, often in a uniquely critical manner reflecting the divided loyalty or dual allegiances of religious citizens. Yet, by heeding Thiemann's conditions of publicity, this role will be circumscribed (minimally so, but circumscribed nonetheless) by the substantive and procedural demands of the democratic, pluralistic political realm. At the same time, many religious institutions will assist in the maintenance of this realm by instilling in each citizen and generation a moral framework that renders meaningful the essential values of liberty, equality, and toleration. And, as long as this role is both protected and permitted by the First Amendment—neither undermined by a restrictive reading of the Free Exercise Clause nor nullified by an over-expansive reading of the Establishment Clause—these institutions will generally be able to maintain fidelity to their religious mandates while concomitantly preserving the integrity and essential moral dimension of the nation's public life.

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tions." (pp. 3-4) "Religion has always exercised significant influence in American public affairs—for good and ill. If we are to develop a more sophisticated understanding of religion's public role, we must begin by acknowledging the inevitable impact of religion upon public affairs." (p. 173) At the very least, the "case against public religion or theology must confront the strong historical tradition that legitimizes the use of theological arguments in defense of the constitutional values of freedom, equality, and toleration." (p. 74)

CONCLUSION

Ronald Thiemann's *Religion in Public Life* is truly a welcome addition to the ever-expanding literature on religion, law, and politics. His work presents a well-reasoned, even-handed, and intellectually defensible attempt to bring some measure of balance to its subject. Though perhaps slightly too abstract in its formulation and possibly a bit too wide-ranging in its breadth, these arguably are signs not of commonplace deficiency, but of its potentiality as a work of genuine cultural significance. Especially noteworthy is Thiemann's attempt to render the philosophical and legal dimensions of the debate over religion in public life accessible to a relatively broad readership. Frequently confined to certain elite or professional quarters, this debate plainly has relevance that extends well beyond the academic halls and judicial chambers. The periodic manifestation of elite discourse through legal doctrines and other expressions of public policy, and the frequent assertion by proponents that many of its constituent arguments are simply expressions of our deep constitutional commitments, demand that it not, in fact, stray too far from the public domain. *Religion in Public Life* laudably attempts to rein in both the esotericism and the ideological excess of this debate, and in so doing makes a genuine contribution to the present and future understanding of religion as an indelible feature of the American political landscape.

TO SECURE THESE RIGHTS: THE DECLARATION OF INDEPENDENCE AND CONSTITUTIONAL INTERPRETATION. By Scott Douglas Gerber.[1] New York and London: New York University Press. 1995. Pp. 315 Cloth $45.00.

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