REVIEW ARTICLE

FAITH: POLITICAL PHILOSOPHY IN THE CANADIAN ACADEMY

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CANADIAN POLITICAL PHILOSOPHY: CONTEMPORARY REFLECTIONS edited by Ronald Beiner and Wayne Norman (Don Mills, Ont.: Oxford University Press, 2001)

I. INTRODUCTION

This collection[1] contains twenty-six essays, most of which are new,[2] not all of which are accomplished, and some of which are both accomplished and important.[3] For reasons of space and inclination, I shan't attempt to support this assessment by engaging each of the essays. Nor shall I dwell on certain quibbles, not all of them minor, concerning the collection's structure (which is artifice),[4] its motivation (which is ambiguous),[5] or its

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1 R. Beiner & W. Norman, eds., *Canadian Political Philosophy: Contemporary Reflections* (Don Mills, Ont.: Oxford University Press, 2001).

2 The exceptions are G.A. Cohen, "History, Ethics, and Marxism" (*ibid.* at 107-17), which first appeared in 1966 and "Communities of Memory" (*ibid.* at 263-81) by W. James Booth, which is a revised version of an article that appeared in 1999. Curiously, in their "Introduction" the editors seem to claim that all are "new essays" (*ibid.* at 2).

3 Chief among which in my view are Eamonn Callan, "Self-Defeating Political Education" (*supra* note 1 at 92-104), Christine Sypnowich, "Egalitarianism Revisited" (*supra* note 1 at 118-30), W. James Booth, "Communities of Memory" (*ibid.* at 263-81), Thomas L. Pangle, "The Platonic Challenge to the Modern Idea of the Public Intellectual" (*supra* note 1 at 335-48), and Charles Taylor, "The Immanent Counter-Enlightenment" (*supra* note 1 at 386-400).

4 The essays are presented in five parts: "Rethinking Liberalism and Citizenship" (Part One contains five essays: *supra* note 1 at 17-104); "Equality, Justice, and Gender" (Part Two, four essays: *supra* note 1 at 107-56); "Minority Rights, Multiculturalism, and Identity" (Part Three, six essays: *supra* note 1 at 159-245); "Nationalism and Self-Determination" (Part Four, six essays: *supra* note 1 at 249-331); and "In Dialogue with the History of Political Philosophy" (Part Five, five essays: *supra* note 1 at 335-400). But this segregation speaks more to an editorial compulsion to organize than to the content of the essays or to the coherence and utility of the so-very-generic headings adopted. In consequence, placement of the essays often appears arbitrary, and the division of the text provides little guidance to the reader.

5 The editors appear to have had two motivations: to demonstrate that "political philosophy in Canada today is a thriving discipline" (*supra* note 1 at 3) and to relate this state of affairs to the contemporary ascendency of "peculiarly Canadian issues (such as multiculturalism, or collective rights for the Quebecois and Aboriginal peoples)" internationally (*ibid.*). Yet, though the range of the essays may be probative of the former, their execution by and large offers no evidence of the latter. Indeed, as the editors themselves note, most of the essays have nothing at all to do with "the meaning or significance of the ... Canadian cultural context" (*ibid.* at 4).

Two further matters also complicate the collection's coherence. At the beginning of his contribution — "Weaving a Work" (*supra* note 1 at 374-85) — Barry Cooper relates that the editors asked of him "a 'sketch' of the 'basic thrust' of [his] 'work'" (*ibid.* at 374). What he subsequently produced for them is, perhaps not surprisingly, an intellectual autobiography. Nor is he the only contributor to do so. Cohen's essay (*supra* note 2) recounts his intellectual journey to political theory; Jennifer Nedelsky, "Citizenship and Relational Feminism" (*supra* note 1 at 131-46) relates her argument concerning "maternal feminism" to her "own experience of pregnancy, nursing, and infant care" (*ibid.* at 135); Melissa S. Williams, "Toleration, Canadian-Style: Reflections of a Yankee-Canadian"

presentation (which, unforgivably in my view, excludes both an index and a bibliography). What I wish instead to do is to correspond with certain of the essays and to deploy the rest as background in an effort to form an argument concerning the current state of political philosophy in Canada and elsewhere in the liberal democratic West. To begin, I shall attempt to situate my argument by exploring the collection's place in contemporary debate.

II. 'CONTEMPORARY REFLECTIONS'?

The collection's subtitle invites one to ask "Reflections of what"? The adjective 'Canadian' might suggest that the editors were motivated by the view that there exists in Canada an indigenous brand of political philosophy. But, though in introducing the collection they exhibit much brio[6] about the state and status of 'Canadian' political

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(*supra* note 1 at 216-31) recounts her discovery of what she takes to be the political ethos of her "adopted country" (*ibid.* at 218); Guy LaForest, "The True Nature of Sovereignty: Reply to My Critics Concerning *Trudeau and the End of a Canadian Dream*" (*supra* note 1 at 298-310) consists of one part author intellectual history and two parts defence of a prior work; Dale Turner, "Vision: Towards an Understanding of Aboriginal Sovereignty" (*supra* note 1 at 318-31) mixes autobiography with argument; and Edward Andrew, "Liberalism and Moral Subjectivism" (*supra* note 1 at 363-73) proceeds from an exploration and defence of the author's recent work. In their "Introduction" the editors relate that they "invited the authors ... to reflect (if they were so inclined) upon the meaning and significance of their Canadian cultural context" (*supra* note 1 at 4). Too many in my view took this as invitation to write about themselves, and the result is an autobiographic tone that seriously diminishes the collection's coherence and value.

Then there is the matter of audience. Though the editors at one point imply that they wish to make Canadian political philosophers better known to Canadians — "the fact that some of our political thinkers are better known abroad than at home was one of our reasons for undertaking this project" (*ibid.* at 2) — surely this is conceit and the collection must be taken to be directed to that relatively small band of academics, equally unknown beyond their circle whether situated in Canada or abroad, who devote their lives to normative political theory. Unhappily, some of the essays undercut this communication and appear directed at a general or a (beginning) student audience. For instance, Ingrid Makus, "Birth, Maternity, Citizenship: Some Reflections" (*supra* note 1 at 147-56) introduces Simone de Beauvoir as "a well-known twentieth-century thinker" and Rousseau as "an eighteenth-century thinker" (*ibid.* at 147); Philip Resnick, "Civic and Ethnic Nationalism: Lessons from the Canadian Case" (*supra* note 1 at 282-97) feels compelled to identify Habermas as a "German critical thinker and philosopher" (*ibid.* at 284); and LaForest (*supra* note 1 at 300) identifies Charles Taylor as "the most prominent contemporary Canadian philosopher" (*ibid.* at 300).

In sum, the collection is uneven and uncertain in focus and tone. Responsibility must lay with the editors who, in my view, stand guilty of failing to articulate either a clear purpose for their project or a clear mandate for their contributors. These failures to take intellectual care are reflected in sloppy editing. To take but two examples: in the "Notes on Contributors" (*supra* note 1 at 401-408) Barry Cooper is identified as "a fourth-generation Albertan" (*ibid.* at 403), yet in his essay Cooper reveals himself as born in Vancouver and educated at a British Columbia boarding school, University of British Columbia, and Duke; and in an endnote to Stephen L. Newman, "What Not to Do About Hate Speech: An Argument Against Censorship" (*supra* note 1 at 207-15) Catharine MacKinnon's name is misspelt (*ibid.* at 213).

6 This brio is shared by a number of the volume's contributors. See, for example, James Tully, "Democracy and Globalization: A Defeasible Sketch" (*supra* note 1 at 58) (who claims that there was "a distinctive Canadian political philosophy" in the twentieth century); Simone Chambers, "New Constitutionalism: Democracy, Habermas, and Canadian Exceptionalism" (*supra* note 1 at 64-65) (who claims that Canada's constitutional history and discourse explain why "Canadians are producing some of the most interesting contemporary statements on" constitutionalism and the accommodation of "diversity, identity, plurality, and difference"); Williams, "Toleration, Canadian-Style: Reflections

philosophy, when push comes to shove, the editors shy away from claiming that there exists "a 'Canadian School' of political philosophy."[7] Despite their wisdom in declining, however reluctantly, such a claim, the editors nonetheless persist in the view that there remains something distinctive — or as they say, "unique"[8] — about 'Canadian'[9] scholarship, and they even proffer a theory of Canadian political and social history to account for this supposed distinctiveness.

First the theory. Despite their view that "no significant aspect of ... civic identity can fail to be contestable, theoretically or practically,"[10] the editors propose that 'Canadian' political theorists are the subjects of a uniform and distinctly Canadian experience of politics and that that experience somehow explains both the "identifiably Canadian"[11] character of their scholarship and their propensity to produce. Theirs allegedly is an experience of two parts. First, Canada's history of "more or less permanent constitutional crisis" has produced, we are told, "political-existential cleavages" to which 'Canadian' "philosophical reflection [is] one existential response."[12] Second, Canada's "greater openness to the contemporary realities of cultural diversity, polyethnicity, and multi-ethnicity" has required its governments and its intellectuals "to think through what these realities mean for civic life more ambitiously than" governments and intellectuals in "societies that pretend to be exempt from these challenges."[13]

This is a peculiarly pan-Canadian — and I think Trudeauist — view of "the political realities in this country,"[14] and it fails on at least two counts. First, it obliterates most of Canadian history. Canadian history, and self-understanding, did begin with P.E.

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of a Yankee-Canadian" (*ibid.* at 227-28) (who claims that Canadian political philosophy reflects a "Canadian-style liberalism" that is "theoretically messier than the American alternative, but on the whole ... less doctrinaire, more creative and dynamic, and more humane"); and LaForest, "The True Nature of Sovereignty: Reply to my Critics Concerning *Trudeau and the End of the Canadian Dream*" (*ibid.* 298 at 299) (who claims Canadian constitutional debates have afforded "Canadian theorists ... a privileged perspective and key insights as their 'home issues' gained prominence in world politics, as well as in the social sciences and philosophy, during the 1990s"). Unhappily, Canadian political philosophers are not alone in this heretofore uncharacteristic turn to self-importance. Canadian judges are presently tooting their horns in a similar tune: see, for example, J. Tibbetts, "Canada a good model for other countries, Chief Judge tells Israel" *National Post* (20 December 2000) A10.

7 *Supra* note 1 at 1-2: Though they claim that "Canadian theorists and philosophers are now recognized internationally for their unique contributions to normative debates about citizenship, multiculturalism, and nationalism" — I will get to this claim momentarily — the editors do not pretend "a homogeneity of views among Canadian theorists" and therefore cannot be taken to be proposing the existence of an identifiably Canadian brand of political philosophy.

8 *Ibid.* at 2.

9 The reason for the scare quotes will become apparent shortly.

10 *Supra* note 1 at 2.

11 *Ibid.* at 3.

12 *Ibid.*

13 *Ibid.* Though I shall not dwell on the details, this claim is, in my view, simply wrong and evinces a remarkable self-satisfaction and complacency about Canada's treatment, presently and in the past, of minorities. That working this claim committed the editors to a linguistic sleight of hand makes matters all the worse (see their strained calculation of the difference between Canadian multiculturalism and the "often presumed but not real cultural homogeneity" of states like Britain, France, Germany, and the United States).

14 *Ibid.*

Trudeau's reconception of the nation in 1970s and '80s, nor can that reconception be understood or evaluated without a sound appreciation of the ethos that guided Canadian politics prior to that time. Moreover, attaching post-Trudeau political history to identity and multiculturalism tends[15] to obfuscate the structural realities that account for what is indeed distinctive about Canadian politics, namely, regionalism and a tendency towards one-party government.

Their views of Canadian history aside, what of their claim that 'Canadian' political theory is somehow distinctive. Recall that the editors back away from the strong claim that Canadian theorists have produced a "'Canadian School' of political philosophy."[16] Theirs is the weaker (though not insignificant) claim that the contribution of 'Canadian' theorists to international "normative debates about citizenship, multiculturalism, and nationalism (as well as much else)" is "unique."[17] Now, the editors fail to provide the calculus that rendered this conclusion. However, if one takes their claim as more than puffery, it is reasonable to assume that their 'Canadian' claim must relate to both the authorship and content of the essays. But, in that event, the collection fails to support the claim that 'Canadian' political theory is any fashion distinct, let alone unique.

Consider first the authors. Of the twenty-six, six[18] are Americans presently attached to Canadian universities, five[19] are expatriate Canadians teaching abroad, and the remaining fifteen are Canadians who, with two or three exceptions,[20] teach at various Canadian universities. In their "Introduction" the editors admit that defining this mix of authors as Canadian is "perhaps contestable."[21] But here surely they are too modest. One cannot define away the plain juridical and social meaning of 'Canadian' when one wishes to defend a Canadian nationalist claim of the sort on offer in this volume. Or rather one can do so only at the expense of silliness.[22]

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15 "Tends" because even were one to view Canadian history and politics through the prism of identity — a prism that, in my view, rarely aids mature political reflection — one could just as easily conclude, as does Barry Cooper in this volume (*supra* note 5), that there exists no pan-Canadian political identity and that Canada is instead characterized by "several regional identities expressed in several regional and literary mythologies" (*ibid.* at 380). Viewed from this vantage, the 'Canadian' identity proffered by the editors might fairly be said to express a federalist-Central Canadian mythology, if not, as they worry, a "Torontocentric" one (*supra* note 1 at 2).

16 *Ibid.* at 1.

17 *Ibid.* at 2.

18 Namely: Joseph Carens, Jennifer Nedelsky, Stephen Newman, Clifford Orwin, Thomas Pangle, and Melissa Williams, all of whom, save Newman, teach at the University of Toronto. Newman teaches at York.

19 Namely: James Booth (Vanderbilt), Eamonn Callan (Stanford), Simone Chambers (Colorado at Boulder), G.A. Cohen (All Souls, Oxford), and Dale Turner (Dartmouth College). Callan, incidentally, is a naturalized Canadian who continues to hold Irish citizenship.

20 The exceptions are: Stéphane Dion, formerly at the Université de Montréal and presently federal Minister of Intergovernmental Affairs; Charles Taylor, Professor Emeritus at McGill; and perhaps Margaret Moore (her entry in the "Notes on the Contributors" is ambiguous as regards her institutional attachment).

21 *Supra* note 1 at 2.

22 The silliness descends to absurdity with the editors' claim that the very contestability of their definition of Canadian might be a virtue: "This approach to defining a Canadian political philosopher is perhaps contestable, but if this volume teaches anything, it is that no significant aspect of the problem of civic identity can fail to be contestable, theoretically or practically" (*ibid.* at 2).

Moreover, the editors' selection of contributors is skewed institutionally and regionally. Eight of the contributors are attached to the University of Toronto and fully seventeen, inclusive of those eight, are from universities in Ontario and in Quebec.[23] There are no contributors attached to universities in Atlantic Canada or in Manitoba and Saskatchewan, parts of the country apparently where the editors' proposed pan-Canadian identity does not, as it does in Ontario especially, compel the "existential response" of political reflection.[24] Indeed, west of Waterloo, Ontario, the editors were able to uncover but three scholars whom they thought properly members of Canada's "thriving"[25] community of distinctly Canadian discourse, one in Alberta and two in British Columbia. Now, absent the editors' nationalist claims, none of this would much matter because in that happy circumstance their selection of contributors would properly be assessed only as against the relative merits of the scholars they chose to include and exclude.[26] But nationalist claims put a premium on national credentials and when, as here, the claim is couched in the vocabulary of national identity, it falls to the editors to take seriously their own premises by ensuring that contributors are selected in a manner that fairly reflects the institutional and regional makeup of the national community.

The content of the essays is no more persuasive of the editors' nationalist ambitions than are the national credentials of the contributors. The editors state their case in a variety of ways. At one point,[27] "Canadian theorists and political philosophers" are said to be "recognized internationally for their unique contributions to normative debates about citizenship, multiculturalism, and nationalism"; at another,[28] they are said to "have become more identifiably Canadian to their international readership"; and at still another,[29] they are ranked as "unmistakingly prominent in theoretical debates concerning multiculturalism and group rights" and "at the forefront in normative debates on issues related to nationalism." However the matter is put, the point is plain: according to the editors, there is something special and distinctive going on in Canada, and the essays collected in the present volume are the evidence. But the evidence turns out to be thin indeed. Most of the essays are not directed towards the matters the editors identify as the grist of Canadian political reflection; and few of them, as the editors admit,[30] are otherwise "identifiably Canadian."[31] And unless we are to take these absences as

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23 Besides the University of Toronto, these contributors hail from Brock (one), Laval (one), McGill (one), Queens (two), Waterloo (one), Université de Montréal (one), and Université du Québec a Montréal (one).

24 *Supra* note 1 at 3.

25 *Ibid.*

26 The editors appear conflicted about the measure proper to their choices. At one point, they claim to have included "most of the leading Canadian political thinkers" (*ibid.* at 2) and appear to be relying on merit *simpliciter*. However, since they then state that they "tried, imperfectly, to represent regional and cultural diversity across Canada" (*ibid.*), I shall here decline the contest of names that their claim of merit fairly begs. Suffice it to say that their bias towards theorists attached to institutions in Central Canada, and to the University of Toronto particularly, defeats not just their regional claim but, in my view, their merit claim as well.

27 *Ibid.* at 2.

28 *Ibid.* at 3-4.

29 *Ibid.* at 9.

30 *Ibid.* at 4 ("a relatively small portion of the book" is devoted to "the meaning and significance of [the contributors'] Canadian cultural context").

31 *Ibid.* at 3.

themselves proof of Canadianness — a view remarkably that the editors very nearly endorse[32] — then we cannot take seriously, at least as judged against the content of the collection, the editors' nationalist claims.

But, in that case, what then may be profitably said of the collection? Two things I think. First, the nationalist carapace with which it is burdened is mostly "hype."[33] Though it is true that two Canadians[34] are especially prominent abroad for their scholarship on matters relating to multiculturalism, group rights, and so on, the nature and reception of their scholarship provides no ground for characterizing, in any useful fashion at all, the state and status of political theory in Canada more generally. Second, the collection is a contribution, plain and simple (and unhyphenated), to contemporary debate about the nature and requirements of liberal political morality. In consequence, its character is determined by the contours of that debate and not at all by the happenstance of authorial nationality (and less still by any self-proclaimed subnational identity).[35] The volume contains essays by revisionist liberals[36] and by liberals who would have us stand fast with liberal tradition;[37] it contains essays evincing a deeper conversation that transcends the fancy of this opposition and that advises connecting political reflection to the existential meaning and ambiguity of being human;[38] and it by and large excludes reflection on more prosaic policy matters such as distributive justice.[39]

The remainder of this review has two concerns. First, I wish to draw with more precision what I take to be the narrative structure of contemporary debates about political liberalism. I want then to sketch an argument against the turn to group identity that

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32 *Ibid.* at 4 (here the editors assess the absence of Canadian content "as a healthy sign").

33 I borrow this word from the editors who, perhaps in reappraisal of their robust claims, at the conclusion of their "Introduction" caution their Canadian colleagues not to get "carried away by ... millennium hype" and recommend instead their "accept[ing] congratulations on the current vitality of [their] intellectual discipline" (*ibid.* at 13).

34 I refer of course to Will Kymlicka and Charles Taylor, both of whom appear in this collection. In my view, the enthusiastic reception of some of Taylor's work in this regard seriously underappraises the breath, depth, and wisdom of his scholarship as a whole.

35 Though judging by the text of many of the "Notes on Contributors" (*supra* note 5) someone — either the editors or most of the contributors themselves — thought otherwise. And it must be said that much of the biographic detail provided is silly and, yes, embarrassingly self-consumed. Does any reader need to know that Edward Andrew once worked as a logger, or that James Booth's parents still reside in Montréal, or that Joseph Carens has been "happily settled" at the University of Toronto since 1985, or that Barry Cooper is "a fourth-generation Albertan" (even were it true), or that Dominique Leydet was "born and raised in Montreal" and Margaret Moore in Sudbury, ... and so on. Readers should be left to gather authorial self-conception from an author's text since it is that textual self alone which aids understanding.

36 For instance, W. Kymlicka, "The New Debate over Minority Rights" (*supra* note 1 at 159-76) [hereinafter "New Debate"]; Jennifer Nedelsky, "Citizenship and Relational Feminism" (*supra* note 5) and Dale Turner, "Vision: Towards an Understanding of Aboriginal Sovereignty" (*supra* note 5).

37 For instance, Eamonn Callan, "Self-Defeating Political Education" (*supra* note 3); Margaret Moore, "Liberal Nationalism and Multiculturalism" (*supra* note 1 at 177-93); Stephen Newman, "What Not to Do About Hate Speech: An Argument Against Censorship" (*supra* note 5); and Clifford Orwin, "Charles Taylor's Pedagogy of Recognition" (*supra* note 1 at 232-45).

38 Especially, I think, the wonderful essays by Christine Sypnowich and by Charles Taylor (*supra* note 3).

39 The contribution by Jerry Cohen, the collection's one self-identified socialist, addresses his being seduced by political theory and fails to defend his socialist position.

informs much of contemporary debate, many of the essays in the present volume included, in order to disclose the possibility of a deeper conversation through which we may reflect on our fate in political community. Happily, evidence of this conversation is also on display in this volume. I must caution, however, that I cannot here pursue at any length either of these ends. What I hope to do is to state them in a fashion that reveals the present volume as a microcosm of the promises and perils of political theory as it is presently practised in Canada and elsewhere.

III. LIBERALISM CONCEIVED AND RECONCEIVED

Political philosophy is an ineluctably moral enterprise. Its objects are the institutions proper to a rightly ordered political community, and its practice resides in formulating and defending moral arguments about the identity, structure, and significance of those political institutions and about which aspects of our lives and affairs are properly subject to guidance and control through them. So viewed, a distinction between personal and political morality inheres in the very notion of a peculiarly political philosophy.

Personal morality has as its concern what it means to lead a good life. Political morality concerns itself, not with individual good in that sense, but with the good of political community, and its objects are "the fundamental bases of political life,"[40] and not the ends of a human life well-lived. Because a community's political life exists through institutions, it falls to political morality to tell us what those institutions should be, "how [they] should be designed, [and] how people in them should act."[41] Concerning the first two matters, conceptions of political morality have minimally to: a) identify the institutions required for a community's political life; b) structure the relations between those institutions; c) set standards for the treatment of members of political community by those institutions; and d) identify when those institutions may regulate the relations between members of political community and in what fashion. The third matter concerns the institutional moralities that those institutions define for, and impose upon, their officers.

In order to satisfy these requirements a political morality must identify and expound some value (or values) that, in its view, is the proper foundation for the terms and conditions of human association in political community. Political moralities will therefore differ according to the values which they aim to serve and from which they depart; and they may be segregated according to whether they proceed from the value of equality, understood as the entitlement "to be treated with the same respect and concern as anyone else" in political community and by the institutions of political life.[42]

Political liberalism is an egalitarian political morality. The bare bones of this morality are easily stated: a rightly ordered political community a) is predicated upon the moral

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40 S.M. Shumer, "Machiavelli: Republican Politics and Its Corruption" (1979) 7:1 *Political Theory* 5 at 8.

41 T. Nagel, "Ruthlessness in Public Life" in S. Hampshire, ed., *Public and Private Morality* (Cambridge: Cambridge University Press, 1978) 75 at 90. Also published in T. Nagel, *Mortal Questions* (Cambridge: Cambridge University Press, 1979) 75-90.

42 R. Dworkin, *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1977) at 227.

equality of individual persons; b) requires that individuals be treated equally despite differences of power, affiliation, and attribution; and c) authorizes the state, minimally, to guarantee equality by enforcing negative tolerance through a regime of rights, which, among other things, institutionalizes the distinction between the public and the private and subjects the state itself to the requirements of political morality. In this way, liberal political morality commits liberal communities, first and foremost, to the Rule of Law and to the institutions of governance that it defines, namely, the separation of powers and public and private law rights. The Rule of Law is the institutional core of liberal governance because absent the practice of constraining power of and through the state, which it alone authorizes, the practices of political community will inevitably acquiesce to power and violate equal treatment.

Liberal political morality so understood is overwhelmingly[43] the normative venue for contemporary debate among political philosophers and theorists. However, in order to disclose its narrative structure and nuance, it will be necessary to pause on the place of difference and of autonomy and authenticity in the moral edifice of political liberalism.

Political liberalism associates moral equality with the constraint of power. The calculation to this result is simple enough. First, if individuals are, as persons, equal despite the many differences that obtain between them, then they are due equal concern and respect by the institutions of communal life. Second, to treat individuals in that way is to treat them as beings who own and are responsible for their own lives. Third, it then falls to political community to secure for its members, as a condition of treating them equally, personal autonomy. Finally, because autonomy is lost when others, individually or collectively, interfere with an individual's moral independence, treating persons equally requires that the power to interfere be constrained by the institutions of political community.

Now this calculation places difference and authenticity beyond the reach of the institutions of political life. This is transparently the case as regards difference just because equality resides in the denial of the relevance of difference to the treatment individuals are due and more generally to the nature and practices of the institutions of communal life. Consequently, under the liberal view, equality means the entitlement to be free from discrimination on account of difference. But, if equality for the purposes of politics resides in this fashion in our status as persons *simpliciter*, and if that status requires what Berlin termed the negative liberty[44] to be free from interference from others on account of our differences from them, then — as he also thought[45] — the positive liberty authentically to be whatever it is that we wish to be (or whatever it is that we think we are) is also removed from the proper conduct of politics. This must be so

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43 That is to say, other venues — marxism particularly but also of course various nationalisms — have largely disappeared from contemporary political narrative. Perhaps for this reason, class is no longer used as a unit of analysis even among those who would revise liberalism to recognize difference (and this despite the fact that difference theorists are, in my view, marxists methodologically).

44 I. Berlin, "Two Concepts of Liberty" in *Four Essays on Liberty* (Oxford: Oxford University Press, 1969) 118 at 122.

45 *Ibid.* at 131ff.

because otherwise the prohibition against counting difference would become porous at best and a nullity at worst.

Traditionally, liberals have used the public/private distinction to express and explain the exclusion of difference and authenticity from the purview of politics. The public realm is the realm of political morality, political society, the state, law, equal citizenship, and justice. The private realm, in contrast, is the realm of personal morality, civil society, free association, difference, authenticity, and moral independence from, among other things, political interference. The public/private distinction, that is, embodies the liberal commitment to save private authenticity and difference by confining politics to equality and autonomy.

More than anything else, contemporary debate is about whether this commitment limits politics absolutely or whether it may be refined to account for difference and authenticity in ways that yet preserve liberal equality and freedom. The contemporary debate between traditional liberals and what I am here calling revisionist liberals thus remains a liberal debate. What is at issue is not rescinding liberal commitments, but their perfection: does the standing view of the requirements of liberal equality permit a revision that, according to its proponents, will somehow perfect our politics?

Revisionist liberalism — or if you like, "liberal culturalism"[46] — claims that certain "ethnocultural" minorities[47] have suffered under standing arrangements, not because they have been the objects of equality-denying and liberty-diminishing discrimination, but because denial of their difference has diminished their authenticity in ways which diminish both their equality and liberty. That is to say, the revisionist claim is *not* that the political subject is racially or religiously or otherwise differentiated in ways that produce differential rights. All liberals, traditional and cultural alike, abhor inequality in that gross sense; and where it continues to exist — as, for instance, where the political subject is rendered heterosexually to diminish the rights of gays and lesbians — they will unite as liberals in the name of equality and against discrimination. What is distinctive about liberal culturalism rather is the claim that, in certain instances, failure to differentiate the political subject to account for the difference of national minorities and multicultural immigrants will work injustice. And it is on that specific ground that revisionist liberals prescribe group rights to protect those minorities "against the larger society."[48]

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46 So termed by Kymlicka in "New Debate," *supra* note 36 at 162.

47 Liberal culturalism distinguishes between two categories of minorities, non-immigrant national minorities (for instance, in the Canadian context, Quebécois and Aboriginals) and multicultural immigrant minorities. It also distinguishes between the rights proper to each sort of group. For instance, in the case of national minorities, "ethnocultural justice" may require rights associated with nation-building (rights to territory and language and rights to representation in majority institutions). In the case of immigrant multicultural groups, justice is served by fair terms of integration: *ibid.* at 166-69.

48 *Ibid.* at 163. For the full brew of Kymlicka's theory of group rights, see his *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995). See especially chapter 3.

Will Kymlicka is the leading and most articulate proponent of this view.[49] According to Kymlicka, "at least certain forms of public recognition and support for [minority] language, practices, and identities are not only consistent with basic liberal democratic principles, but [are] indeed ... required by them."[50] This revisionist argument descends from two proposals, namely, that ethnocultural diversity is a constitutive feature of societies such as ours[51] and that diversity of that kind carries real significance for our political arrangements. The significance is calculated in two ways, each of which intends to ground a theory of "ethnocultural justice."[52] Revisionists first make the positive claim that "there are compelling interests[53] related to culture and identity that are fully consistent with liberal principles of freedom and equality and that justify granting special rights to minorities."[54] Revisionists then claim, in opposition to a view supposedly held by traditional liberals, that the liberal state is not neutral as between cultures in the same fashion that it is admittedly neutral as between religions, genders, and races and that this bias works an injustice against ethnocultural groups that group rights alone can redeem.[55]

It is not my present purpose to contest either of these arguments because my dissent from revisionist views of the requirements of liberal politics concerns other matters. However, an abundance of arguments are available. For instance, the claim that cultural diversity is constitutive of liberal societies is calculated in a way that appears to obviate the need for ethnocultural rights. If the diversity that characterizes "modern liberal democrac[ies] ... is the inevitable result of the rights and freedoms guaranteed to liberal citizens,"[56] then whence the need for rights "to protect" diversity "from the impact of external pressures."[57] As regards the metronome of bias, recall that revisionists do not argue,[58] as have some feminists[59] and others,[60] that the liberal political-legal subject is inevitably biased against difference. Their argument rather is that the liberal state — or

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49 In addition to his essay in this volume (*ibid.*), see W. Kymlicka & W. Norman, eds., *Citizenship in Diverse Societies* (Oxford: Oxford University Press, 2000); W. Kymlicka, *Finding Our Way: Rethinking Ethnocultural Relations in Canada* (Toronto: Oxford University Press, 1998); I. Shapiro & W. Kymlicka, eds., *Ethnicity and Group Rights, NOMOS XXXIX* (New York: New York University Press, 1997); W. Kymlicka, *States, Nations, and Cultures* (Assen: Van Gorcum, 1997); W. Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, *ibid.*; W. Kymlicka, ed., *The Rights of Minority Cultures* (Oxford: Oxford University Press, 1995); and W. Kymlicka, *Liberalism, Community, and Culture* (Oxford: Clarendon Press, 1989).

50 "New Debate," *ibid.* at 162.

51 *Ibid.* at 164.

52 *Ibid.* at 169.

53 Namely, "the role of cultural membership in securing freedom and self-respect": *ibid.* at 164.

54 *Ibid.* at 162.

55 *Ibid.* at 163-69. This argument is embraced by a number of other contributors. See, for example, Moore, *supra* note 37 at 185ff.

56 "New Debate," *ibid.* at 164.

57 *Ibid.* at 163.

58 Kymlicka, for instance, confines his claim of state bias to "a common language and social institutions" and thereby exempts "religious beliefs, family customs [and] personal lifestyles" (*ibid.* at 164).

59 See, for example, C. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, Mass.: Harvard University Press, 1989). For an interesting response to one form of this argument, see L.C. McClain, "Atomistic Man Revisted: Liberalism, Connection, and Feminist Jurisprudence" (1992) 65 S. Cal. L. Rev. 1171.

60 See, for instance, U.S. Mehta, "Liberal Strategies of Exclusion" (1990) 18 *Politics and Society* 427.

perhaps more precisely its legislative and executive branches[61] — is biased inasmuch as it is inevitably committed to what Kymlicka calls "nation-building."[62] Nation-building takes shape in policies that encourage "citizens to view their life chances as tied up with participation in common societal institutions that operate in [a common] language [or languages]" and nurture "a national identity defined in part by common membership in a societal culture."[63] Because "all liberal democracies have adopted" national-building,[64] the liberal claim to "ethnocultural neutrality" is revealed as a sham.[65] But surely no liberal has ever denied that the liberal state imposes common institutions, nor does anything of consequence follow from that being the case. Liberalism is after all a political morality, and the moral abstinence that properly resides at its core does not extend, nor can it extend, to the institutions of governance and the conditions of their effective practice. That diversity is indeed "constrained by linguistic and institutional cohesion" required by a common political life is true but banally so because constraint of that sort is a condition of doing politics at all, and on no coherent view of governance can it be rendered as a harm that warrants rights protection.

The boundaries of revisionist and traditional liberalism are not drawn by trifles such as these. What divides them rather is their very different attitudes towards the place of authenticity in our political arrangements. Both clearly think authenticity is a political value. But traditional liberals think that politics serves authenticity only indirectly through the purchase of personal autonomy, the achievement of which *is* the business of politics. This calculation doesn't just subordinate authenticity to autonomy politically; it makes of it a private virtue with a specific character. For traditional liberals, authenticity attaches to individuals as persons and not as citizens; and, though politics saves safe their freedom to be authentic, it is individual experimentation and experience, not political action, that is the stuff of authentic life.[66] Under this view of matters, nothing follows from the brute fact that the raw matter of those experiments and experiences is individual encounters with standing cultural history. The conditions of liberty, made real by private and public rights, makes history in that sense something less than an iron cage and something more beneficent than a nightmare. Though history may never be transcended, liberty makes it something subject to choice by individuals and, in any of its cultural particulars, something that may be renounced by them.

Revisionists take a decidedly different view. As regards those groups that qualify — and that matter turns on whatever meter of difference is used to construct minority status — authenticity is directly a concern of politics and must be addressed through the

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61 This caveat appears proper because group rights are intended to protect ethnocultural groups against "the economic or political decisions of the larger society" ("New Debate," *supra* note 36 at 163).

62 *Ibid.* at 165.

63 *Ibid.*

64 *Ibid.*

65 *Ibid.* at 163.

66 This prohibition against authenticity in politics, in my view, takes its highest form in Rawls' veil of ignorance. The imaginary parties to the constitutive political act are prevented knowledge of who they are *to be* in political society just because identity in that sense is not a proper object of politics. Rawls instead confines their deliberations to political morality, which is to say, to matters concerning how political society should *act*. See J. Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971) c. 3.

provision of "minority rights."[67] Where traditional liberals value authenticity in a weak sense that associates the public freedom to be authentic with the private choices of individual persons, revisionist liberals value authenticity in a strong sense that associates that liberty with public protection of standing cultural arrangements. That good liberals like Kymlicka would forbid groups rights against their own members and, in that way, preserve the rights of members *as persons* to negotiate their own lives does not change the place revisionists would have us concede to authenticity in our politics.[68] What was once secondary and private would become, in the cases that qualify, primary and public; and in those cases the subject of authenticity would cease to be the person and would become instead the citizen as group member.

The significance of the revisionist proposal, and of its reception into political discourse, cannot, in my view, be overestimated. Revisionists are recommending that we reimagine the limits of politics. No longer should authenticity be forbidden the state, and no longer therefore should it constitute a barrier to political action. This is to change fundamentally the notion of politics by which liberal communities have defined themselves and governed their subjects.

In the next section, I want to argue that the contemporary liaison of liberal political discourse with authenticity in the strong revisionist sense is a dangerous liaison indeed. Not only does it blind us to the dangers that inhere in politics, but it also blinds us from the point of our doing politics at all.

IV. FATE AND FREEDOM

Revisionists take an altogether happy view of the consequences of their proposal. "Minority rights," we are told, will "supplement, rather than diminish, individual freedom and equality."[69] This is to claim much: that the introduction of a collective legal and political subject will not diminish liberal commitment to the primacy of the individual; and that the innovation of collective rights will not compromise the liberal practices of individual equality and liberty.

Many arguments are available against revisionist optimism.[70] For instance, using political prudence as our guide, we could reasonably argue that special rights for minorities might so rent the social integration and solidarity necessary for political life that contest, resentment, and recrimination alone might remain our politics. I wish here neither to offer nor to criticize those who have tendered such an argument.[71] My interest

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67 "New Debate," *supra* note 36 at 162.

68 *Ibid.* at 163. Not all revisionists, however, are as liberal as he because, as he himself puts it, some of them "argue that some forms of internal restrictions can be accepted, so long as group members have an effective right of exit from the group" (*ibid.*).

69 *Ibid.* at 164.

70 Happily, Kymlicka acknowledges most of these arguments: see *ibid.* at 162-63, 169-71.

71 See, for instance, P. Birnbaum, "From Multiculturalism to Nationalism" (1996) 24 *Political Theory* 33; S.P. Mohanty, "Us and Them: On the Philosophical Bases of Political Criticism" (1989) 2:2 Yale J. of Criticism 1; A.M. Schlesinger, Jr., *The Disuniting of America: Reflections on a Multicultural Society* (New York: W.W. Norton, 1992); and, in the present collection, Moore, *supra* note 37 at 178, 186-88.

lies in another direction. In the place of the speculation about social consequences that attend the disintegration argument, I want to sketch an argument that sounds in the very nature of liberal political morality. It is this argument, I believe, that discloses the first obvious danger of authenticity as a political purpose and points us to the second deeper concern to which I have previously referred.

At one point in his essay, Kymlicka acknowledges "the eroding effects of individual autonomy" on ethnocultural communities.[72] At another, he acknowledges that "the commitment to individual autonomy is deep and wide in modern societies, crossing ethnic, linguistic, and religious lines."[73] Later on in the piece, he claims that "modern liberal democratic" societies are "inevitably pluralistic," and he then identifies "such diversity [as] the inevitable result of the rights and freedoms guaranteed to liberal citizens."[74] He is, of course, right in all of this. The rights of self-determination provided by liberal political institutions, and centrally by those authorized by the Rule of Law, subvert power in all its forms, including especially its collective cultural forms. Since my first argument against liberal revisionism depends upon it, I want briefly to draw out this association between liberty and the subversion of power. I shall confine my argument to the Rule of Law, though its terms apply equally to all liberal institutions.[75]

The Rule of Law declares *the priority of justice over power*. Now, neither this declaration nor the practices that it informs is in any fashion utopian. It does not fall to liberal political community to cleanse the world of power, though of course there have been political communities and theories whose aim that has been. Rather, by insisting on the primacy of rights owed to individuals, political communities governed by the Rule of Law seek only to constrain power from having its way unopposed in the world and over our lives. Yet, in inhibiting power, the Rule of Law has an awful and immense influence on power. By dividing the powers of the state, by institutionalizing a free and independent judiciary, by installing a regime of public and private rights to constrain public and private power, and by nurturing a sense of justice and the vocabulary of rights, liberal political communities become communities in which power is *destabilized*.

The nature of this subversion can be stated with precision. First, the Rule of Law proceeds from a premise that, without more, subverts power. Power expresses itself in abstractions and consolidates in collectivities. Whatever their vocabulary — nation, race, gender, ethnicity, class — abstractions seek, and depend upon, "the leaching away of the person" into some collective.[76] Liberal law, in contrast, is first and last a commitment to the moral and political primacy of the individual. Liberal practice does not leach away the individual in service to power, but instead it corrodes the collectivities and abstractions in which power takes shape and resides in order to serve and preserve the individual. But

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72 "New Debate," *supra* note 36 at 160.

73 *Ibid.* at 161.

74 *Ibid.* at 164.

75 The following analysis is drawn from my *On Coming to Law: An Introduction to Law in Liberal Democratic Societies* (Toronto: Butterworths, 2001). Remarkably, in my view, Christine Sypnowich (*supra* note 3) is the only contributor to the present volume who places the Rule of Law at the heart of liberal politics.

76 J. Vining, *From Newton's Sleep* (Princeton: Princeton University Press, 1995) at 208.

there is more to it than even this. Our law does not just serve each of us as individuals. In a very important sense, it constitutes our identity as persons. Law "contribute[s] to the self-identity" of all who are subject to its rule.[77] The Rule of Law is a rule of rights, and it weaves social relations from a yarn of insistence on the irreducible and universal significance of individuals.

Second, our law requires power to respond in terms other than power itself. Law in this fashion "introduces a breach in the unity of power."[78] No matter the extralegal powers of the parties, it falls to the party making a claim to make it out at law and to the party defending against a claim to respond in law. Liberal law is, in this sense, "force available to all," and as such, it diminishes the force that beyond the law is a fellow of social and political power.[79]

Third, rights criticize the distribution of power. This is so, not because rights protect us from power, though they do, but more fundamentally because rights constitute a commitment to side with those who are vulnerable to power. There is nothing starry-eyed about this, nor does it prejudice liberal law. Siding with the vulnerable, rather, inheres in the very notion of rights. Rights approach power with deep suspicion because power tends to deny the sharing of power that rights demand. Rights are, in this sense, a practice of suspicion: to believe in rights is to believe that power needs always to be justified against the requirements of equality. We are each of us of course vulnerable to power. And when power seeks to have its way with us, our rights at law require that power account for itself in the language of rights.

That liberal law is for these reasons subversive means everything to liberal political community. It makes such a community one whose practice it is to unsettle social order. Indeed, the moral point of liberal political association is to keep open and fluid the terms and conditions under which individual men and women live their lives. It is true, but not sufficient, to say that liberal community works this fluidity through individual autonomy guaranteed through rights. Autonomy made real in this way reimagines the force and fact of history. For individuals in liberal community, history becomes choice, and culture becomes for them an act of free association that depends upon, and expresses, their autonomy. Thus descends the alchemy of liberty: "All that is solid melts into air" because freedom once rendered real against history corrodes all.[80]

The promise and possibility of fluidity in individual lives, however, comes at a price which is not negotiable. Liberal political community must to be both committed to politics and modest and moderate in its politics. The first payment is made good with the community's pledging its politics to moral equality. Liberal political community must "feel ... a unity between all citizens — real and not the factitious product of propaganda

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77 E.P. Thompson, *The Poverty of Theory or An Orrery of Errors* (London: Merlin, 1978) at 288.

78 T. Todorov, *On Human Diversity*, trans. C. Porter (Cambridge, Mass.: Harvard University Press, 1993) at 374.

79 *Ibid.*

80 K. Marx & F. Engels, "Manifesto of the Communist Party" in E. Kamenka, *The Portable Karl Marx* (New York: Penguin, 1983) 203 at 207. See also M. Berman, *All That Is Solid Melts Into Air: The Experience of Modernity* (New York: Penguin, 1982).

— which recognizes their common fate and their common aspirations."[81] The second payment resides in acknowledging the limits of politics. Not every human good is properly a political good, and not every injustice may be remedied through political institutions. On the contrary, on the liberal view, politics is a "negative virtue" that is defined as much by what it excludes as by the autonomy that it serves.[82]

Revisionist liberalism seeks to convince that the costs of civilized life are less than we thought. It would reduce the price of equality by attaching to the individual political subject, a collective subject with rights available only to some. And, in this fashion, it would expand the moral space of politics to allow for state-sponsored practices aimed at improving liberal society. In these two bargains resides the first danger of liberal revisionism.

Judith Shklar reminded us that pluralism (or as she might now say, diversity) is a consequence and not a purpose of liberal politics.[83] In her view, liberal politics "has only one overriding aim: to secure the political conditions that are necessary for the exercise of personal freedom."[84] On these grounds, she proposed a proper liberalism to be a "liberalism of fear" whose subjects are "the weak and the powerful" and whose concern is "freedom from the abuse of power and intimidation."[85] According to Shklar, liberal politics arises from an "apprehension"[86] about the way of power in the world, from "a *summum malum*, which all of us know and would avoid if only we could. That evil is cruelty and the fear that it inspires, and the very fear of fear itself."[87] I mention Shklar not because I think she is right, though I do, but because, in my view, she captures something fundamental to our politics, namely, that it is fraught with dangers to persons. It is the wisdom of liberalism as "a political doctrine"[88] that it acknowledges those dangers and attempts to manage them through a confinement of political purpose and practice. It is a weakness of revisionism that it blinds us to them and replaces apprehension with optimism and limitation with "ideas of social improvement."[89] And in this, it makes us forget that "when justice needs to be enforced and is enforced, the scene is not one of harmony; some ambitions are frustrated. A barrier is erected, an impossibility declared."[90]

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81 L. Hand, *The Spirit of Liberty*, 3d ed. (New York: Knopf, 1960) at 164.

82 S. Hampshire, *Innocence and Experience* (Cambridge, Mass.: Harvard University Press, 1989) at 68.

83 J. Shklar, "The Liberalism of Fear" in N.L. Rosenblum, ed., *Liberalism and the Moral Life* (Cambridge, Mass.: Harvard University Press, 1989) 21 at 29. For commentary on Shklar's views, see B. Yack, ed., *Liberalism without Illusions: Essays on the Liberal Theory and the Political Vision of Judith N. Shklar* (Chicago: University of Chicago Press, 1996). For an attempt to accommodate revisionism with Shklar's liberalism, see J.T. Levy, *The Multiculturalism of Fear* (Oxford: Oxford University Press, 2000).

84 Shklar, *ibid.* at 21.

85 *Ibid.* at 27.

86 *Ibid.*

87 *Ibid.* at 29.

88 As opposed to "a philosophy of life" (*ibid.* at 21).

89 *Supra* note 82 at 68.

90 *Ibid.* at 72.

In the passage cited earlier,[91] Learned Hand counsels that the legal equality which our politics constructs between persons descends from an acknowledgement of "their common fate." In her essay in the present volume,[92] Christine Sypnowich finds fellowship with Hand. In answer to various revisionist impulses, Sypnowich seeks to reconnect liberal political philosophy and practice to what she terms "a sense of finitude and the limitations of the human condition."[93] In her view, it is just our condition, our finitude and fallibility, that "renders both politics and political theory necessary."[94] And only once we acknowledge both are we "prepared to embark upon a quest for equality and the public good on behalf of — and in honour of — real-life individual persons."[95] Otherwise, she fears, we will fall prey to a "utopianism"[96] that will let loose our politics from the "restraint and caution"[97] that alone make its subjects visible and valuable. According to Sypnowich, we must acknowledge that no Parousia of "full transparency [or] full community" awaits;[98] we must "temper the ambitions of our ideals";[99] and we must therefore recommit ourselves to the "politics of restraint" — to the "limitations of power and authority" — made possible by the institutional arrangements of the Rule of Law.[100]

I agree. In my view, revisionist enthusiasm about the possibilities of politics signals a singular blindness to fate as the source and governor of politics. We do politics not only because we are beings with others with whom we must somehow get along, but because *like them* we are beings forced into history, we know not why, and *like them* we are fated finally to death, we know not when, and before then, to fallibility and insecurity in our lives and affairs. We do politics, that is, not merely to make life possible, but to encounter questions about its meaning. In consequence, politics for us is something more than and different from a *modus vivendi* by which we negotiate our lives with others. Rather, it is a practice in which we address others and ourselves and encounter the complex otherness of being human, which, though it is revealed by it, exceeds the political. Revisionism disconnects our politics from this, its existential source. And it is this disconnection that accounts for both its ambition and what I take to be its shallow and tidy view of the human situation. But its sins do not end there: by sheltering us from the non-political questions that politics, at least under present circumstances, alone can reveal, liberal revisionism cheapens our lives.

In his contribution,[101] Charles Taylor offers an account of modern cultural practices, including politics, as a never-fulfilled engagement with the transcendent. According to Taylor, "the dominant trend" of our culture "has been towards the denial of transcendence," understood as a denial that "human life finds any point beyond itself."[102]

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91 *Supra* note 81 and accompanying text.
92 *Supra* note 3.
93 *Ibid.* at 129.
94 *Ibid.* at 127.
95 *Ibid.*
96 *Ibid.*
97 *Ibid.* at 128.
98 *Ibid.*
99 *Ibid.* at 129.
100 *Ibid.* at 128.
101 *Supra* note 3.
102 *Ibid.* at 386.

This orientation expresses itself in two ways: in "an exclusive humanism,"[103] according to which "life, flourishing, driving back the frontiers of death and suffering, is of supreme value";[104] and in "a heightened sense of self" which takes shape in "an ethic of 'authenticity'"[105] and informs "a politics of identity-recognition."[106] Yet our culture's "active, practical question[ing] [of] the point of life" also contemplates the transcendent.[107] The notion that "the point of things is not exhausted by life, the fullness of life, even the goodness of life"[108] survives in "a sense of being confined, diminished, by the acknowledgement of [the] primacy" of life.[109] This cultural moment calls us to "a change of identity" and to "a radical decentring of the self."[110] Taylor thinks that our culture also embraces forms of symmetry between the moments of denial, which leads to the occupation with life and with identity, and renunciation, which leads to "the positing of a point to life beyond life"[111] and the "opening ... to a change in identity."[112]

Revisionism proposes to attach to the politics of autonomy a politics of authenticity constructed out of the contingencies of ethnocultural identity. In this, it offers closure, both for minorities whom it would serve and for the majority against which it seeks to protect them. Revisionism indeed incites closure among minorities. Through the award of rights the passive identity and unity of culture become a cause for political and social mobilization. And with motive and mobilization, cultural patrimony becomes political fate that no patronizing nod to rights of exit can redeem.[113] On the other hand, revisionism instructs the majority that it too is a mere cultural form distinguished only by the chance of its empowerment. And with this, it can be argued, it fairly begs the "us" to deny its unity with the "them."[114] As regards neither, is there instruction on existential fate, on the unity of origin, practice, and destination which alone nourishes and defines our freedom. The revised liberal polity opens none of us to the call of renunciation and transcendence; and because such openness is the sole solidarity available to us,[115] it can give us no cause to experience liberty through experiments in our selfhood. Simply, the faux fate of cultural membership nourishes nothing. It would enervate our politics and our spirits by confining the possibilities which are the stuff of lives lived in liberty. Deaf to the call of change and blind to the questions which motivate, define, and limit politics, the unhappy subjects of cultural liberalism, "us" and "them" alike, would lead lives cheapened and coarsened by a present solidified through the manufacture of politics.

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103 *Ibid.* at 387.
104 *Ibid.* at 391.
105 *Ibid.*
106 C. Taylor, *The Malaise of Modernity* (Concord, Ont.: Anansi, 1991) at 51.
107 Taylor, *supra* note 3 at 387.
108 *Ibid.*
109 *Ibid.* at 394.
110 *Ibid.* at 387.
111 *Ibid.* at 390.
112 *Ibid.* at 388.
113 I refer to Kymlicka, *supra* note 36 at 163.
114 See Mohanty, *supra* note 71.
115 About which see A. Lingis, *The Community of Those Who Have Nothing In Common* (Bloomington: Indiana University Press, 1994).

V. CONCLUSION

Liberal institutions are fragile. In the final analysis, their health, indeed their survival, depends upon the convictions of their officers and their subjects. Intellectuals occupy a special place among the subjects of liberal polity. Some time ago, John Hallowell pointed to "a mutual dependence and a reciprocal influence between ideas and institutions, between theory and practice, between ideologies and practical politics."[116] He was right and wise in this. Liberal institutions rely in a special way on the liberal convictions of the intellectuals whose ideas will either provide them nourishment or else sap their vitality.

We know from the barbarous affairs in Europe in the 1930s and '40s of "the rapidity and completeness with which liberal institutions" can be "destroyed."[117] We know too that then "liberalism was not murdered, but ... committed suicide."[118] And we know that intellectuals were the handmaids of this self-destruction. Now, these of course are different times, and though there are some who think that political philosophy has failed in its obligation to respond to the collapse of European liberalism,[119] my intention in this brief conclusion is not to pursue that matter or to draw historical or theoretical comparisons between that period and our own. I want instead merely to proceed from what I take to be that period's bequest to political theorists: namely, that so very much depends upon their political convictions and the ideas that those convictions compel.

Convictions, of course, must themselves be nourished, and in order to sustain institutions they must also harden into habits. In a happy turn of phrase, Francis Allen identifies the convictions necessary to support liberal institutions, at least by their officers, as "habits of legality," by which he means a habituated and practical reverence for the requirements of legal equality and political and personal freedom.[120] In a moment, I want to suggest that the "habits of legality" so understood are required as well of liberal political theorists and philosophers. But to situate that proposal, there is first the notion that such habits are now beyond us.

Convictions express faith, faith in the point and possibility of a practice. There are some however who claim that faith in the point and possibility of our political practices is now beyond us. Harold Berman, for one, thinks that the faith required for liberal law and politics is irretrievably lost and that the liberal project is, in consequence, at its end historically. He puts his pessimism thus:

> The crisis of the Western legal tradition is not merely a crisis in legal philosophy but also a crisis in law itself. Legal philosophers have always debated, and presumably always will debate, whether law is founded in reason and morality or whether it is only the will of the political ruler. It is not necessary to

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116 J.H. Hallowell, *The Decline of Liberalism As An Ideology* (London: Kegan Paul, Trench, Trubner & Co., 1946) at x.

117 *Ibid.* at ix.

118 *Ibid.*

119 See, for example, N. Geras, *The Contract of Mutual Indifference: Political Philosophy after the Holocaust* (London: Verso, 1998).

120 F.A. Allen, *The Habits of Legality: Criminal Justice and the Rule of Law* (New York: Oxford University Press, 1996).

> resolve that debate in order to conclude that as a matter of historical fact the legal systems of all the nations that are the heirs to the Western legal tradition have been rooted in certain beliefs or postulates: that is, the legal systems themselves have presupposed the validity of those beliefs. Today those beliefs or postulates — such as the structural integrity of law, its continuity, its religious roots, its transcendent qualities — are rapidly disappearing, not only from the minds of philosophers, not only from the minds of lawmakers, judges, lawyers, law teachers, and other members of the legal profession, but from the consciousness of the vast majority of citizens, the people as a whole; and more than that, they are disappearing from the law itself. The law is becoming more fragmented, more subjective, geared more to expediency and less to morality, concerned more with immediate consequences and less with consistency and continuity. Thus the historical soil of the Western legal tradition is being washed away ...., and the tradition itself is threatened with collapse.[121]

Berman's best wish for our tradition is that it "will perhaps serve as a kind of ancient history, a new 'corpus juris Romani,'" from which "new forms of legal order" will seek "guidance."[122] His diagnosis of the political present thus concludes with the frail hope that the future will somehow, sometime, honour the past.

Berman is too hasty. The crisis of faith in our institutions may indeed be very deep, and it may already have had very far reaching effect, but ours is not yet a politics of despair. There remains in our institutions pockets of devotion, and, as the present volume illustrates, among our intellectuals, the intention very much remains to contribute to the traditions of our politics. The problem is not an absence of faith; our crisis instead concerns the habits of mind and character necessary to make good our faith.

In my view, the contemporary debate between autonomy liberals and authenticity liberals illustrates this problem of disciplined belief. Both sides act on distinctly liberal convictions. Yet, generally, neither side exhibits an habituated devotion to our traditions. Authenticity liberals act in the name of a perfected equality, yet judged against the requirements of our traditions, their proposals offer no coherent theory of governance. Autonomy liberals, on the other hand, appear to act on a runic version of our past which mistakes defence for devotion. In the place of perfectionism and reaction, what is required is empathetic interrogation of our tradition in order to lay bare the faith required to preserve the character of our politics into the future. Happily, a number of the essays in this collection do just that, and on that account alone the collection warrants our time and deserves our gratitude.

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121 H.J. Berman, "Religious Foundations of Law in the West: An Historical Perspective" (1983) 1 J.L. & Rel. 3 at 41-42.

122 *Ibid.* at 43.