Part II

Multiculturalism and the Principles of Democracy
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Chapter 5
Constitutionalism and Multiculturalism
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Hath not a Jew eyes? hath not a Jew hands, organs, dEMENTions, sensEs, affEctions, passions, fed with the same foode, hurt with the same weapons, subject to the same diseases, healed by the same meanes, warmed and cooled by the same Winter and Sommer as a Christian is; if you pricke us doe we not bleede? If you tickle us, doe we not laugh? if you poison us doe we not die? and if you wrong us shall we not revenge? if we are like you in the rest, we will resemble you in that.
— William Shakespeare, The Merchant of Venice

Alexis de Tocqueville, writing in the 1830s, very much feared that liberty and equality would be at war with each other; today there is a tendency among some intellectuals to think that peace between them can be achieved by combining them under the label cultural pluralism. Cultural pluralism implies equality, we are told, and equality implies freedom for the various elements (mainly religious opinions and ethnic groups) being combined. It also implies—indeed, it is said to require—a “nonideological state,” or an ideologically neutral state; and it is only a short step from this to say that such a state is obliged to promote “multiculturalism” by making it a part, in fact the organizing principle, of the public school curriculum, for example. In such a curriculum all “cultures” are to be treated as equal, or as equally deserving of respect. But there is a question as to whether multiculturalism is compatible with the principles of the Constitution and, therefore, capable of providing a foundation for what is said to be the cultural pluralism we have long enjoyed in this country. Whether it is compatible depends on what is meant by culture.

Although not the first to use the term in its modern sense, Thomas Carlyle (in the 1860s) spoke of culture as the body of arts and learning separate from the “work” of society. This definition has the merit of reflecting (and that very
clearly) the problem that gave rise to the idea of culture and the attempt to define it in the early nineteenth century. Carlyle was preceded by Coleridge, Keats, Shelley, and Wordsworth, who, in his role as poet, saw himself as an “upholder of culture” in a world that disdained it; and by John Stuart Mill, for whom culture meant the qualities and faculties that characterize our humanity, or those aspects of humanity that he foresaw would be missing in a utilitarian society. Carlyle was followed by Matthew Arnold, for whom culture meant not only literary pursuits but—in a sentence that became familiar if not famous—the pursuit of “the best which has been thought and said in the world.”

What these critics had in common was a concern for the sublime (or the aesthetic) and a complaint against the modern democratic and commercial society in which it had no firm place. The founders of this modern society—say, John Locke and Adam Smith—promised to provide for the needs of the body (and in this they surely succeeded); culture was intended to provide for the needs of the soul—Coleridge, for example, made this the business of his “clerisy.” As Allan Bloom put it, “only when the true ends of society have nothing to do with the sublime does ‘culture’ become necessary as a veneer to cover the void.”

The proponents of multiculturalism have something different in mind when they speak of culture. Introducing Charles Taylor’s essay on the subject, political scientist Arny Gutmann says that public institutions, “including government agencies, schools, and liberal arts colleges and universities, have come under severe criticism these days for failing to recognize or respect the particular cultural identities of citizens.” She mentions specifically African Americans, Asian Americans, Native Americans, and women. Culture here seems to mean not “the best which has been thought or said in the world,” which, as such, might serve (as Shakespeare’s plays and poems have served) to civilize and, in some way, even to unify peoples; rather, culture here seems to mean the different customs, ways, mores, or morals/manners—moeurs, as Tocqueville called them—of peoples, groups, and (if we are to believe Amy Gutmann) even the sexes. Thus, in the body of his essay, Taylor refers specifically to the French Canadians, whose moeurs are not those of the English Canadians and for which the former demand recognition. Demand it and apparently deserve it, not because their culture is superior in Matthew Arnold’s sense to that of the English Canadians but simply because it is theirs.

No country has done more to recognize the diversity of morals/manners than Canada; it even has a (federal) Department of Multiculturalism and
Citizenship and provides generous subsidies for "ethnic" music, painting, dance, drama, museums, etc." Initiated in the 1970s by Prime Minister Pierre Elliott Trudeau, the department had the purpose "to add to the cultural richness of Canadian life by assisting the smaller ethnic groups [that is, groups other than the English and French Canadians] to maintain certain of their traditional cultural forms and a distinct sense of identity, if such was their desire." These diverse groups were to form the Canadian "mosaic." But it is one thing to provide subsidies for folk-dancing groups and ethnic cooking and quite another to allow these groups, without exception, to retain their "cultural identities." The feasibility of the latter program would surely depend on what it is in their culture that they want to retain. After all, to the extent that they allow some groups to retain their cultural identities, they will inherit some nasty ethnic rivalries.

Nevertheless, Canadians speak of multiculturalism as a form of Canadian nationalism "that will convert ethnic rivalries from one of the problems or weaknesses of a society into one of its strengths." But success here will depend, to some extent at least, on a strengthening of national identity and a corresponding weakening of ethnic identity, a subject I'll have more to say about in due course. But how does a government intend to go about converting its Serbs and Croats, for example, into Canadians? Not, surely, by policies designed to refurbish and strengthen their memories or otherwise preserve their traditions. Better that they forget their history, lest they be led to repeat it in Canada. And they can be led to forget it only by being taught that Canada is something more than the sum of its diverse parts and something better than any of its parts. This, of course, is what the United States set out to do in 1787, except that its "parts" were understood to be individuals with rights, not groups making up a "mosaic."

The framers of our Constitution never spoke of multiculturalism, cultural pluralism, or, for that matter, even of pluralism. Such terms were not part of their political vocabulary. Nor were they sanguine about the possibility of combining cultures. Instead, as the following passage from Federalist 2 indicates, they were sanguine about our prospects only because we were (or were said to be) united in all essential respects:

Providence has been pleased to give this one connected country to one united people—a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles.
of government, very similar in their manners and customs, and who, by their joint counsels, arms, and efforts, fighting side by side throughout a long and bloody war, have nobly established their general liberty and independence.

The same concern for unity, or a similarity of manners, customs, and, above all, opinion concerning the principles of government is reflected in the early statements and congressional debates having to do with immigration and naturalization. These debates took place in 1790 and 1794, and everyone who addressed the issue favored population growth and, to that end, a liberal immigration policy; but, at the same time, everyone recognized the importance of excluding the immigrant who, in Madison’s words, could not readily “incorporate himself into our society,” or, as Theodore Sedgwick put it, would not “mingle [here] in social affection with each other, or with us,” or, finally, “would not be attached to the principles of the government of the United States.” As Jefferson said, “Every species of government has its specific principles [and] ours perhaps are more peculiar than those of any other in the universe.” He, of course, knew nothing of those who would be of concern to later generations of politicians, the fascists and communists; he was concerned with monarchists and even the immigrants who had been ruled by monarchs. He was afraid that they would bring with them “the principles of the governments they leave, imbibed in their early youth; or, if able to throw them off, it [would] be in exchange for an unbounded licentiousness, passing, as is usual, from one extreme to another.” Those principles, he continued, they might transmit to their children. “In proportion to their numbers, they will share with us the legislation [and] will infuse into it their spirit, warp and bias its directions, and render it a heterogeneous, incoherent, distracted mass.”

Thus, rather than seeing advantages of diversity, the framers wanted immigrants to be assimilated, incorporated into “our society,” with a view to maintaining a population whose members would be attached to the same “principles of government.” (As Jefferson put it, a “homogeneous” society would be “more peaceful [and] more durable.”) They had no idea of accommodating a variety of disparate “cultures.” From all that appears, they would have thought that impossible.

What we see as cultural differences, they saw as religious differences. Indeed, they probably would have agreed with one of his critics that Horace Kallen (who was the first to use the term “cultural pluralism”) did not take culture seriously precisely because he did not appreciate its religious foundations:
If we think of culture not superficially in terms of graphic arts, music or literature, but as the firm cradle of custom in which the baby is laid and which inevitably forms his emotional life, his food habits, his language, his thoughts, his skills, his sexual life, his work, and his moral values, the envisioned fluid "cultural mobility" becomes rather incredible. One cannot be brought up in all languages, all family patterns, all religions.11

Since our constitutional principles are most evident in those provisions dealing with religion, for the purposes of this essay cultural pluralism, at least initially, will mean religious pluralism. Besides language (and political memories), what distinguishes the French from the English Canadians save religion? Is it possible that the culture in multiculturalism—especially when it is taken seriously—means religion, or at least has its ultimate source in religion? After all, as Shakespeare's Shylock indicates (see the epigraph above), we are one with respect to the body and its passions but many only with respect to our memories and our manners/morals, whose source is in our political and religious (or irreligious) beliefs. Understanding the conditions of our religious pluralism will shed some light on the possibility—or better, the impossibility—of multiculturalism.

In 1776, we declared ourselves a "new order of the ages," the first nation in all of history to build itself on the self-evident truth that all men are created equal insofar as they are equally endowed by Nature's God with the unalienable rights to life, liberty, and the pursuit of happiness. The purpose of government, we then said, was "to secure these rights." This was to be done—because, given our principles, it had to be done—only with the consent of the governed.

But it was understood by the framers of the Constitution that the governed would not always agree on the definition of rights, or on how rights were to be secured, or on whose rights deserved to be secured or, in the event of a conflict, preferred; in fact, the framers expected the people to have sharply different views on these matters. Thus, the "one people" that declared its independence in 1776 and the "we the people" that constituted a government in 1787–88 in order to secure those rights would, as a matter of course, thereafter be divided into factions, and unless steps were taken to avoid it, warring factions. According to James Madison (writing in number 10, the most frequently quoted and celebrated of the Federalist Papers), "the latent causes of faction are . . . sown in the nature of man," and by definition these factions have interests "adverse to the rights of other citizens, or to the permanent and aggregate interests of the community."
Given these conditions, the securing of equal rights would not be an easy matter; it would be especially difficult because Nature, so equitable in its endowment of rights, was by no means equitable in its endowment or distribution of talents or faculties, particularly, as Madison put it, the “faculties of acquiring property.” Still, he did not hesitate to say that protecting these “different and unequal faculties”—naturally different and naturally unequal—was “the first object of government.” The consequence of securing the equal rights of unequally endowed human beings would be a society divided between “those who hold and those who are without property.” It followed for him that the regulation of these property factions—creditors, debtors, and landed, manufacturing, mercantile, moneyed, and “many lesser interests”—would be the “principal task of modern legislation.” Unlike the others—for example, religious factions—these property factions could be regulated (and accommodated) because, although divided one from another, they shared a common interest in economic growth, and to promote this growth would be the task of modern legislation. America’s business would be (as Calvin Coolidge many years later said it was) business.

Madison proved to be a poor prophet with respect to the “business” that occupied the country during the first half and more of the nineteenth century. From 1819—when Congress began to debate the Missouri question, through the years of the Mexican War (and the Wilmot Proviso it provoked), the compromise of 1850, the Kansas-Nebraska Act of 1854 (and the “Bloody Kansas” it provoked), and the Dred Scott decision of 1857, to the Civil War and Reconstruction—Congress, and indeed the entire country, was principally concerned with an issue that Madison neglected to mention in Federalist 10, namely, the slavery issue and the factions it aroused.

To judge from what he wrote in Federalist 56, he expected (or hoped) that time would resolve this “multicultural” issue. “At present,” he wrote, some of the states, and especially the southern states, were little more than societies of husbandmen. Few of them, he went on, “have made much progress in those branches of industry which give a variety and complexity to the affairs of a nation.” But he expected this would change in time; with time would come a diversification of the state economies, which, if true, would relieve the southern states of their dependence on slave labor, with the result that slavery would cease to be, or would not become, an issue in national politics. In fact, of course, it became the issue in national politics, and the Madisonian system proved incapable of resolving it. Had he foreseen this, Madison might have said in 1788 what Abraham Lincoln said in
1858 (and, of course, Lincoln was quoting the Bible), namely, that "a house divided against itself cannot stand," which, until proven otherwise, can stand as our definitive statement on the possibility of multiculturalism.

The question then arises as to why Madison was so confident that the other sorts of factions that he identified, particularly religious factions, would not require legislative "regulation." Or, to speak more plainly, why did he think this modern "civilized" nation would be able to avoid the religious problem? That had not been true in the past, especially in the Britain whose history he knew so well, and it is not true everywhere now. In the Britain he knew religion had given rise not only to factions but to civil war and revolution. Why was he confident that this would not be the case in America?

The answer is that the Constitution took religion out of politics, thereby making legislative regulation unnecessary. By separating church and state, specifically, by guaranteeing the free exercise of every religion while favoring none, the Constitution guarantees a proliferation of religious sects, a plurality or "multiplicity of sects," as Madison puts it in Federalist 51, none of them capable of constituting a legislative majority. The various sects will have to live with each other; more to the point, as merely one among many, each sect will be required to forgo any attempt to impose its views on the others. The government itself will be neutral in religious matters, and this makes it possible to say that almost anybody, and of any religious persuasion—or, at least, nominally of any religious persuasion—can become an American. All we require is a pledge of allegiance "to the flag of the United States and to the republic for which it stands," implying (especially nowadays) that anybody can make the promise and that no one will have difficulty keeping it.

In saying this, however, we tend to forget the restrictions we used to impose—on Chinese immigration, for example—or the limits we in fact used to enforce. Until recently, that pledge of allegiance was understood to imply a renunciation even of certain political opinions—for example, the advocacy of the overthrow of government by force or violence. It was only in 1974 that the Supreme Court held that members of the Communist party could not be kept off the ballot for refusing to take an oath renouncing such advocacy. Nor was our record much different with respect to religious opinion, and this despite the First Amendment. For example, our toleration did not extend so far as to embrace the Mormons and their practice of plural marriages. "To call [the advocacy of bigamy and polygamy] a tenet of religion is to offend the common sense of mankind," the Supreme Court said
When, a few years earlier, Abraham Lincoln was asked what he would do about the Mormons, he replied that he proposed “to let them alone”; but his Democratic adversary, Senator Stephen A. Douglas, campaigned to keep them out—by keeping Utah out—of our union.

But all this is history, a history that many of us would prefer to forget; today no one has reason to be concerned about the communists, and no one publicly advocates polygamy (to say nothing of slavery). It is, of course, true that the Constitution is not altogether neutral respecting religion. It counts the years in a Christian manner (see Article VII), and it recognizes, at least for one purpose, Sunday as the Sabbath (see Article I, section 7); but the non-Christians have learned to live with this. Speaking for a Supreme Court majority, Justice George Sutherland once said, “We are a Christian people”; but that was in 1931, and no one—at least, no one in an official capacity—would say that today. Instead, we are inclined to speak of “our Judeo-Christian tradition,” and if there were to be, as there has been in Britain, a great increase in the number of Muslims among us, I have no doubt that our multiculturalists would happily adapt this to read “our Judeo-Islamic-Christian tradition.”

The situation in Britain is worth describing because, while interesting in itself, it also serves to remind us of the persistence of the religious issue and the difficulties facing a multicultural society. Britain has a religious problem today, and not simply because, unlike us, they do not separate church and state. By law, the Church of England remains the established church: its archbishop of Canterbury retains his precedence, even over the prime minister, and only its doctrines are protected by the law of blasphemy. Despite this, the British might claim to be a pluralist society, in practice if not in principle. They began in 1689 by tolerating most Protestants, including the Quakers, and over the course of the years—which, in the event, proved to be centuries—have extended this privilege to Roman Catholics, Jews, and every variety of Protestant. In theory, there remains, as there was in 1689, a majority church, but only 2.3 percent of the population now attend its services on any given Sunday. The Queen, an Anglican in England and a Presbyterian in Scotland, might attend “chapel” services in Wales, a Roman Catholic mass in Liverpool—or, I suspect, even recite the Kaddish at a Jewish burial service—without arousing public comment.

Under the 1944 Education Act, religious minorities were permitted to invoke the “conscience clause” in order to exclude their children from par-
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Participating in certain acts of worship or religious instruction programs in the state schools; more than that, Roman Catholics and Jews were entitled to public funding for their own denominational schools. For all these reasons, Britain might have thought that it had become, in the words of the Anglican Book of Common Prayer, a haven for “all sorts and conditions of men.” Instead, as I said, it finds itself with a religious or cultural problem. And, faced with a similar situation, so might we.

The problem arose from the fact that there are now one and a half million Muslims in England alone, a total exceeding the number of Roman Catholics and Jews; and, to say the least, Muslims especially do not believe, because they cannot believe, in the separation of church and state. Bernard Lewis explained why this is so. “Muhammed,” he said, “was not only a prophet and a teacher, like the founders of other religions; he was also the head of a polity and of a community, a ruler and a soldier.” It was this (and “a thousand other reasons”) that led Tocqueville to say that Islam and democracy could not readily coexist.

The Salman Rushdie affair made the British very much aware of this; they learned, as we might come to learn, that Muslims do not believe in freedom of speech, for example.

Freedom of speech is not the only problem for Muslims (to the extent they remain committed Muslims). The other is secularism; and Britain, having embarked on the path of toleration in 1689, has reached the point where it has become a secular society. In response to complaints made by various minority groups—not, we are told, only the Muslims—the British government decided to “celebrate diversity” by instituting a program of multicultural religious instruction in the state schools. Under the new program, all religions were, nominally at least, to be “taught”; in fact, however, each was to be taught as a “possible system of meaning and value,” or, in the words of the Swann Report recommending the program, taught insofar as its doctrines were not in conflict with “rationally-shared values.” Reasonably enough, the Muslims objected to the program (as well as to other elements of the curriculum: anthropomorphic art, sensual music, “progressive” sex education, and the Darwinian theory of evolution). They continue to cling to their “cultural identity” by taking their religion seriously, unlike the British majority. Because they do, they prefer the old system, under which the state schools taught Christian doctrine (or a watered-down version of Christian doctrine) but allowed Muslims to remove their children from the program by invoking the “conscience clause” on their behalf. As they see it, better a “benign uniformity,” as one commentator put it, than a “compulsory ‘diversity.’” At least
under the old system they were not compelled to subscribe to opinions contrary to their articles of religion.

As one writer suggested, the problem might be resolved by providing public funding of denominational schools without exception:

British Muslims, and for that matter British Hindus, Sikhs, and even its conservative Protestants continue to be denied the denominational status that their numbers and popularity demand. They resent this. They point out, correctly enough, that they pay taxes like everyone else, and should accordingly be granted the same privilege as any other religious minority. They conclude, reasonably enough, that they are denied those privileges because the central authorities fear that, if granted them, they might actually use them for something other than the pursuit of "rationally-shared values." Rather than accommodating its Muslims, Hindus, and Sikhs by providing public funding of denominational schools without exception, the British majority insists on imposing its policy of not taking religion seriously on minorities that do take it seriously. As a result, Britain has a serious cultural problem.

Unlike the British, we confine religion to the private sphere, and there is much to be said for that policy. Moreover, we protect it there. Thus, in 1925 the Supreme Court held that no state may compel students to attend public, rather than private, or parochial, schools. As Jefferson once said, "Our civil rights have no dependence on our religious opinions, any more than our opinions in physics or geometry."

Still, contrary to Madison's expectations, the religious problem abides. Try as we might, there are certain to be times in the life of a nation, even a nation devoted to business and its regulation, when men's religious opinions will carry more political weight than their opinions in physics or geometry—or, as the abortion issue should remind us, than their opinions in genetics, ontology, sociology, or whatever. Of course, Madison would have said that abortion did not belong on the national political agenda, and that it was only because of the Supreme Court's improper intervention that it was put there. On the whole, however, our policy of separating church and state has served us well, which is why it is important to understand what it requires of us.

Separation of society and state; separation of the private and the public; separation of church and state—these distinctions are major stones in the foun-
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dation on which American constitutionalism is built, and all of them rest on
the constitutional distinction between soul and body. If not the first to make
these distinctions, John Locke was the first to persuade Americans of their
necessity in politics; and, in his (Virginia) Bill for Religious Freedom, Jeff­
erson was the first to propose that the last of them be embodied in legisla­
tion. He had made a careful study of Locke’s Letter on Toleration, and in so
many words repeated Locke’s statements concerning the care of body and
soul respectively. According to Locke, the commonwealth is “a society of men
constituted only for the procuring, preserving, and advancing . . . life, lib­
erty, health, and indolency of body; and the possession of outward things,
such as money, lands, houses, furniture, and the like”; whereas the care “of
each man’s soul belongs to himself.” Or, in Jefferson’s words, “the opera­
tions of the mind, [as opposed to] the acts of the body, are [not] subject to
the coercion of the laws.” Accordingly, the framers of the Constitution sepa­
rated church and state, thereby making religion a wholly private matter.

Keeping it private is another matter. As I have pointed out in another
place, because the biblical religions especially—Judaism, Christianity, and
Islam alike—teach that souls belong to God and that, whether through the
agency of Moses, Jesus, or the Archangel Gabriel (or Jibral), God has revealed
His will or His law respecting the care of souls, there is always the possibility
(if not a clear and present danger) that someone, someone not attached to
our constitutional principles, will claim to know God’s will and try to en­
force it on his neighbors. Indeed, as we are reminded almost daily by the
events in Algeria, Iran, Iraq, Nagorno-Karabakh, Tajikistan, India, Israel, and
what used to be known as Yugoslavia, to say nothing of Northern Ireland,
there are people who, when given the chance, will do just that. Such people
prefer to fight religious wars rather than accept cultural pluralism; as such,
they cannot be “attached to the principles of the government of the United
States,” and, to recall Madison’s words, they cannot readily be incorporated
“into our society.”

We cannot tolerate them (at least, not in any numbers) because they are
not tolerant; more precisely, we must insist that they disclaim the authority
on the basis of which one might be intolerant. This means that, in their
capacity as citizens, they must recognize the right of liberty of conscience.
For example, just as the Constitution expects us to forget that we were En­
glish (Irish, German, or whatever), it expects Episcopalians, for example, to
forget the eighteenth of their thirty-nine Articles of Religion, which reads:
“They also are to be [held] accused that presume to say, that every man shall
be saved by the Law or Sect which he professeth, [so long as] he be diligent to frame his life according to that Law, and the light of Nature." In their capacity as citizens, however, Episcopalians are required to be guided by that light of nature. They are expected to follow the example of a Reverend Mr. Shute in the Massachusetts Ratifying Convention of 30 January 1788: "Far from limiting my charity and confidence to men of my own denomination in religion, I suppose, sir, that there are worthy characters among men of every denomination—among the Quakers, the Baptists, the Church of England; and even among those who have no other guide, in the way to virtue and heaven, than the dictates of natural religion."25

In the light of nature (and according to the Constitution), nobody is "accursed." On the contrary, by nature everybody is endowed with the unalienable right to pursue happiness as he (and not his neighbor or the government) defines it.26 As Locke put it, liberty of conscience is "every man's natural right," a principle echoed by Jefferson in the (Virginia) Bill for Religious Freedom, where we read that "the rights [of conscience] hereby asserted are of the natural rights of mankind." That principle is embodied in the Constitution—in fact, our constitutionalism rests on it—and we are all expected to acknowledge it when we act politically. The Constitution speaks not of Christian, Jew, or Muslim, but consistently only of undifferentiated "persons" (and, in one place, of "Indians, not taxed"). By so speaking, it seeks to discourage religious (and antireligious) parties in favor of secular political parties. It expects us—whatever our religion, and whatever our cultural "identity"—to be able to come together in those parties. But it is not easy to form a governing political majority with those whom, by their failure to subscribe to our particular articles of religion, we hold to be "accursed."

Thus, contrary to the multiculturalists, the Constitution is not ideologically neutral. If it were, all political issues would be properly resolved, one way or the other, by popular vote of the people or their elected representatives. Among these issues is, or was, the one that engaged Senator Stephen A. Douglas and Abraham Lincoln in the 1850s: the issue of slavery in the territories. Douglas called his slavery policy "popular sovereignty" and made it, thus dignified, the principle of his Kansas-Nebraska Act. But Lincoln insisted that the act was un-American precisely because it took no stand—which is to say, because it was neutral—on the question of whether slavery was good or bad. The act's moral neutrality contradicted the self-evident truth that all men are created equal.
So, too, with respect to religious issues. Of course, the Constitution is neutral with respect to religion, neutral insofar as it forbids any government policy favoring one religion over another; but this means that religious issues, like that of slavery in the territories, are not properly resolved by popular vote of the people or their elected representatives. Were it otherwise, no constitutional principle would stand in the way of a self-styled “moral majority” determined to impose its ways on those it regards as immoral minorities. Our religious pluralism depends not on ideological neutrality but on the continued vitality of the principles we held to be self-evident in 1776 and embodied in the Constitution in 1787-1788, and prominent among these truths is that the care of each man’s soul belongs to himself alone. Not every “culture” recognizes these truths; those that do not cannot be regarded as equal to ours. Which is to say, in the light of the Constitution, all men are created equal, but not all “cultures.”

As Amy Gutmann points out (as if it needed pointing out), we encounter problems with multiculturalism “once we look into the content of the various valued cultures.” She wonders whether we can afford to respect, or “recognize,” illiberal cultures or, as she puts it, “those cultures whose attitudes of ethnic or racial superiority . . . are antagonistic to other cultures.” She would surely agree that we cannot allow the successors to the Ayatollah Khomeini to send their agents among us to assassinate our “blasphemous” Salman Rushdies. Unlike Iranian law, under our Constitution there is no such thing as blasphemous speech. If, nevertheless, such assassins do appear among us and commence their vocation, and we apprehend them, as we have apparently apprehended the bombers of the World Trade Center, are they entitled to be tried by the sort of jury that sat in the case of El Sayyid A. Nosair, the accused assassin of Rabbi Meir Kahane? Which is to say, a jury prepared to help a group preserve its cultural identity? There are those who say so. Nosair was represented by the redoubtable William M. Kunstler, who demanded a jury of “third world people”; and, having gotten it, he got an acquittal on the murder charge.

The Sixth Amendment to the Constitution provides that in “all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.” Now black Americans—whether on trial themselves or as the victims of alleged crimes committed by others—have begun to insist that juries cannot be impartial unless they are representative. In response, several
state legislatures, including Florida’s, have proposed laws guaranteeing racially balanced juries. This may be in violation of the Sixth Amendment, which, the Supreme Court said recently, requires “impartial” juries, but does not require, and may even forbid, “representative” juries.28

This jury issue is not new; in fact, it is at least nine hundred years old. In 1255, King Henry III ordered the arrest of some ninety-two Jews on charges of ritual murder. On being indicted and sent to London for trial, eighteen of them, “regarding conviction as a foregone conclusion unless they were allowed a mixed jury, refused to put themselves upon the country.” This was construed as a confession of guilt, and the eighteen were summarily executed.

The privilege of being tried by a mixed jury—or, in the official language of the time, by a panel de medietate, which, in this case, meant half Jewish, half Christian—was sometimes denied, and, upon Edward I’s accession to the throne in 1272, was revoked for a time; but, when honored, it served as some protection for this particular “cultural” community. That protection came to an end on—and surely not by chance—All Saints Day, November 1, 1290, when Edward “issued a decree consigning the Jewry of England to perpetual banishment.”29 And with the banishment ended this early experiment in multiculturalism.

Then there is the more recent British practice, the one adopted to deal with the multicultural situation in Northern Ireland. (To paraphrase W. S. Gilbert, Northern Ireland is the very model of a modern multiculturalism.) The current problem is a variation of the one the British faced earlier when they governed the whole of Ireland. Not surprisingly, at that time, trial by jury did not function in Ireland as it did in England. Too often, Irish juries simply refused to convict the guilty; even so, we are told, “that most hallowed right of English law, trial by common jury, was preserved even in Ireland” for most of the nineteenth century. Not so in Northern Ireland today. Faced with unacceptable differences in the way Protestant and Catholic defendants were treated, the British Parliament, in 1973, abolished trial by jury for defendants accused of violent crimes.30 So much, then, for that “most hallowed right of English law, trial by common jury.”

Banishment is one way to deal with a multicultural problem and abolishing trial by jury is another, but neither is permitted to any government of the United States; our Constitution based on the rights of man forbids it. Do we, then, adopt different rules of justice for our different groups? Amy Gutmann says that “recognizing and treating members of some groups as equals now seems to require public institutions to acknowledge rather than ignore
cultural peculiarities, at least for those people whose self-understanding depends on the vitality of their culture.”31 But instead of recognizing their “cultural peculiarities,” especially their peculiar or different rules of justice, do we not owe it to ourselves to persuade them of the superiority of ours: trial by impartial jury and the other elements making up due process of law; government by the consent of the governed; freedom of speech, press, and conscience; in a word, government designed to secure the unalienable rights not of groups or “cultures” but of man? Indeed, does not our system of constitutional government itself presuppose one people—in the words of Federalist 2, a people “attached to the same principles of government”? To pose the jury question bluntly, does not the criminal justice system presuppose that African American, Hispanic American, Asian American, and Jewish American defendants can receive a fair trial by “impartial” juries and judges? And that it will be a sorry day for this country if they cannot?

The jury problem pales almost to insignificance when weighed with the problem facing many liberal democracies today, especially those of Western Europe, that of accommodating the refugees from the east and south. The problem is new, but its seeds were sown in religious conflicts five hundred and more years ago. Speaking in Washington a few years ago, political scientist Samuel P. Huntington said that “the most significant dividing line in Europe may well be the eastern boundary of Western Christianity in the year 1500.”

The peoples to the north and west of this line are Protestant or Catholic; they share the common experience of European history; they are generally better off than the peoples to the east. The peoples to the east and south are Orthodox or Muslim; they historically belonged to the Ottoman or tsarist empires; they were only lightly touched by events shaping the rest of Europe. Conflict along the fault line between Western and Islamic civilizations has been a seesaw for 1,300 years, and it is unlikely to cease.32

The movement of peoples today—sometimes almost entire populations—illustrates not only the enduring strength of these religious and ethnic hatreds but the extent of the problem facing liberal regimes today. It is sufficient to mention Germany, where the influx of refugees from Eastern Europe has given rise to a resurgence of nationalist sentiments of the nastiest kind; or Italy, which turned back entire shiploads of people fleeing Albania; or France and its treatment of North Africans; or, for that matter, President Clinton’s tergiversation respecting Haitian refugees.
In this situation, it is easy to sympathize with Prime Minister Trudeau's multicultural policy; generous, tolerant, and seemingly liberal, it was supposed to provide an example to a world sorely in need of what it had to offer. It was to make Canada "a special place, and a stronger place," stronger than the United States, a multicultural "mosaic" rather than a "melting pot," "a brilliant prototype for the moulding of tomorrow's civilization."

At his urging, Canada officially became a bilingual country. In order to become the master of its own fate, it arranged to have the British North American Act of 1867 converted into the Canadian constitution, or, in the word at the time, it "patriated" its constitution from Britain. To guarantee the rights of all its people, in whatever province they might reside, in 1982 it attached to that "patriated" constitution a Charter of Rights and Freedoms. Since then the country has been engaged in what might be described as a perpetual and itinerant constitutional debate, moving from Ottawa, to Meech Lake, to Charlottetown, with frequent stops in all the provincial capitals, most frequently and persistently Quebec. At issue was (and is) Canadian unity.

The first Ottawa round—commentators have adopted the parlance of prize fighting to describe this debate—ended when Trudeau's nation-building effort, with its emphasis on the equal rights of Canadian citizens at the expense of the powers of the provinces, went down to defeat at the hands of the Quebecois. In round two, the western provinces, reacting to Trudeau's language and energy policies, began to demand a restructuring of the Senate in order to check the power of populous Ontario and Quebec. This was followed by the election of a separatist government, under Rene Levesque, in Quebec. Round three began in 1980 with Trudeau's effort to bypass the provincial governments by appealing to the people directly; but, failing in this, he was forced to make the concessions demanded by the provincial governments in order to get the constitution "patriated"; even so, Quebec refused to go along. Round four engaged the aboriginal peoples who, dissatisfied with a constitutional provision guaranteeing their "existing rights," renewed their demand for self-government; at the same time, Ottawa (now represented by Brian Mulroney) and Quebec (now represented by Robert Bourassa) began a series of negotiations with the various provincial premiers, leading to the Meech Lake Accord of April 30, 1987. Under this agreement, all the provinces would gain the powers demanded by Quebec, although Quebec was to be recognized as a
“distinct society.” Under its terms, the accord had to be ratified by the federal parliament and all ten provincial legislatures. This requirement proved to be its undoing because by involving the legislatures it involved the people, if only indirectly; and, as the public opinion polls indicated, a majority of the people were strongly opposed to it. Round five came to an end in October 1992, when a majority of Canadians, in a majority of provinces, and in a national referendum, rejected the Charlottetown Accord. It was rejected largely because, in order to win equal representation in the Senate, the polygenetic western provinces had to agree to allow largely French Quebec, regardless of the size of its population, to have 25 percent of the seats in the House of Commons. One commentator described the process as “a deal-maker but a referendum-breaker.”

Then, in October 1995, a proposal to make Quebec a sovereign nation was defeated 49.4 to 50.6 percent in a popular referendum. The leader of the separatist Bloc Quebecois, Lucien Bouchard, said that “the next time will be the right time, and the next time may come sooner than people think.”

From this brief account it is possible to draw several conclusions bearing on multiculturalism: the effort to accord recognition and its attendant privileges to one group, cultural or otherwise, will provoke either similar demands from other groups or, especially when the people are brought into the process, a stubborn refusal to make the accommodation. The “Ukrainians” of Manitoba are less likely than their political leaders (at least those at Meech Lake) to indulge the “French” of Quebec. Like other “peoples,” especially in a regime that recognizes “peoples,” they have pride too. Thus, although the Meech Lake politicians saw the proposed constitutional recognition of Quebec’s “distinct society” as merely symbolic and understood that what really mattered was the extent of the powers granted to the provinces, the “people” stamped their feet and said no.

Comparisons with the United States are surely unfair to Canadians; but, if we would avoid its problems, comparison with Canada can be useful to us. Canada began as two societies and remained two largely separated societies for the better part of its history; and its efforts to build one multicultural society have ended, for the time at least, with a country more divided than ever. Whereas, if (but only for the time being) we ignore the black-white division (which was resolved, to the extent that it was resolved, only by a civil war), America began as one people; and its policy of assimilating, rather than accommodating, its immigrants has allowed it (for the time, at
least) to remain one. It was able to assimilate them because it was able to persuade them that its ways, its rules of justice, and its religious principles were superior to those they may have brought with them.

“All eyes are open, or opening, to the rights of man. The general spread of the light of science has already laid open to every view the palpable truth, that the mass of mankind has not been born with saddles on their backs, nor a favored few booted and spurred, ready to ride them legitimately, by the grace of God.” So wrote Jefferson in the last of his many letters. But too many eyes are closed, or closing, today. Today that abstract or palpable truth is too often seen as mere opinion, one opinion among many, and all of them equal; and if our multiculturalists have their way—and if all cultures are equal, why should they not have their way?—all of them are to be taught in the public schools. The idea of the rights of man will occupy no special place in such a curriculum. As one of many ideas, its authority is almost certain to be weakened, and with its weakening will come a weakening of the foundation on which we have built the pluralism—and the liberty—we have enjoyed from the beginning.

It is especially likely to be weakened when the loudest voices we hear today are contemptuous of the world built by Jefferson and his colleagues. His invocation of “the light of science” is seen by some as part of a plot, a way of justifying the continued hegemony of his kind, namely, white European males and their white American male coconspirators.

This contempt for things American—at its base a self-contempt—is nowhere better expressed than in the 1993 Bienniel Exhibition of American Art at New York’s Whitney Museum. Intended to portray the “victims” of American civilization, the show (described in the catalogue as a “multicultural” exhibition) features videos and photographs of black gang members, Mexican hookers, battered women, transvestites; female self-portraits with dildos and prosthetic breasts; “installations” displaying a splat of simulated vomit; and, at the end, in cut-out letters two feet high, the statement “In the rich man’s house the only place to spit is in his face.” As evidence of their having paid the admissions fee, and by order of the museum’s director (rich white David Ross), visitors are required to display a button bearing the words “I can’t imagine ever wanting to be white.”

Leo Strauss had something like this Whitney exhibition in mind when, twenty-nine years ago, he wrote that every such accusation presupposes a law—in this case (so severe are the Whitney accusations) something like a holy law—against which political life is to be measured.
that life in the United States could be heaven, or was supposed to be heaven; but the founders promised no such thing. What they promised was liberty, including the liberty to tend to the salvation of our own souls; and the country they established was the first in all of history to make, and to keep, that promise. By keeping it—here I quote Werner J. Dannhauser—they made "corruption voluntary to an appreciable degree." 38

The proponents of multiculturalism fail to appreciate what has been accomplished in and by the United States, and their project, when taken seriously, would have the effect—and, in the case of the Whitney people, the intended effect—of undermining its foundation. The future of constitutionalism depends, in part, on our ability to understand this.

Notes

1. For an account of the attempt to define culture, see Raymond Williams, Culture and Society (New York: Columbia University Press, 1958).
5. Forbes, 16.
6. A news item of some years ago illustrates the problem: "Gojko Susak, the Croatian defense minister who three years ago was running a chain of pizza parlors in Ottawa, Canada, says the U.N. complaints about Croatian deception are 'their excuse for not doing what they are supposed to do.' In his Zagreb office, where a bear skin rug that once belonged to former Yugoslavian strongman Josip Broz Tito covers the floor, Mr. Susak [insists] that the Croats have stopped [the Serbian] offensive." Wall Street Journal, 8 March 1993, A6.
7. In this connection, it is interesting to note that "pluralism" as a political term is a neologism, one that made its first appearance in the Oxford English Dictionary only with the publication of the Supplement in 1982. There we are told that "pluralism," meaning "the existence or toleration of diversity of ethnic groups within a society or state, of beliefs or attitudes within a body or institution, etc.," was first used in 1956 by Horace Kallen in his book Cultural Pluralism and the American Idea. Rogers Smith informs me, correctly, that Kallen used the term "cultural pluralism" in 1924 in his Culture and Democracy.
17. The Ayatollah Khomeini ordered Rushdie to be assassinated for publishing what Khomeini said was a blasphemous book, *Satanic Verses*.
24. The difference between a policy of toleration and the American policy was well stated by George Washington in his famous letter of August 17, 1790, to the Hebrew Congregation of Newport, Rhode Island: “It is now no more that toleration is spoken of as if it were the indulgence of one class of people that another enjoyed the exercise of their inherent natural rights, for, happily, the Government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens in giving it on all occasions their effectual support....

“May the children of the stock of Abraham who dwell in this land continue to merit and enjoy the good will of the other inhabitants—while every one shall sit in safety under his own vine and fig tree and there shall be none to make him afraid.” *The Writings of George Washington*, vol. 31, ed. John C. Fitzpatrick (Washington, D.C.: Government Printing Office, 1939), 93n.
26. “The legitimate powers of government extend to such acts only as are injurious to
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... others. But it does me no injury for my neighbor to say there are twenty gods, or no god. It neither picks my pocket nor breaks my leg." Jefferson, Notes, Query XVII, in Writings, 285.

27. Gutmann, 5.


34. Peter H. Russell, "The End of Mega Constitutional Politics in Canada?" PS (March 1993), 33. I am indebted to Professor Russell for much of the above account.

35. Thomas Jefferson to Roger C. Weightman, June 24, 1826, in Writings, 1517.

