

CHAPTER ONE

CONSENT TO RELIGIOUS FREEDOM

The Legacy of Thomas Jefferson

Recent discussions of religious freedom and US politics have typically pursued whether and, if so, in what way citizens who are also religious adherents may properly rely on their religious beliefs in making or publicly advocating political decisions (see Greenawalt; Rawls, 440–90; Audi and Wolterstorff; Eberle; Stout; Habermas 2008, 114–47). In response to this question, debates have largely occurred within the unquestioned assumption that all citizens, whether religious believers or not, are or can be committed to a democratic political process and thus a democratic constitution. This assumption, in other words, is typically present notwithstanding the differing views on what restraints, if any, religious adherents should observe in relating their activity as citizens to their religious convictions. Whether a theory simply privatizes religion, or allows political appeal to religious beliefs only in certain circumstances, or imposes a “proviso” on any political conclusions advanced on religious grounds, or permits without qualification political recourse to religious backing, or in some other way defines how religious believers properly participate politically, the context of common consent to a democratic constitution is typically taken for granted.

THE PRESENT QUESTION

This essay is focused on whether the democratic assumption is itself consistent with religious freedom. To help mark that question, it should be distinguished from another, namely, whether democracy with religious freedom is morally good or right—an answer to which requires a more or less

complete moral theory and its political application. On my reading, the recent discussions of US politics mentioned above have typically taken for granted not only the self-consistency of democracy with religious freedom but also its moral permissibility. Intending to ask about the former, I, too, will posit the moral authorization of a democratic constitution—although only on condition that politics with religious freedom is coherent. Hence the question for discussion is this: if the constitution legitimizes any religious understanding a citizen might believe, is principled common consent to democratic politics itself possible?¹

Notwithstanding how widely a positive answer is assumed, its validity is not immediately apparent, for the following reason: the differing religions at least may include differing beliefs about the ultimate context and encompassing purpose or ultimate orientation of human life, the most fundamental principle or principles of both individual and communal activity. Why, then, should an open-ended plurality of such beliefs result in the common allegiance a democratic constitution requires? I will here seek an answer through a conversation with Thomas Jefferson, who, I am persuaded, appreciated the question. Although he finally failed, I am also persuaded, explicitly to offer a convincing response, a coherent account is, I will argue, implied by his abiding commitment to reasoned inquiry, so that we today may endorse religious freedom in profound continuity with him.

Among the founders of our republic, Jefferson stands in national memory as the principal mind and voice responsible for religious freedom, surpassing even James Madison, Jefferson's close and enduring personal and political friend. Some may argue for Madison's greater significance, especially given his role in congressional approval of the First Amendment to the United States Constitution in 1788. But Jefferson's leadership on religious freedom was already secure when Madison entered politics, largely because Jefferson authored in 1777 the Bill for Establishing Religious Freedom—finally enacted by the Virginia legislature, through Madison's leadership, in 1786. "The Virginia event," one historian writes, "was the most decisive element in the epochal shift in the Western world's approach to relations between civil and religious spheres of life after fourteen centuries" (Marty, 1). Also, Jefferson's superior gift for eloquent expression has impressed itself on our history. No sentence in our political legacy, I venture, more captures his stature on religious freedom than his confession of 1800: "I have sworn upon the altar of god, eternal hostility against every form of tyranny over the mind of man" (letter of September 23, 1800; Jefferson, 29).*

For Jefferson, religious freedom is a natural right and thus a prior constraint on all proper governmental power. To be sure, his Virginia Bill

*All references to Jefferson in this chapter are to Jefferson 1999.

was proposed as statutory law. But he clearly affirmed what he subsequently confirmed in protesting the absence of a bill of rights, including the right to freedom of religion, in the proposed 1787 Constitution (see letter of December 20, 1787; Jefferson, 360–61), namely, that religious freedom is properly a constitutional principle. Jefferson's proposed constitution for Virginia, drafted in 1776, included the provision: "All persons shall have full and free liberty of religious opinion; nor shall any be compelled to frequent and maintain any religious institution" (http://avalon.law.yale.edu/subject_menus/jeffpap.asp). The statutory Bill became necessary when the provision for religious liberty was not adopted, in part because Jefferson's draft constitution, sent from Philadelphia during his presence in the Continental Congress, arrived in Williamsburg too late for extensive consideration. Moreover, the Bill's final paragraph announced the properly constitutional character of the rights therein protected: "we [the legislators] . . . do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operations, such act will be an infringement of natural right" (Jefferson, 391–92).

But precisely how Jefferson conceived and defended political recognition of this natural right is not transparent. The opening phrases of his Virginia Bill as drafted cite a theistic justification:

Well aware . . . that Almighty God hath created the mind free . . . ; that all attempts to influence it by temporal punishments, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy author of our religion, who being lord of both body and mind, yet chose not to propagate it by coercions on either, as was his Almighty power to do, (Jefferson, 390)

One might well wonder whether Jefferson should thereby be charged with inconsistency: if religious freedom is justified by a certain theistic conception, does the political function of this principle depend, against its own provision, on all citizens commonly professing a certain religious belief?

Let me seek to clarify why such dependence yields an apparent contradiction. If religious freedom is a prior constraint on all proper governmental power, it is properly a constitutional principle because a constitution, on my understanding, establishes the political process as such and thus the form for proper determinations of the state's activities. Constitutional provisions, therefore, must be adhered to by all people who are actual or potential participants in the political process, rather as participation in a meeting requires adherence to Robert's Rules of Order. In republican or democratic politics, as no founder of the United States asserted more decisively than Jefferson, "the whole people" (although, for him, this excluded African Americans,

Native Americans, and women) confers political authority: “Independence can be trusted nowhere but with the people in mass” (letter of July 12, 1816; Jefferson, 217; letter of September 6, 1819; Jefferson, 379). Governments, as he wrote in the Declaration of Independence, derive “their just powers from the consent of the governed” (Jefferson, 97). Accordingly, consent to the constitution—by which I here mean adherence to, that is, acting in accord with, the constitution—defines the ethics of citizenship or is required of all citizens, as Jefferson, who never doubted that republican self-government requires a virtuous citizenry, agreed: the people are “inherently independent of all but the moral law” (letter of September 6, 1819; Jefferson, 379; see Gaustad, 120).²

But “the whole people” are precisely those for whom the constitution provides religious freedom. Here, then, is the political problem: because adherence to the constitution must be shared by all, notwithstanding the legitimacy of open-ended religious plurality, consent to democracy with religious freedom must itself be religiously free, that is, neutral to all religious differences. If that consent depends on belief in “Almighty God,” is this not a particular religious belief that must also be professed by “the people in mass”? If so, this belief, one might conclude, should itself be stipulated by the constitution, so that government may ensure through its own teaching the common adherence to democratic practice. But, then, the democratic constitution seems at odds with itself—providing for freedom of religion even while stipulating a religious belief required of all citizens.

In his subsequent autobiography, Jefferson glossed the Bill as “meant to comprehend, within the mantle of its protection, the Jew and Gentile, the Christian and Mahomatan, the Hindoo, and *infidel of every denomination*” (cited in Alley, 62, n. 7, emphasis added)—whereby he denied, at least by implication, that common consent to religious freedom requires shared profession of a theistic belief. In view of this, some may read the Virginia Bill’s opening theistic appeal as solely strategic: arguments from God’s purpose were included to help persuade a legislature many of whose members were for religious reasons initially resistant to the desired outcome. Others may note that belief in God in some or other sense was universal, or virtually so, in the American colonies and newborn states of the eighteenth century; hence, theism could be taken for granted in making a case for religious freedom—although pervasive theism does not entail that Jefferson’s conception of the divine was itself pervasively affirmed. In any event, these historical comments, whatever their merit, still leave unanswered the question of principle: absent a common theistic profession, is consent of the governed to religious freedom possible? To all appearances, Jefferson appreciated this question. However the opening appeal in his Virginia Bill should be understood, his larger legacy includes two themes, each of which might

be meant to show how consent or adherence to a democratic constitution, the ethics of citizenship, is indeed religiously neutral.

JEFFERSON'S ANSWERS

On one theme, the common allegiance is taught by all religions, whatever their differences. "Reading, reflection and time have convinced me," Jefferson wrote in 1809, "that the interests of society require the observation of those moral precepts only in which all religions agree . . . and that we should not intermeddle with the dogmas in which religions differ, and which are totally unconnected with morality" (letter of September 27, 1809; Jefferson, 281). In 1800, as part of his eloquent defense of republican government delivered during his First Inaugural as president, he spoke of the country being "enlightened by a benign religion, professed, indeed, and practiced in various forms, yet all of them including honesty, truth, temperance, gratitude, and the love of man; acknowledging and adoring an overruling Providence, which by all its dispensations proves that it delights in the happiness of man here and his greater happiness hereafter" (Jefferson, 174–75). In 1816, he bemoaned the "quarreling, fighting, burning and torturing" occasioned "from the beginning of the world to this day" by "the dogmas of religions *as distinguished from moral principles*" (letter of November 11, 1816; Jefferson, 401, emphasis added). And in 1781–82, he directed attention to "our sister states of Pennsylvania and New York," where "religion is . . . of various kinds indeed, but all good enough, all sufficient to preserve peace and order" (Jefferson, 395)—implying agreement among the various religions on moral principles essential to republican government. "They [those states] have made the happy discovery, that the way to silence religious disputes, is to take no notice of them" (Jefferson, 396).

In speaking of "all religions," Jefferson may typically have meant differing opinions about, in Madison's words, a person's "duty . . . to render to the Creator such homage and such only as he believes to be acceptable to him" (Alley, 56)—so that all religions include belief in the deity, even if conceptions of God differed. More broadly, Jefferson may have intended something like what we today call the world religions, recognizing within each the possibility of contention about how that religion is properly represented—as Christianity, for instance, has embraced contention among sects and denominations. On this designation, "all religions" meant or, at least, included differing opinions about a person's proper relation to some reality beyond the contingently existing things of this world, and thereby each religion affirms for humans an ultimate orientation to or encompassing purpose given by some transcendent reality. A religion, Jefferson also likely recognized, typically inculcates the given opinion and orientation or

purpose in or through a particular community and its defining representations, including representative practices, for instance, ritual practices.

In the first two sections of the present essay, I use “religion” in this Jeffersonian sense, that is, to include belief in some transcendent reality, whereby religious beliefs are distinguished from those of infidels or, as we today might say, from secularistic orientations. If, in this sense, all religious orientations were, for Jefferson, “good enough,” perhaps he sought the ethics of citizenship in what Benjamin Franklin called “the essentials of every religion,” in distinction from what Franklin called the “other articles” or inessentials by which religions differed from each other and that “serv’d principally to divide us” (cited in Mead, 64).

That Jefferson indeed considered such differences inessential is supported by his attempts to eliminate unnecessary dogma in his own, principally private reformulation of the Christian religion. A “syllabus, or outline . . . of the comparative merits of Christianity” (letter of April 21, 1803; Jefferson, 267; see 267–70) soon became “The Philosophy of Jesus of Nazareth,” both written during Jefferson’s first term as president (and the latter subsequently lost to history [see Gaustad, 118]). Years later, a longer work, “The Life and Morals of Jesus,” retrieved from the synoptic gospels what Jefferson believed to be the simple message of Jesus by excising what Jefferson saw as the metaphysical or supernatural mysteries subsequently added by priests and theologians. “My opinion is that there would never have been an infidel, if there had never been a priest” (letter of August 6, 1816; Jefferson, 399).

On this answer to our central question, in any case, religious differences are irrelevant to consent of the governed because the ethics of citizenship and thus democratic politics is backed by religions generally. Something like the force of supposed religious essentials has led several twentieth-century thinkers to discover in US history and endorse for the country a national religion in distinction from the disestablished religious communities that nonetheless enjoy free exercise. Robert Bellah argued for a “civil religion”; Phillip Hammond found a “religion *behind* the constitution”; and Sidney E. Mead advocated a “Religion of the Republic” (see Bellah; Hammond; Mead).³ Summarily, the view these proposals have in common might be called the “religionist” account of religious freedom. If, for Jefferson, common adherence to republican government is consistent with religious freedom because the ethics of citizenship depends on something one might call religious essentials, then he, too, offers a religionist account.

In response, we should ask how any such account prevents a constitutional stipulation of religious essentials and thus is consistent with protection for, as Jefferson later insisted, the “infidel of every denomination” (cited in Alley, 62, n. 7). Here, as Mead has suggested, Jefferson perhaps relied on

the widespread presence during the eighteenth-century of belief in God or, at least, in a transcendent reality. Given that all disestablished religions were “good enough,” because they all taught the essentials, he could then assume widespread republican morality without religious establishment because infidels were relatively few. As Mead also notes, however, this assumption is precarious. If the refusal of all religion—or, as we may say, the presence of secularistic beliefs—were to extend significantly among the citizenry, the consent of the governed could not, on this religionist account, be assured (see Mead, 65). Given this possibility, a need for shared belief in religious essentials seems to entail a constitutional provision giving the government both the right and the duty to stipulate its religious backing if and when the disestablished religions are not “good enough,” for instance, if and when nonreligious views of human life as such become sufficiently widespread to threaten common adherence to democracy.

Indeed, if democracy depends on religious essentials, a constitutional provision in which their content is stipulated seems urgent quite apart from a significant secularistic presence. The religionist proposal requires agreement among all religions *that* there are these essentials and *what* they are, and both may be controversial among the diverse religions (see Mead, 65–66). That certain supposed truths are potentially included in the teaching of all religious communities does not entail that they actually teach those truths. The needed agreement, in other words, appears to have as its object a quite specific religious belief or set of beliefs—as Jefferson’s own view of “an ordering and overruling Providence” and “the simple message of Jesus” suggests. Some will object to this critique, insisting that a religionist can avoid contradiction with religious freedom by stipulating constitutionally solely the dependence of democracy on religion as such. Let us call this the minimal religionist account: consent to democracy does not depend on any specific religious belief; the essential is solely some or other affirmation of a transcendent reality as the proper object of ultimate orientation or ground of encompassing purpose. Accordingly, religious freedom is preserved because any conviction about the character of that reality is legitimate.

Something like that appears to be the classic proposal of John Courtney Murray, who asserts belief in “the sovereignty of God” as the first item of our American consensus and thus essential to our politics (Murray, 44). If I understand him rightly, Murray does not mean the Christian God or any other specific conception of a transcendent reality; rather “God” in the American consensus designates only something not of this world that is sovereign over it. The affirmation that all human life is ruled by or accountable to an eternal spiritual ground must, Murray argues, be constitutive of the political order as such. Only if all citizens acknowledge that spiritual questions concern human life in relation to eternity can politics be properly

limited to nonspiritual or, as he says, temporal purposes and, thereby, occur democratically. For Murray, in other words, the distinction between questions about temporal affairs, answers to which depend on the natural law reason can know, and ultimate or spiritual questions, answers to which transcend what reason can know, must be shared by all democratic citizens. With that common belief, a political community can be “locked together in argument” (Murray, 6); politics may proceed by discussion and debate about the natural law and its application. But absent common affirmation of the eternal ground, some citizens will be secularists; appeal to reason, they will assume, can determine what it cannot determine, namely, the true answer to all questions, and politics by way of democratic reason and persuasion will become impossible. Thus, government should explicitly support religion as such in contrast to secularistic understandings—so that democracy implies religious freedom but does not imply governmental neutrality toward the difference between religious and secularistic beliefs.

As far as I can see, however, Murray’s proposal is inconsistent with freedom for the differing affirmations of a transcendent reality. If common assent to the sovereignty of God—where “God” designates a reality otherwise undefined—is necessary and sufficient for common consent to democracy, the differences among understandings of this God make no difference to politics. But Murray thereby asserts something with which at least some of the religious affirmations thereby included may disagree. On some religious beliefs, perhaps, no political adherence could be a proper one unless based on the *true* understanding of God, which the religion in question is taken to represent. Indeed, any given belief in a transcendent reality as the proper object of our ultimate orientation seems to imply the dependence of all proper political activities on belief in the God thereby affirmed. Hence, any such religious understanding would be expressly denied by the first item in Murray’s American consensus; stipulating that democracy depends on common assent without content to a transcendent reality contradicts at least some of those assents. Accordingly and against Murray’s intent, his proposal becomes one among the many religious beliefs that religious freedom legitimizes and implies the constitutional provision of a specific religious belief, which the government is bound to inculcate.⁴ In other words, an established religion is required. Given that even the minimal religionist account has this implication, moreover, the same will be so with any more substantial view of religious “essentials” as the basis for democratic consent—including Jefferson’s, if indeed his solution was religionist.

But a second theme in Jefferson’s writings may imply that he never relied on a religious belief. While he likely took certain essential moral principles to be common among all religions, perhaps those principles were, for him, independent of whether theism or any other orientation to a tran-

scendent reality is true. On this proposal, consent to republican government can occur through a moral sense characteristic of human nature. In what measure so-called moral sense theory—represented by, for instance, Thomas Hutcheson and David Hume—influenced Jefferson's understandings is controversial among students of his thought (see White; Wills; Staloff; Gaus-tad). But his attraction to that theory is clear, and Jefferson could regularly speak of a "moral instinct" (e.g., letter of June 13, 1814; Jefferson, 287) or what Hume called a "sentiment of . . . humanity" (Hume, 235).

For Jefferson, it also seems clear, our moral sense is given by a divine creator. "The Creator," he wrote in 1814, "would indeed have been a bungling artist, had he intended man for a social animal, without planting in him social dispositions." As far as republican morality is concerned, however, Jefferson may have considered this a private opinion. In the same letter, he praised "the care of the Creator in making the moral principle so much a part of our constitution as that no errors of reasoning or of speculation might lead us astray from its observance in practice," a premise necessary, he says, in order to explain "whence arises the morality of the Atheist" (letter of June 13, 1814; Jefferson, 287, 285, 286). This reading of him, moreover, is perhaps reinforced by his lifelong reticence, notwithstanding his abiding focus on articulating political principles, to speak publicly about his own religious beliefs. "Jefferson kept his beliefs to himself," writes one biographer; "all his life, he was reluctant to reveal his views on religion to anyone except his closest friends" (Bernstein, 42). All such beliefs are nonpolitical, on this reading, because discernment by the moral sense was, for Jefferson, separated from any religious affirmation or denial. Asking what morality requires of a citizen is one thing; asking whether a transcendent reality exists is an independent question. If our moral instinct in this sense is the court of appeal before which moral disagreements can be brought, perhaps Jefferson intends an ethics of citizenship that is not religionist and thus purports to be neutral not only to all religious differences but also to the difference between religious believers and infidels.

On moral sense theory, roughly speaking, the faculty in question responds to its objects in a manner something like how other forms of perception sense their objects. The former perceives certain kinds of actions as right or good and others as wrong or bad in a way analogous, say, to how our sense of touch perceives certain things as smooth and others as rough. Such a theory might be thought to authorize a self-consistent account of religious freedom if discernment by this moral faculty is sufficient to validate the difference between moral and immoral actions. In that event, doubt or disagreement about supposed precepts of right or good can be resolved by appeal to our moral instinct. This does not mean that understanding must be absent from moral discernment, as if the moral sense were noncognitive.

The defining point is, rather, that reason or argument is not needed to validate proposed differences between virtuous and vicious action. Hence, what alone remains for reasoned deliberation to add is counsel about the proper means to ends defined by moral sense.

Some of Jefferson's statements may be read to advance this view. His tortured and torturing treatment of slavery in *Notes on the State of Virginia* catalogues what he reckons as the scientifically demonstrable disparities between blacks and whites, including a difference in rational capacity, from which he infers tentatively a conclusion of racial inferiority and superiority. But he finds blacks equal with respect to the moral sense: "Whether further observation will or will not verify the conjecture, that nature has been less bountiful to them in endowments of the head, I believe that in those of the heart she will be found to have done them justice" (Jefferson, 479). Even more to the point is his long 1786 letter to Mrs. Maria Conway, his friend and possible intimate while ambassador to France, in which he relates a "dialogue . . . between my Head & my Heart." In the extended conclusion, the heart instructs the head: "Respect for myself now obliges me to recall you into the proper limits of your office. When nature assigned us the same habitation, she gave us over it a divided empire. To you she allotted the field of science; to me that of morals. . . . In denying to you the feelings of sympathy, of benevolence, of gratitude, of justice, of love, of friendship, she has excluded you from . . . our moral direction" (letter of October 12, 1786; Jefferson, 10, 17–18).

Even recognition of the "want or imperfection of the moral sense in some men," Jefferson argued in 1814, no more denies its presence as "a general characteristic of the species" than does "the want or imperfection of the senses of sight or hearing" in some people denies them as general human capacities. Further, he defended the discernment of moral sense against what might seem a convincing critique, namely, "if nature had given us such a sense, impelling us to virtuous actions, and warning us against those which are vicious, . . . then nature would also have designated, by some particular ear-marks, the two sets of actions . . . Whereas, we find, in fact, that the same actions are deemed virtuous in one country and vicious in another." He then indicts the indictment, in a response reminiscent of Hume, for failing sufficiently to generalize: "The answer is, that nature has constituted *utility* to man, the standard and test of virtue. Men living in different countries, under different circumstances, different habits and regimens, have different utilities" (letter of June 13, 1814; Jefferson, 287–88).

Let us call this dependence on moral sense one form of a "separationist" account of religious freedom, where theories of this type warrant republican morality or consent to democracy by virtue of its independence from whether any religious understanding of human life is true. If this read-

ing permits an ethics of citizenship without a common religious belief, a problem nonetheless remains, namely, the need for explicit agreement on this separation of morality from the truth or falsity of any religious belief. On the proposal we are now considering, relevantly neutral or religiously free commitment to the constitution is possible because the ethics of citizenship and thus democratic politics is based on our moral sense without explicitly or implicitly taking sides for or against any religious orientation. But moral sense theory is itself a general account of morality, and there is no reason to assume that diverse religions legitimized by religious freedom will include agreement on the supposed sufficiency of moral sense. Indeed, if religions include differing beliefs about the ultimate context and encompassing purpose of human life, one should expect extensive disagreement with the supposed independent force of the moral sense. Accordingly, that independence could provide the required common consent only if this theory is itself stipulated constitutionally—whereby the constitution now requires, in place of a religious belief, a provision about the separation of morality from whether human life relates to a transcendent reality. We may not call this an establishment of religion, but that provision stipulates, nonetheless, that religious conviction is not free: at least some religions are not constitutionally legitimate, namely, those that deny the separated sufficiency of moral sense.

The potential for this denial is confirmed when other students of Jefferson's thought question whether the independent veracity of a moral sense captures even his view. On Morton White's interpretation, the evidence from Jefferson's later life is inconclusive: "Moral sense, utility, revelation, intuitive reason—all of these are offered at one time or another as avenues to moral truth, but no one of them is clearly given the sort of preference that intuitive reason was given by Locke, utility by Bentham, and the moral sense by Hutcheson" (White, 127). In contrast, White argues, Jefferson's mind on this issue during the 1770s is transparent. He was then persuaded by the reconciliation of "rationalism and . . . moral sense" (White, 107-08) found in the Italian jurist Jean Jacques Burlamaqui. On White's account, Burlamaqui "held that reason verifies what the moral sense first brings to our attention"—and Jefferson as a younger man also thought "that the moral sense was *subordinate* to reason" (White, 111, 114).

For this reading of the younger man, White argues, the absence of any "appeal to the moral sense in the Declaration [of Independence]" is convincing (White, 114). "We hold these truths to be self-evident: that all men are created equal; that they are endowed by their creator with certain inherent and inalienable rights; that among these are life, liberty, & the pursuit of happiness" (Jefferson's draft; Jefferson, 97). Although Jefferson's initial term was not "self-evident" but, rather, "undeniable," both meant truths whose

apprehension depends on rational intuition (see White, 72–78)—and while the reality of a moral sense is not denied in the Declaration, the appeal to truth discerned by reason implies that “reason verifies” what the moral sense proposes. Assuming that White’s reading is essentially correct, we should recall that Jefferson’s Virginia Bill was also written during the 1770s and thus during a period when, for him, the discernment of moral sense required validation by reason. At least when this Bill was drafted, then, he could not have considered the moral sense sufficient to separate morality from whether any religious understanding is true.

To be sure, religious establishment might still be avoided if the common consent is possible because moral *reason*—or, at least, reasoning about justice—is separated from any religious affirmation or denial. Something like this second form of the separationist account has become the favored view of religious freedom in recent decades. Differing theories, some of them indebted to Kant, have been advanced to support this account, and all such theories are supposed to show how reason, without explicitly or implicitly taking sides for or against any religious belief, validates moral or, at least, political principles (see, e.g., Apel 1979; Habermas 2008, 114–47). More than any other, perhaps, the massively influential thought of John Rawls, especially as presented in his later *Political Liberalism* (2005) has come to exemplify this view. Indeed, on my reading, his proposal there differs from his earlier *A Theory of Justice* (1971) precisely because, on his own assessment, the earlier work failed to answer the question to which the present essay is addressed—namely, how to have common adherence to democracy consistent with a plurality of what Rawls calls “comprehensive doctrines” (Rawls 2005, 12). Rawls’s answer is separationist because it advocates “free-standing” (Rawls 2005, 10) principles of justice. An ethics of citizenship can be common, religious freedom notwithstanding, because the appeal of public reason in deciding “constitutional essentials and issues of basic justice” (Rawls 2005, 224) stands free from the affirmation and denial of any given religious or nonreligious comprehensive doctrine—and the plurality of reasonable comprehensive doctrines participate in an “overlapping consensus” (Rawls 2005, 134) affirming principles of justice as freestanding.⁵

I doubt that Jefferson shared this form of separationism. The self-evident rights of “all men” affirmed in his Declaration of Independence are said to be endowed by “their creator,” such that political independence is something to which people of colonial America are entitled by “the laws of nature and of nature’s God” (Jefferson, 96). I take this to assert not simply a private religious belief but, rather, his conviction at the time that moral and political principles are rationally inseparable from theism. But even if he did anticipate a separationism of reason, that view shares with the separationism of moral sense the same problem: while the appeal may be to reason

rather than to the moral sense, we still have a theory about morality, and there is no basis for assuming that diverse religions legitimized by religious freedom will include agreement on this theory. Indeed, if religions include differing beliefs about the ultimate context and encompassing purpose of human life, one should expect extensive disagreement with the supposed separation or freestanding status of any principles for the political order. Accordingly, that separation could provide the required common consent only if this theory is itself stipulated constitutionally. The constitution still requires, in place of a theistic belief, a provision that delegitimizes at least some religious beliefs—namely, those that deny the separation of moral or political reasoning from whether any religious belief is true.

In sum, then, both religionist and separationist accounts of religious freedom are problematic. The first is troubled because it requires consent by all citizens to a given religious belief, even while religious freedom legitimizes their dissent from that same belief, and the second is troubled because it requires consent by all citizens to a theory about morality, even while religious freedom legitimizes dissent from that same theory. If neither account can explicate a coherent constitution, it is now important to focus on another theme central to Jefferson's Virginia Bill. As suggested by his apparent appeal to reason in asserting the laws of nature and of nature's God, he was confident that religious truth, including whether there is any, is open to rational discernment. At least within Virginia's 1786 legislature, which enacted the Bill, the most controversial aspect of Jefferson's theism was likely his conviction that God's character and our duty to God are accessible to natural reason. The legislators deleted from Jefferson's draft those phrases in his opening appeal that expressed this conviction. Here is the beginning and conclusion of that appeal as drafted, with the deleted phrases emphasized:

Well aware that the opinions and belief of men depend not on their own will but follow involuntarily the evidence proposed to their minds; that . . . the holy author of our religion, who being lord of both body and mind, yet choose not to propagate it by coercions on either, as was in his Almighty power to do, but to exalt it by its influence on reason alone; (Jefferson, 390, emphasis added)

Jefferson's bedrock affirmation of enlightened reason is underscored by all of his biographers and, with respect to religion, is stated summarily in his 1787 letter to his nephew: "Fix reason firmly in her seat, and call to her tribunal every fact, every opinion . . . Your own reason is the only oracle given you by heaven, and you are answerable not for the rightness but uprightness of the decision" (letter of August 10, 1787; Jefferson, 254,

255). Consistently, Jefferson's counsel continues: "Question with boldness even the existence of a god; because, if there be one, he must more approve of the homage of reason, than that of blindfolded fear" (letter of August 10, 1787; Jefferson, 254). But nowhere is Jefferson's rationalism more apparent, or expressed with eloquence and force not found in Madison or any other founder, than when the preface to the Virginia Bill justifies its enactment with this final authorization: "and finally, that truth is great and will prevail if left to herself; that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict unless by human interposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them." Accordingly, the Bill stipulates "that all men shall be free to profess, and by argument to maintain, their opinion in matters of religion" (Jefferson, 391).

Perhaps, then, Jefferson answered the question of common adherence to the constitution as follows: democracy with religious freedom is possible because the differences among religions—and, indeed, whether any religion is true—can be adjudicated before the tribunal of reason. "Reason and free inquiry are the only effectual agents against error. Give a loose to them, they will support the true religion by bringing every false one to their tribunal, to the test of their investigation" (Jefferson, 394). Still, it is not clear what importance Jefferson attached to rational inquiry about religious claims. Perhaps he saw the tribunal as consistent with reliance on religious essentials or, alternatively, on the moral sense as sufficient for an ethics of citizenship. On that accounting, the tribunal was nonpolitical. The point of reasoned discussion was simply to purge religions of the "quarreling, fighting, burning and torturing" occasioned "from the beginning of the world to this day" by "the dogmas of religion as distinguished from moral principles" (letter of November 11, 1816; Jefferson, 401)—and Jefferson's own attempt to purge Christianity of mystery and superstition exemplified the triumph of reason over divisions caused by religious inessentials, the "other articles" that, according to Franklin, "serv'd principally to divide us" (cited in Mead, 64). The force of reason would hasten religious harmony in society—and later in life Jefferson predicted that "Unitarianism . . . will, ere long, be the religion of the majority from North to South" (letter of November 2, 1822; Jefferson, 406).

But if, instead, Jefferson saw rational assessment of religious beliefs as another way to explain consent of the governed, he failed to show how the two are related. Adherence to democracy is required of all citizens notwithstanding the freedom of each to believe any religion she or he finds convincing. Even if reason and free inquiry will distinguish religious error and truth, what must be common cannot depend on the true religious beliefs (e.g., on the theism, if it is true, expressed at the outset of Jefferson's Vir-

ginia Bill) because consent of the governed must be present even while the constitution legitimizes both true and false religions. On what, we must still ask, does adherence to democracy with religious freedom depend?

Notwithstanding this additional theme in Jefferson's accounting, then, he did not, as far as I can see, provide clarity on how common consent to the democratic constitution can be consistent with the religious freedom he relentlessly advocated—or, to say the same thing, how an ethics of citizenship can itself be religiously free. Nothing he explicitly says avoids constitutional stipulation of either a religious belief or a belief about the ethics of citizenship that will delegitimize some possible religions. Still, I wish to argue for a critical appropriation of Jefferson's legacy, on which democracy requires neither constitutive agreement on religious essentials and thus an established religion nor a constitutional separation of morality from whether any religion is true. Moreover, the critical reinterpretation necessary to reach a coherent account is, I believe, sufficiently minimal to credit his stature in national memory as the principal author of our religious freedom.

REFINING THE QUESTION

Among the reasons for religious freedom cited in its preamble, Jefferson's Virginia Bill includes the following: "to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous falacy . . . [and] it is time enough for the rightful purposes of civil government, for its officers to interfere when principles break out into overt acts against peace and good order" (Jefferson, 391). Perhaps the acts properly subject to governmental interference could be more clearly defined, but restricting legal intrusion to actions in distinction from opinions is, I think, correct at least in this respect: civil government should not interfere with a citizen's opinion about whether the laws are good or right. In a democratic political community, any law is subject to legitimate contestation by any citizen thereof—because the government is authorized by "we the people," and any law, constitutional or statutory, is subject to alteration or repeal by those same people through the constituted political process.

If democracy is the "sovereignty of the people," to reformulate the point, every democratic citizen is sovereign over her or his assessment of every political claim; that is, the state may not stipulate any citizen's assessment of any claim for the justice of any actual or proposed law or policy or for the validity of any norm or principle in terms of which political activities are evaluated. Together as equals, the people are the final ruling power, and they can be sovereign only if each citizen is free from any governmental authority in evaluating the activities or possible activities of

all governmental authorities. "A government is republican," Jefferson wrote, "in proportion as every member composing it has his equal voice in the direction of its concerns" (letter of July 12, 1816; Jefferson, 211).

Popular sovereignty is also one way to interpret the importance of religious freedom. Naturally, any such interpretation depends on how religion or religious activity, in distinction from other human expressions or activities, is understood. For Jefferson, as we have seen, a religious opinion or conviction affirms some or other ultimate human orientation to a deity or, more broadly, some transcendent reality. That opinion, he likely thought, is typically inculcated in or through the defining representations of a particular community, and perhaps we should take such particular communities to be, at least typically, constituted by an originating person or event, for which claims to decisive disclosure are made. Still, these latter claims are not what connect religious freedom to popular sovereignty. The political importance of a religion is, rather, the understanding of human life that is represented or said to be disclosed. Inclusive of certain beliefs about the ultimate context and orientation of human life, each religion also affirms a conviction about the ultimate terms of political evaluation. A religion is politically pertinent, let us say, because it includes terms for evaluating politics as such. Thus, religious establishment stipulates to all citizens a given set of such terms, and a citizen cannot be sovereign over her or his assessment of every political claim without religious freedom.

Still, if popular sovereignty entails religious freedom, does religious freedom entail popular sovereignty, that is, the sovereignty of every citizen, religious (in Jefferson's sense) *or* nonreligious, over her or his conviction about the terms for evaluating politics as such?⁶ For some, perhaps, religious freedom seems to legitimize only religious adherence, in distinction from not being a religious adherent, and thus is consistent with a constitutional stipulation that citizens should have some or other religious belief; on this account, the constitution requires the belief that human life's ultimate orientation is properly defined by a transcendent reality and leaves undefined and thus open to free decision what religious conception a citizen affirms. But this view is simply the minimal religionist account discussed earlier, for which I reviewed John Courtney Murray's proposal as exemplary. On that minimal view, religious freedom is consistent with democratic consent because all religions teach the allegiance all citizens should have, and thus government should support religion generally in distinction from secularism. The critique of this account, also offered above, argued that it requires the establishment of a specific religious belief.

If the critique is successful, it follows that provision for religious freedom implies the freedom also to affirm a nonreligious orientation in human life and corresponding terms for evaluating politics as such. In his own way,

Jefferson asserted this implication. Later in life, as noted earlier, he glossed the Virginia Bill as “meant to comprehend, within the mantle of its protection, the Jew and the Gentile, the Christian and the Mahomatan, the Hindoo, *and infidel of every denomination*” (cited in Alley, 62, n. 7; emphasis added)—thereby extending the relevant freedom to religious and nonreligious alike. Having recognized Jefferson’s commitment to reasoned inquiry as sufficient to discern religious truth and error, we might interpret this gloss to assert the following: the mind is not truly free to assess diverse religions if it cannot require sound reasons for religious rather than nonreligious belief, and thus, by implication, citizens must be free to refuse all religions. As he counseled his nephew: “Question with boldness even the existence of a god; because, if there be one, he must more approve of the homage of reason, than that of blindfolded fear” (letter of August 10, 1787; Jefferson, 254).

Assuming that religious freedom and popular sovereignty do entail each other, we might nonetheless understand why, given his context, Jefferson used “*religious* liberty” to include, by implication, an equal right to nonreligious belief—that is, he might permissibly speak of religious freedom because, in Virginia and the emerging nation at his time, citizens overwhelmingly agreed on the reality of a deity or, more generally, of something transcendent to the world. At least given a situation where denial of all religious convictions has become more prevalent, however, one might doubt that a democratic constitution is especially well formulated when the right to affirm nonreligious terms for evaluating politics as such is provided only by implication. If the relevant democratic freedom concerns the sovereignty of every citizen, it seems needlessly complex explicitly to protect specifically religious grounds for political evaluation and include protection for nonreligious grounds as somehow implied thereby. Here, we might cite the words Jefferson, while ambassador to France, wrote to Madison in 1787 urging that a bill of rights be added to the draft US Constitution: “a bill of rights is what people are entitled to against every government on earth . . . & what no just government should refuse or *rest on inference*” (letter of December 20, 1787; Jefferson, 361, emphasis added).

Accordingly, the following account may be salutary for our contemporary understanding: “religious” in “religious freedom” has a more extended meaning than Jefferson’s apparent intention. With him, religious opinions are politically pertinent because they include some or other belief about the orientation of human life as such; in contrast to Jefferson, this extended meaning designates as religious any explicit belief about the ultimate terms of political evaluation and, at least by implication, how these terms are authorized or grounded—whether or not this authorization is said to require a deity or a transcendent reality.⁷ Thereby, the express meaning of religious freedom is protection for the sovereignty of every citizen over her or his

terms for evaluating politics as such, so that every citizen can be sovereign over her or his evaluation of every political claim, and thus “we the people” are the final ruling power.

All things considered, I take the extended meanings of “religious” and, similarly, “religion” to provide, at least in our contemporary understanding, the best interpretation of religious freedom and, specifically, the religion clauses of the First Amendment to the US Constitution—and unless otherwise noted, I will in this discussion henceforth use these words with those extended meanings. At the same time, our public discourse so pervasively uses these words, with Jefferson, to designate beliefs or communities in which a transcendent reality is affirmed—that is, uses them in what I will now call the conventional sense—that such extended uses may seem inappropriately artificial. For this reason, I will, more often than not, substitute the phrase “comprehensive assessment,” intending this as synonymous with what I take religious freedom properly to protect. A comprehensive assessment, as a religious affirmation in the extended sense, is an explicit conviction about the ultimate terms of political evaluation and, at least by implication, how those terms are authorized or grounded. Accordingly, I propose, we should now interpret religious freedom, in the conventional sense of religious, as representative of a more inclusive legitimization. For understandable historical reasons, in other words, “religious freedom” was the eighteenth-century term for the right of every citizen to affirm any comprehensive assessment she or he finds convincing.⁸

If the constitutional provision for religious freedom so understood is a coherent form of political community, it follows that statutory laws and policies enacted democratically should never include an express statement about the ultimate terms of political evaluation. An official governmental activity that explicitly affirms or denies any comprehensive assessment would stipulate the terms (or something about the terms) in which all citizens should evaluate all political claims. For the same reason, statutory laws and policies should never stipulate how any activity of the state should be evaluated—for instance, should not prohibit criticism of the current regime—because doing so would violate the right of every citizen to decide for ultimate terms in which she or he evaluates all political claims. This is simply to repeat that citizens cannot be sovereign unless each is free from any political authority in evaluating the activities of all political authorities—and thus to repeat, with Jefferson, that government’s relation to religion is a constitutional matter.⁹

But whether religious freedom and principled common consent to the constitution are coherent is the basic issue here, and we can now return to that vexing question. To the best of my reading, Jefferson’s steadfast defense of religious freedom nonetheless left uncertain how adherence to the

constitution can itself be religiously free or properly neutral to the diversity of religions—and thus whether a democratic constitution must provide, in order to help ensure action in accord with the ethics of citizenship, a belief that contradicts religious freedom. His two most apparent proposals seem to advance, on the one hand, a religionist view, on which certain supposed essentials of all religions in the conventional sense will be commonly affirmed, and on the other, a separationist view, on which common consent is possible because republican morality is independent of whether any conventional religion is true. In either case, to repeat once more the conclusion argued earlier, democracy requires a constitutional stipulation on which at least some possible religions in the conventional sense are delegitimized.

If we take religious freedom to protect any comprehensive assessment, the point may be restated: both the religionist and separationist accounts are themselves comprehensive assessments—or, at least, define some specific class of comprehensive assessments, in which case those excluded from that class are explicitly delegitimized. Whether democratic adherence is said to depend on essentials common to all conventional religions or, alternatively, on a common agreement that republican morality neither affirms nor denies, explicitly or implicitly, any conventional religious belief, the required constitutional stipulation expressly contradicts some possible comprehensive assessments. Neither proposal, in other words, can provide a relevantly neutral ethics of citizenship. But if so, how can consent to the constitution be, in principle, common?

The apparent dilemma may be generalized by underscoring that a democratic constitution constitutes the political community, prescribing the practice in accord with which activities of the state should be determined and to which all citizens as political participants should adhere, and thereby itself makes a political claim. By definition, every political claim implies some ultimate terms of political evaluation by which it is taken to be authorized. Accordingly, citizens cannot, it seems, share a principled adherence to the constitution unless they share a comprehensive assessment.¹⁰ Because an ethics of citizenship is indispensable to democratic politics, this logic concludes, the constitution must stipulate its implied comprehensive assessment, and that constitutional stipulation contradicts religious freedom.

In the end, I believe, this argument is not convincing. Still, it has transparent force and makes a point about political evaluation that a coherent account of religious freedom cannot ignore, namely, that every political claim is a claim to validity and thus implies ultimate terms by which it is taken to be validated. As an important consequence, one cannot fully argue for religious freedom itself without explicating and redeeming a comprehensive assessment. If popular sovereignty, in distinction from forms of political

community in which some religious conviction or comprehensive assessment is established, is good or right, one can fully validate this conclusion only by way of defending terms for evaluating politics as such. Doing so is far more than this essay can achieve, and for this reason, as noted at the outset, I will not seek here to defend democracy itself. The present issue, also noted at the outset, is solely the following: given that some ultimate terms of political evaluation are implied by a political constitution, are religious freedom and thus the sovereignty of every citizen over her or his comprehensive assessment consistent with principled common consent to a democratic political community?

REASON'S TRIBUNAL

We may approach a positive answer by recalling again Jefferson's allegiance to reason as sufficient to distinguish religious truth and error. To the best of my reading, he did not explain how rational validation and invalidation of religious beliefs explains consent to the constitution. Clearly, the ethics of citizenship cannot wait on agreement about religious truth, even if, in principle, this can be reached by appeal to the tribunal of free inquiry. But is there some other way in which the powers of reason permit democratic union among diverse comprehensive assessments? Here, I believe, is the coherent alternative: given popular sovereignty, consent to the democratic process is present whatever political disagreement may occur because making any political claim at all is commitment to validate and invalidate contested political claims by the way of reason. Reason does not secure the required common adherence only subsequent to its discernment of religious truth; to the contrary, the tribunal to which Jefferson gave unsurpassed expression is the democratic way to which every sovereign citizen already commits herself or himself simply by making a claim for some political assessment.

On this proposal, one's claim to validity for a political evaluation claims to be authorized by the true comprehensive assessment—and the claim is made in the context of popular sovereignty, that is, the context in which every citizen is sovereign over her or his assessment of every political claim and government is determined by “we the people.” Other citizens cannot be politically sovereign unless each may contest the comprehensive assessment and thus, if necessary, the evaluation for which validity has been claimed. In making any political claim, therefore, one issues the pledge that, if the claim is contested, its validity can be validated or redeemed by the giving of reasons—or, we may say, by argument that commands the assent of all citizens. Given popular sovereignty, in other words, every political participant commits herself or himself, whenever she or he makes a political claim that is contested, to its validation or invalidation by democratic reasoning.