

Reaping the Whirlwind

Liberal Democracy and the Religious Axis

John R. Pottenger

Georgetown University Press

Washington, D.C.

Contents

Acknowledgments	ix
Introduction	1
<i>Part One</i>	
Religion and Politics	7
1 Mixing Religion and Politics: The Case of the Ten Commandments	11
2 Religion, History, and Logic: The Genetic Fallacy	32
<i>Part Two</i>	
The Foundation and Structure of the Modern State	45
3 Axes of History: Abandoning the Universal Christian Commonwealth	47
4 The Religious Axis: Rationality, Conscience, and Liberty	67
5 Constitutional Protection: America, Religious Liberty, and the Factional Imperative	92
	vii

Part Three

Challengers to Liberal Democracy and the Religious Axis	123
6 Mormons and Evangelicals: Uneasy Coalitions in the Public Square	127
7 Liberation Theology's Methodological Insurgency: Confronting Liberal Democracy	157
8 Islam and the State: Modifying Liberal Democracy	184
9 Christian Reconstructionism: Defying the Religious Axis	208

Part Four

Conclusion	241
10 The End of Civil Society	243
Notes	261
Bibliography	301
Index	325

1

Mixing Religion and Politics *The Case of the Ten Commandments*

In contemporary arenas of public opinion and the public square, disquieting issues of religion and politics abound among private citizens and public officials. Unresolved ethical issues, such as those regarding embryonic stem-cell research, elective abortion, euthanasia, pornography, same-sex marriage, and the public acknowledgment of God, have inspired religious partisans to take to the streets. Failure to reach common agreement on these issues originates from incompatible cultural values and religious convictions. A growing number of religious believers perceive the presence of religious pluralism in society as an indication of a preference by the liberal democratic state for the secular over the sacred. For many believers, secularism has led to public discussions and debates about previously unquestioned ethical positions. The very fact of discussions and debates in turn indicates a rejection of universal moral standards. Absolute moral standards have been replaced by emphasis on personal ethics in a democratic society, which has resulted in moral confusion and relativism. Given widespread moral relativism, believers perceive a decline in personal and public morality that will only bring divine condemnation and ruination upon society.

Many of those seeking a greater influence of religion in American public life attribute the country's moral decline to the removal of God from public life. Focused by references to deity on the national currency and in the Pledge of Allegiance, and by the display of Christmas crèches and the Decalogue in government facilities, legal challenges to the

public acknowledgment of God are stirring contentious debate among citizens in workplaces, schools, and courtrooms. Because interpretation of the original intent of the founding documents of the republic has unofficially been delegated to the courts, legal disputes and decisions have generated widespread attention. Indeed, many religious critics argue that decisions of the courts have come to dominate politics regarding the religious question. Moreover, they argue, court decisions during the past four decades have increasingly trivialized, expressed hostility toward, or unduly restrained public display of religious values and expressions. They maintain that the failure of recent court decisions to realize the social benefit of state support of divinely inspired moral standards has damaged the moral fabric of the nation. Furthermore, the roots of judicial failure can be found in the flawed ethos of liberal democracy, which has come to deny the divine basis of society and morality. For some, a “war on Christians” is under way.¹ As one religious warrior assesses the situation, the culture war centers on the battle between “belief in God and nonbelief,” with myriad skirmishes being fought for the “minds, souls, and lives” of all citizens.²

The controversy over the public display of the Ten Commandments provides one of the more visible and salient illustrations of the volatile mix of religion and politics in the liberal democratic state. Proponents such as Roy S. Moore, former chief justice of the Alabama Supreme Court, assert that open display of the commandments of the Decalogue amounts to public acknowledgment of God, which is crucial to the maintenance of a moral culture and a good society. Nevertheless, the political and legal debate over public display strongly implies the presence of mutually incompatible epistemologies. That is, certain religious worldviews may be antithetical to the ethos and political institutions of liberal democracy. For advocates of the public display of the Decalogue, the commandments represent essential moral instructions for the well-being of individual and society, worth defending philosophically and politically—even to the point of appealing to history as justification, thus challenging the very foundation of liberal democracy.

The Moral Primacy of the Ten Commandments

Advocates of the public display of the Ten Commandments point to a tide of moral relativism that, in their view, can only lead to social collapse. They argue that renewed adherence to an ultimate standard

of value is necessary to stem this tide. The Decalogue reaches back to ancient Israel, originating with the covenant between God and Israel at Mt. Sinai; it formed the moral and practical basis of ancient Israelite theology and society.³ Its moral authority has persisted through three millennia as a core teaching in the Jewish, Christian, and Islamic faiths. This covenant of obedience and promise set the Israelites, as "God's chosen people," apart from other nations. Submission to God's will promised divine protection and assistance to the Hebrew tribes, thus contributing to the creation of Israel as a unified nation.⁴ The Israelite nation was also instructed to serve as intermediary before God for other nations. In this way, Israel was "charged to be God's covenant people for the sake of all nations, but organized as a state rather than as a purely religious community."⁵ The commandments have provided a moral basis for political societies and communities of faith throughout history, proponents maintain, and continue to provide such a basis even in the present.

The Ten Commandments have typically been interpreted as representing categories of behavior that are general rather than specific.⁶ Although specific instances are cited, the Decalogue serves as a general prohibition of immoral behavior in all aspects of an individual's personal relations with others, and of his or her spiritual life. Its prohibitions encourage behavior not prohibited; thus it encourages doing good while it admonishes against doing harm. The presupposition behind these commandments is that a moral "way of life becomes possible only in disciplined communities of faith." Different groups number the commandments differently, but believers revere the commandments as offering timeless instruction on the proper relationship between God and man, and among members of society.⁷ Christianity and Islam would each later claim the mantle of "God's chosen people" as a result of perceived apostasy by a former covenant partner, Israel and Christianity, respectively. Today the symbolism of the Decalogue, both as God's covenant with humankind and as an ultimate measure of values, is seared deeply in the identities of the three Abrahamic religions.

The ethos of the Ten Commandments, however, contrasts sharply with that of liberal democracy. Although a set of moral obligations and a set of personal rights may compliment each other within a particular ethical framework, one set will tend to precede the other in importance. The Decalogue commands "duties to God, family, and neighbors rather

than establishing protections for personal freedom.”⁸ It sets the tone for the illiberal nature of the Mosaic code with its subsequent case or casuistic laws, which prescribe specific penalties for identifiable acts of disobedience.⁹ Thus the Decalogue initiates widespread application of obligatory moral restraints, while liberalism arises from belief in a priori rights to enhance personal liberty. A society based on the covenant of the Decalogue expects other-regarding behavior from its members, for the benefit of all. A society founded on the preeminence of individual rights expects self-regarding behavior, provided this does not interfere with the rights of others. Covenant and contract offer contrary approaches to the moral foundations and expectations of civil society.

In the public square, the contrary essences of biblical or Qur’anic covenantal religion and liberal democratic contract theory have clashed, igniting a firestorm over one icon of religious expression. During the past four decades in the United States, legal battles over the public display of the Ten Commandments have become flashpoints where religious beliefs and essential political values have crossed paths. Tellingly, these flashpoints have resulted from a volatile mix of religious activism and political resistance. One illustration of this mix involved an effort to display the Ten Commandments in a public place, and the ensuing legal battle over public acknowledgment of God as the primary source of morality and law.

During the sweltering days of August 2003, thousands of Christians kept vigil outside the rotunda of the Alabama Judicial Building in Montgomery. They had been drawn to the building to protect a representation of a symbol of their faith. Affirming the Judeo-Christian foundation of American law, Roy S. Moore, chief justice of the Alabama Supreme Court, had placed in the rotunda of the building a two-and-a-half ton, granite monument of the Ten Commandments. Intended as a public acknowledgment of God and a symbolic representation of the enduring moral claim of this ancient covenant, Moore’s monument depicted the two stone tablets of the Decalogue. The first four commandments, regarding the essential duties to God, were written on one tablet; the other six commandments, regarding relations to fellow human beings, were written on the other.¹⁰ Moore sought to enshrine the covenantal relationship between God and humans, and between religion and politics—and to advocate the restoration of this relationship. He did so within a liberal democratic framework that leans in a contrary direction.

Shortly after the monument was placed in public, a U.S. federal court ruled that Moore's public display of the monument in a government building was tantamount to state support of religion, and thus violated both previous U.S. Supreme Court interpretations of the Constitution and the separation of church and state.¹¹ The court ordered that the monument be removed from public display and set a deadline for compliance. As the deadline approached, Christian protestors gathered, held rallies, and maintained an around the clock vigil. They read scriptures, prayed aloud, and sang hymns; they pleaded with state officials to support Chief Justice Moore by resisting the judgment of the federal court. Moore himself requested that the governor issue an executive order enforced with Alabama National Guard troops to defend the monument from removal, but the governor refused.¹² In response, nationally prominent evangelical Christian leaders and conservative politicians attended the rallies to offer moral support and to encourage the protestors.¹³ As the deadline for removal approached, determined supporters of the chief justice continued to arrive from throughout the country. U.S. federal marshals, Alabama state troopers, and officers of the Montgomery Police Department warily monitored the gathering storm.

Moore's odyssey to display the Ten Commandments reveals a complex mix of religious passion, moral philosophy, legal arguments, and democratic politics. Disentangling this mix will expose a stark contrast among religious and political possibilities, a contrast challenging the intent and logic of modern liberal democracy.

Moore's Odyssey on the Road to Public Acknowledgment of God

Known locally as well as nationally as the "Ten Commandments Judge," Roy Moore began his legal career after graduating in 1969 from the U.S. Military Academy at West Point.¹⁴ Upon graduation, he served in the U.S. Army—first in Germany, and then in Vietnam as a company commander of a military police unit—before returning to Alabama to enter law school. After graduating from the University of Alabama School of Law in 1977, Moore became the first full-time deputy district attorney in Etowah County, Alabama, serving in that position until 1982. At the end of his term he ran unsuccessfully for election to a circuit court judgeship. Amid bitter disputes with his co-workers, Moore

resigned his position with the district attorney's office and left the legal profession, seeking his fortune out of state and abroad, in other endeavors.

After a few years, Moore returned to Alabama and reentered the legal profession in private practice in the Etowah county seat of Gadsden. In 1986 he again entered politics and ran unsuccessfully for district attorney. In 1992, however, he was appointed by the governor to fill a vacancy on the court of the Sixteenth Judicial Circuit in Etowah County. In 1994, Moore ran successfully as an incumbent, retaining his position on the court. Committed to his Southern Baptist upbringing, Moore had developed a deep passion for acknowledging God in both private and public settings. Of more importance, both politically and legally, he displayed a hand-carved, wooden plaque of the Decalogue in his courtroom, and began each day of judicial proceedings with a Christian prayer.

In 1995 the American Civil Liberties Union and the Alabama Freethought Association sued Moore in Montgomery County District Court for breaching the wall of separation between church and state.¹⁵ Although the Alabama Supreme Court ultimately dismissed the suit in 1998 for lack of standing by the plaintiffs, the state of Alabama had also brought suit, asking for a declaratory judgment in the case.¹⁶ In 1996, judging the display to be counter to previous U.S. Supreme Court decisions, another state circuit court judge ordered Moore to remove the plaque and to refrain from conducting prayers in the courtroom. Moore, however, argued that as a state judge he was obligated to make such acknowledgment by the Alabama Constitution. In his view, adherence to the constitution overrode a contrary order of a state court, thus he defiantly resisted the court's order: "I consider it my duty to acknowledge God. To take down the Ten Commandments would be a violation of that duty. To stop prayer would be a violation of that duty. I will not take down the Ten Commandments. I will not stop prayer."¹⁷ In 1997, pending an appeal, the Alabama Supreme Court ordered a stay of the lower court's order. The high court finally dismissed the second case as nonjusticiable on technical grounds and never ruled on its merits—leaving Moore free to display the Ten Commandments in his courtroom.

Public opinion, in Alabama as well as nationally, supported Moore's stance.¹⁸ With growing popular support, he campaigned in 2000 for statewide political office on the theme of defending the public display of the Ten Commandments and restoring the acknowledgment of

God to the public square. Accusing the federal and state judiciaries of complicity in the decline of public morality during the past four decades as a result of their removal of God from public life, Moore's appeal to voters was straightforward:

The removal of God from our public life corresponded directly with an increase in school violence, homosexuality, and crime. Parents were killing their children, and children were killing their parents. As we drifted from God we were losing our sense of right and wrong. The courts were imposing their own morality, which was actually immorality. My campaign message was simple and direct: We must return God to our public life and restore the moral foundation of our law.¹⁹

In November, with 54 percent of the vote, Moore was elected as chief justice of the Alabama Supreme Court.

The Monument

In his newly elected position, Moore also served as the administrative head of Alabama's Unified Judicial System, which included responsibility for the facilities of the Alabama Judicial Building.²⁰ With this authority, on the night of July 31, 2001, he placed in the building's rotunda a large, granite monument of the Ten Commandments that he had designed and commissioned at personal expense. At the dedicatory service for the monument, Moore proclaimed:

Today, a mere forty years later, many judges and other government officials deny any higher law and forbid the teaching to our children that they are created in the image of an Almighty God while they purport that it is government—and not God—who gave us our rights. Not only have they turned away from those absolute standards that serve as the moral foundation of law and which form the basis of morality, but also they have divorced our Constitution and Bill of Rights from these principles. As they have sown the wind, so we have reaped the whirlwind in our schools, in our homes, and in our work places.²¹

Moore's placement and dedication of this religious monument in a public building spurred fresh whirlwinds of public opinion, in the form of lawsuits against public acknowledgment of God.

In October 2001, two lawsuits against Moore were filed in the U.S. District Court for the Middle District of Alabama, one from the

American Civil Liberties Union and the Americans United for Separation of Church and State, and the other from the Southern Poverty Law Center in Montgomery.²² The suits argued that the display of the Ten Commandments monument in the rotunda of the Alabama Judicial Building amounted to public endorsement of religion and thus violated the establishment clause of the First Amendment; the plaintiffs asked that the monument be removed from public display. After a seven-day trial in October 2002, federal district court judge Myron Thompson ruled in November in favor of the plaintiffs, and ordered Chief Justice Moore to remove the monument. Judge Thompson then issued a stay of the injunction, pending Moore's appeal to the U.S. Court of Appeals for the Eleventh Circuit. Several faith-based organizations then filed *amicus curiae* briefs on behalf of Moore, including WallBuilders, Thomas More Law Center, Focus on the Family, Concerned Women for America, and Toward Tradition.

In June 2003, a three-judge panel of the federal appeals court met in Montgomery to hear Moore's appeal. In July the panel upheld the ruling of Judge Thompson, who then set a deadline of August 20 for Moore's compliance with his order to remove the monument. Moore continued to refuse to acknowledge the authority of the federal court to order the monument's removal; after the deadline passed, Judge Thompson held him in contempt of court. Two days later, in response to the contempt finding, the Alabama Judicial Inquiry Commission suspended Moore, with pay, from his position as chief justice. In September Moore filed an appeal with the U.S. Supreme Court to reverse the appellate court's affirmation of the district court's order; in November the court declined to hear the appeal. Faced with the prospect of severe fines imposed on the state of Alabama for each day that the monument remained on public display, the remaining eight associate justices of the Alabama Supreme Court relied on a seldom-used provision in the Alabama legal code to overrule Moore's earlier decision to place the Ten Commandments monument in the rotunda.²³ The justices ordered the building manager to remove the monument from public display and to place it out of sight in a storage room.²⁴ While the monument was removed from the limelight, Moore's antagonists were yet to be finished with the pertinacious judge.

A complaint was filed formally with the Judicial Inquiry Commission, arguing that Moore engaged in judicial misconduct by refusing to

carry out a court order. The commission determined that Moore had violated the Alabama Canons of Judicial Ethics in his refusal to obey the federal court order. The Alabama Court of the Judiciary held a trial, found Moore guilty of breaching the canons, and removed him permanently from his elected position. Moore appealed his removal from office to the Alabama Supreme Court. Also following a requirement of the state canons, the associate justices recused themselves from consideration of the appeal. The acting chief justice and the governor of Alabama then selected seven retired judges to sit on a Special Supreme Court to hear the appeal. In January 2004, led by the Alabama attorney general, members of the special court heard arguments requesting that the court uphold the removal of Chief Justice Moore from the Alabama Supreme Court; the court also heard arguments from Moore and his attorneys for reinstatement to his elected, judicial position. On April 30, 2004, the court decided unanimously to reject Moore's appeal to overturn the Court of the Judiciary's decision. Moore appealed the decision to the U.S. Supreme Court, which also rejected it, on October 4, 2004.

Defenders of Moore, the Ten Commandments, and Public Acknowledgment of God

Moore's passionate and political quest to acknowledge God in a public setting met legal resistance and ultimately failed. The legal resistance arose from the precedents of previous federal court decisions that finally prevailed over the legal depositions Moore had submitted in defense of his actions. But many defenders of religious faith and activism in the public square have taken issue with the court's decisions, including theologian Richard John Neuhaus, legal theorist Stephen L. Carter, and religious philosopher Nancy R. Pearcey.

Richard John Neuhaus defends Moore's efforts to return God to the public square by displaying the Ten Commandments in a public setting.²⁵ Neuhaus contends that religion, including the centrality of the covenant of the Decalogue, plays a special role in society by offering the public a set of "communal traditions of ultimate beliefs and practices."²⁶ He argues that these traditions are necessary for the development of a moral culture. A moral culture, in turn, assists liberal democratic politics in identifying, achieving, and sustaining the public good. In particular, Neuhaus calls attention to the significance of the

Ten Commandments in American culture. He argues that the commandments occupy a crucial “normative status” when they proclaim the existence of transcendent values beyond “one’s subjective disposition.”²⁷ Neuhaus is disappointed that U.S. courts increasingly bow to secular considerations when they refuse to recognize the vital role of transcendent values, as symbolized by the placement of the Ten Commandments in public settings.

Stephen L. Carter also argues that the Ten Commandments represent the presence of a divine source from which moral obligation originates. In contrast to the claims of liberal rationalism, Carter asserts that an alternative source of moral truth is available: “divine command.”²⁸ He maintains that “morality is a matter of fact, not opinion. Correct moral rules are established by God, not by man. They are not human constructs, but facts that God has revealed about himself and his order for the world.”²⁹ In the United States, where the secular culture increasingly exhibits dislike of ethical rules, Carter defends the posting of the Decalogue in public buildings to stem the moral decline of society.

Nancy R. Pearcey too deplors the decisions of the U.S. Supreme Court concerning the public display of the commandments. Pearcey contends that such decisions have undermined the possibility of identifying a moral imperative necessary to achieve the public good.³⁰ She further asserts that the loss of moral authority in law has deprived the public policy process of any ability to engage in moral debate; instead, the process is left to rely on utilitarian procedures of majority rule alone. In the postmodern era, this forfeiture of the rule of law—which necessitates a transcendent moral standard against which to measure human laws—leaves only arbitrary human rule in its place. Pearcey warns that arbitrary rule based on the tyranny of the majority will result in the collapse of free government: “The postmodernist assault on objective moral truth has put us on the road to tyranny.”³¹

In the theory and practice of liberal democracy, the courts exercise the primary adjudicative function. In consequence, disputes about the public expressions of faith and the limits of religious participation in the public square have been resolved by the courts. Furthermore, the role of the national and state judiciaries in resolving such disputes has grown in recent years. Neuhaus, Carter, and Pearcey perceive the judicial courts as exercising inordinate power in political matters, and making

decisions that exhibit an unjustifiable and dangerous bias against religion. The range of the biases extends from the trivialization of religion in the public square, to state hostility toward religion, to the captivity of religion by the secular culture.

Law, Culture, and Religion

The refusal of the courts to recognize transcendent values, according to Carter, results from decisions that encourage liberal democracy to trivialize religious voices in the public square and the presence of religion in politics.³² Trivialization occurs primarily in judicial court decisions and public policy debates where religious arguments are typically dismissed as irrelevant. According to Carter, the U.S. Supreme Court has increasingly reduced the significance of organized religion in public life with decisions regarding government's relations to religion. In attempts to keep religion and politics separate, the decisions have focused on the motivation underlying religious arguments rather than on the arguments themselves. By focusing on religious motivation, these decisions have erroneously implied that the religious arguments represent an attempt to impose particular religious beliefs on the public.³³ By equating religious motivation with religious belief, Carter argues, such decisions have relegated freedom of religion to the same constitutional status as that of freedom of speech.³⁴ That is, religious individuals are deemed to have the same right to participate in the public square as other individuals of various political persuasions, with no more accommodation accorded them than members of non-religious interest groups. Nevertheless, Carter declares, equating freedom of religion with freedom of speech has serious detrimental social consequences.

Carter maintains that the prohibition of congressional recognition of an established religion originally prevented only the federal government from establishing a state religion at the national level. The original intent of the clause recognized the states' right to preferment of certain religions over others, generally through taxation and appropriations.³⁵ Although the original intent limited only the federal government's support of a religious establishment, Carter nonetheless agrees with recent Supreme Court decisions that religious establishments should not be publicly supported at either the national or state level.³⁶ Indeed, he accepts as legitimate the incorporation doctrine,

wherein the protection against any national religious establishment has been extended to the states via the equal protection clause of the Fourteenth Amendment. Nevertheless, the present trend in decisions of the Supreme Court that trivialize religious presence in all aspects of the public square is cause for alarm: "the Establishment Clause might well end up not antiestablishment but antireligion."³⁷ As a result of equating religious moral concerns with religious motivation, and religious institutions with other political interest groups in the public square, Carter maintains, religion has been effectively trivialized and rendered ineffective. In his judgment, this diminution of freedom of religion enervates the original intent of the establishment clause of the First Amendment.³⁸

Carter also argues that, when faced with disputes regarding religion and politics, the federal courts tend to exhibit a bias against minority religions and conservative social positions, and in favor of the mainline Catholic, Protestant, and Jewish denominations and their more liberal public policy positions.³⁹ He notes that there is even a tendency to disrespect denominational self-determination in matters of doctrine, membership, and practices.⁴⁰ Increasingly, the courts are deciding matters such as employment policies in religious organizations and programs, and other economic issues, according to secular considerations like racism and sexism, which ought to be the purview only of secular society. Consequently, Carter argues, the public square eschews independent moral voices, particularly those of religious faith, which are perceived as irrational and divisive. He laments contemporary judicial decisions and the laws influenced by them, which together have reinterpreted the original role of freedom of religion. Rather than encouraging religious activism as a moral check on democratic politics, liberal democracy merely tolerates religion's presence in society. In this way, the courts of secular society promote a bias toward the trivialization of religion.

In addition to this trivialization, Neuhaus perceives court decisions as reflecting a more disturbing trend: "Religion . . . [came to be perceived as] radically individualized and privatized. [Consequently,] religion became a synonym for conscience."⁴¹ He perceives a growing hostility toward religion by the courts as their decisions leave the public square "naked" of consideration of religious perspectives. He is alarmed at the implications of separating conscience from politics, and public morality from public policy, as demanded

by the secular state through its legal interpretation of the separation of church and state.⁴²

Neuhaus argues that the concept of separation of church and state has come to be understood as separation of religion and religiously based morality from the public square. That is, religiously grounded values have now been ruled out of order in public discourse. Under the prevailing interpretation of church and state, Neuhaus asserts that legal and political institutions are forced to address questions of right and wrong in a way that is not “contaminated” by religion. Moreover, he argues that the exclusion of traditional religion as the moral basis of law has created a moral vacuum.⁴³ Neuhaus warns that other amoral ideologies, primarily secularism, are filling the void left by deracinated religion. This structural hostility to religion has far-reaching implications for the future of democracy: “Religion and politics are today engaged in a struggle over culture definition and culture formation.”⁴⁴ In fact, other observers point out that a focus on culture reveals deeper and more disturbing implications for the relationship between religion and politics, implications extending beyond trivialization by the courts and political hostility.

Pearcey argues that beyond the present conditions of trivialization and hostility, Christianity has become captured by the epistemological bifurcation of American culture. That is, the moral and intellectual ethos of the culture accepts and promulgates the classical liberal Enlightenment view of a logical distinction between *facts* and *values*.⁴⁵ Pearcey maintains that the search for scientifically explained and empirically corroborated facts of nature has been separated categorically from the quest for a transcendent moral standard of universally applicable principles. Furthermore, the former category of science is assumed to exhibit naturally objective characteristics, while the latter category of moral transcendence has been defined as offering only subjective or private values. Within this fact–value dichotomy, she argues, the sacred claims of religion in general and of Christianity in particular have been confined by a secular culture within the category of subjectivity. The culture is convinced that only scientific naturalism can objectively identify and explain truth. Moreover, according to Pearcey, most Christian denominations and evangelicals have accepted this dichotomy along with Christianity’s captivity within it. Consequently, she observes, they have allowed the culture to shape their Christian outlooks, rather than the reverse.⁴⁶

Religion and Politics

Carter, Neuhaus, and Pearcey argue that religion must reclaim its role of public advocacy of a real, transcendent moral standard to serve as the basis of public law. Carter argues that removal of religion from a privileged position in the state does not require removal of religion from the public square. He believes that recent decisions indicate that the courts fail to recognize the paramount role of religion: "the principal value of religion to a democratic polity is its ability to preach resistance."⁴⁷ The freedoms of conscience and association limit the reach of governmental authority by allowing for the formation of religious beliefs and organizations. With alternative allegiances, argues Carter, organized denominations serve as intermediate institutions between the state and the citizenry.⁴⁸ By its promulgation of ethical values to guide personal behavior and critique public policy, religion serves as a moral restraint to the overbearing democratic state. In this way, he says, religion must be free to serve as a critic of the state—which can only be done through active participation in the public square: "If the religions are to retain the autonomy that they are guaranteed both by the Constitution and by the liberal virtue of respect for individual conscience, then they must remain free to reject [public policy] argument[s] on theological grounds."⁴⁹ Carter argues that religion must not have an interest in taking control of state apparatuses, if it wants to serve as a critic of the state.⁵⁰ If it does, it will lose its independence. His argument requires that religious individuals and organizations be able to communicate with other citizens of various religious and political persuasions.

In agreement with Carter, Neuhaus maintains that religion and politics do mix. Religious organizations may resist immoral policies of the secular state by establishing alternative allegiances and advocating moral critiques. Neuhaus wonders, "The question is whether we can devise forms for that interaction which can revive rather than destroy the liberal democracy that is required by a society that would be pluralistic and free."⁵¹ He is not encouraged by such prospects. One danger is that "a religious community that no longer understands itself as an embattled minority begins to think more about influence than about tolerance."⁵² Insurgent religious movements may be motivated in part by "dreams of power and glory," because "these are very human dynamics, and the churches are nothing if not human."⁵³ Neuhaus fears that politics under these conditions could degenerate into religious warfare.⁵⁴

The problem of religion and politics, according to Neuhaus, is that of maintaining civil discourse while allowing the two to mix in the public square.⁵⁵ When referring to recent religious insurgencies in American politics, he states the problem succinctly:

[They want] to enter the political arena making public claims on the basis of private truths. The integrity of politics itself requires that such a proposal be resisted. Public decisions must be made by arguments that are public in character. A public argument is transsubjective. It is not derived from sources of revelation or disposition that are essentially private and arbitrary. The perplexity of fundamentalism in public is that its self-understanding is premised upon a view of religion that is emphatically not public in character.⁵⁶

To be effective in the public square, religious advocates must not build their own “wall of strict separationism between faith and reason.”⁵⁷

Neuhaus warns that attempts to create a secular society devoid of religious political participation will lead to removal of the only source of legitimation of the actions of the state. Because under current conditions there is no agreed upon moral authority higher than the community itself, the way is open for secular totalitarianism.⁵⁸ The present transition of court decisions from the disestablishment of church from state to the disestablishment of religion from the polity, he believes, will result in the establishment of the secular state as the only “church.” In fact, many of those in power who are pushing an agenda hostile toward religion use both the law and the media to impose repugnant values on Americans, who resent both the imposition and the immorality.⁵⁹ Neuhaus warns that a public square devoid of religious discourse and the presence of religion “is a dangerous place.” By excluding religious transcendence from the public square, he maintains, religious militants will aspire to transcendent authority intent on establishing a theocracy.⁶⁰ The absence of religion, then, is worse than allowing religion and politics to mix.

Conflicting Epistemologies

Carter and Pearcey both argue that Christianity’s covenantal religion based on the Ten Commandments and liberal democracy’s social contract based on a priori rights embrace contrary presuppositions and objectives, which result in fundamentally incompatible religious and

secular epistemologies. The two epistemologies' initial assumptions regarding the nature and source of moral authority are in conflict. In fact, agrees Neuhaus, it is this conflict that drives the culture wars of modern society.⁶¹ Beyond disagreements of practical problem solving in the formation of public policy, conflict over the transcendence of moral authority reveals the dynamics of incompatible worldviews and epistemologies.

Carter realizes that religious and theological arguments justifying moral positions on public policy matters provide a predicament for public dialogue in a democracy: "What is often less noted, but no less true, is that just as we may not share common starting points, we may not share common reasoning methods either."⁶² Relying on the Enlightenment heritage of liberal democracy, the public square requires that claims of religious moral knowledge be subjected to rational and empirical analysis, which religion frequently cannot sustain because of its alternative epistemological assumptions. Carter maintains that the secular and the religious frameworks for ascertaining factual knowledge have different ways of knowing moral truth. The initial starting points of rational empiricism and revelation can lead to different conclusions; religious and liberal epistemologies are simply incompatible.⁶³ These distinct epistemologies result from the imposition of the fact-value dichotomy described by Pearcey, with its categories of objectivity and subjectivity.

Pearcey argues that the Christian gospel, entrapped in the category of subjective or privatized values, has lost its popular credibility and is prevented from influencing the public square: "only by recovering a holistic view of total truth can we set the gospel free to become a redemptive force across all of life."⁶⁴ To be liberated from its captivity, a critique of classical liberalism is necessary "to expose its [flawed] epistemology."⁶⁵ She believes the primary flaw of the fact-value dichotomy can be traced to the incorporation of the social contract theory of liberalism in the development of American political thought.⁶⁶

Pearcey argues that classical Christianity posits God as the sole source of moral authority, which must be the basis of law.⁶⁷ Once the ethos of the Enlightenment, including the fact-value dichotomy and the social contract theory, denied the reality of divine creation and revelation, the moral basis of law eroded, leaving only experience and reason as bases for legal codes. This erosion left secular society without transcendent moral guidance, and moral skepticism set in. According

to Pearcey, "the consequences of this are shaking the very foundations of our government and society today."⁶⁸ In particular, she argues, the U.S. Supreme Court decisions mandating the removal of the Ten Commandments from public places has resulted in moral chaos.⁶⁹ Their removal has left government charged with simply protecting individual autonomy, regardless of moral considerations. She maintains that the decisions have dissolved the restraints on individual behavior of common morality held by traditional religion, with devastating social consequences.

Furthermore, Pearcey argues, with its rejection of a transcendent moral standard, social contract theory has become the primary engine of secularization and the ideology of secularism in America. She calls for the rejuvenation of Christian philosophy to refute secularism: "If we aspire to engage the battle where it is really being fought, we must find ways to overcome the dichotomy between sacred and secular, public and private, fact and value—demonstrating to the world that a Christian worldview alone offers a whole and integral truth. It is true not about only a limited aspect of reality but about total reality. It is total truth."⁷⁰ Pearcey believes that this can be done by "translating" the theological claims of Christianity into secular language and then comparing the Christian worldview to secular and other worldviews to demonstrate the superiority of Christianity in offering "a more consistent and comprehensive account of reality."⁷¹

Neuhaus suggests that this translation process may already be present in American society. Because the values of the American people are deeply rooted in religion, he argues, religious values are necessary in the public square for the political process to be viewed as democratically and morally legitimate⁷²: "moral legitimation means providing a meaning and a purpose, and therefore a framework within which the violation of that meaning and purpose can be criticized."⁷³ He maintains that religion shapes the essence of culture through its moral judgments about the world; in turn culture influences the nature of civil society and its politics. Because politics derives from those moral judgments, the political process alone cannot produce an evaluative framework for moral criticism. In fact, he argues, religious institutions are already capable of performing a necessary democratic function by serving as mediating structures of society.⁷⁴ Because the law must inevitably engage beliefs about right and wrong, the presence of religious discourse in the public square is a necessary condition for democratic

governance and moral public policies. The liberal democratic state must be convinced to permit the return of religion to the public square.

In the absence of a common epistemological framework, Neuhaus calls for public recognition of America's religious heritage as a temporary replacement. With liberal democracy's promulgation of limited government, the nurturing of moral values and culture can still be found in civil society. In fact, contemporary civil society derives its moral basis from the Judeo-Christian tradition. Throughout American history, he argues, civil society's acceptance of America as a Christian nation provided the moral foundation of the liberal democratic polity.⁷⁵ Historically, decisions regarding public policy matters have occurred through discussion and debate among members of society who hold Christian values.⁷⁶ According to Neuhaus, the heritage of Christianity in the United States offers sufficient justification for religious moral claims to be heard and given a privileged position in contemporary public policy discussions.

Religion in the Public Square

The legal and political conflicts over the Ten Commandments in Alabama ironically suggest that the critiques of liberal democracy's apparent bias against religion in general and Christianity in particular reflect a certain artificiality with regard to religion and the public square. That is, the critiques claim the ability of the state or culture to trivialize, to act with hostility toward, or to confine the role of religion and religious values in public discourse. Yet, while attitudes of trivialization, hostility, and confinement certainly find their way into politics, religious expression is not such a well-defined whole that it can be easily controlled or restricted; in fact, in the United States, religion permeates civil society.

According to the 2000 census, approximately 83 percent of Americans consider themselves Christians; Jews comprise 2 percent.⁷⁷ Other religious affiliations comprise 6 percent, and 9 percent consider themselves either atheist or agnostic. These data reveal that 85 percent of Americans identify themselves with a religious perspective that embraces Judeo-Christian moral values. Religious values can hardly be said to be absent or quiet in politics; the volume of their presence depends only on the religious beliefs and convictions of adherents. The cacophony

of religious and political voices is assured; only the political resources and objectives of those religious voices are in question.

Supporters of religious expression in the public square represent an alarmed and growing segment of the U.S. population. Welling up from deep-seated, emotional convictions, defense of the public acknowledgment of God is often expressed in impassioned yet ostensibly reasonable claims. Advocates of greater religious influence in society and politics often appeal to the religious heritage of the nation to justify their social and political objectives. Regardless of logical validity or soundness of premises, their arguments rely on Christianity's historical influence on the formation of the republic as sufficient justification for Christianity's continued presence and predominance in American politics. Defense of the public display of the Ten Commandments resonates with millions of Americans who believe that their religious values ought to be recognized for the historic role they played in the formation of the American republic. Yet they perceive political antagonism, as state and national courts increasingly limit the display of symbols of religious faith and values accepted by the majority of citizens.

Moore's attempt to place and defend a permanent monument of the Ten Commandments in the rotunda of the Alabama Judicial Building fell short of his objective. The federal appeals court upheld the ruling of the district court's decision, and the U.S. Supreme Court refused to hear Moore's appeal. When the associate justices of the Alabama Supreme Court ordered the Ten Commandments monument to be removed from public display in November 2003, enraged Christians swarmed the rotunda to block its removal. Arrested by state troopers and police officers, the angry demonstrators were forced to end their passionate protest, but not their larger crusade. Motivated by the state's assault on their faith, believers organized to swell the presence of conservative evangelical Christians in politics.

An Alabama group advocating a more active religious voice in state and national politics organized the League of Christian Voters, to aid Christians running for political office who pledge to support the public acknowledgment of God.⁷⁸ In another Alabama county courtroom, another judge—a supporter of Roy Moore—now dons judicial robes with the Ten Commandments sewn on the front.⁷⁹ Inspired by Moore's example, the Constitution Party courted Moore for a potential run for the U.S. presidency in 2004. Moore has promised to continue his

fight to uphold the right of public officials to acknowledge God; he established the Foundation for Moral Law to promote religion in the public square, and unsuccessfully sought the Alabama Republican Party's nomination as candidate for governor in 2006.

Appeal to History

Throughout U.S. history, Neuhaus recounts, mainline Protestant religions cultivated individual and communal virtue to maintain a sense of national purpose. He argues that biblical religion has provided the public philosophy that is democratically legitimate for America. The alternative, a secularized society and state, would leave the American polity as "a skeleton devoid of substantive beliefs about personal and public good."⁸⁰ Carter makes a more specific case that the Ten Commandments "are also an important foundational document for understanding American history and culture."⁸¹ He emphasizes that the historical recognition of "divine moral authority" must not be abandoned in the public square, but acknowledged in public places as part of U.S. history. Until the epistemological battles have been won in favor of Christianity, Carter too argues for reliance on religious history, primarily the Christian heritage of America, to justify the presence and privilege of religious voices in politics.

The development of Christianity, particularly its moral and social teachings, has played a crucial role in Western political philosophy. In fact, the heritage of liberal political thinking, with its significant religious content, may serve as intellectual justification for religious activism in politics. A rediscovery of the moral foundation of the United States—or "America's sacred ground"—could offer significant justification to encourage religious participation in the search for the common good.⁸² Nevertheless, contemporary defenses of religious activism in politics, such as those of Moore, Carter, Neuhaus, and Pearcey, generally appeal to the heritage of Christianity in the United States, rather than considering the historic Christian contributions to political philosophy. That is, they appeal to history itself, as an instrument or even weapon of debate to defend a privileged position for Christianity.

Today the Ten Commandments' historic role in the development of religious teachings and in the formation of Western culture looms large in debates about its symbolic placement in the public square.

For many advocates of moral and social responsibility, the Decalogue represents the permanent source of moral authority required by all societies. But for liberal democratic theory, comprehensive implementation of the Decalogue's moral instructions in society threatens to erase the distinction between private and public, a distinction that has permitted freedom of conscience and religion, maintaining a relative distance between church and state and upholding peace and order.

The logic of both historic arguments requires careful scrutiny. To resolve the problem of conflicting epistemologies, advocates of a greater political presence of religion in the public square appeal to history, particularly the Christian origins of U.S. society. The appeal to history raises the issue of how history is to be interpreted, and how historical events should be used to support particular arguments.

2

Religion, History, and Logic *The Genetic Fallacy*

At the annual meeting of the Southern Baptist Pastors in 2005, former chief justice Roy S. Moore proclaimed, “We’ve been deceived by a government that tells us we cannot worship God—contradictory to history, contradictory to law, and contradictory to logic.”¹ This proclamation epitomizes Moore’s claim that history, law, and logic intersect to support his cause. While he had appealed to higher courts to uphold his courtroom prerogatives, Moore had also appealed to history to defend his legal argument: “All history supports the acknowledgment of God.”² But he admits that his defense must also withstand appeals to law and logic.

In an appeal to history, arguments of a particular era may indeed be timeless and thus may shed light on concepts and assumptions to clarify philosophical disputes. For example, historical arguments may reveal the original intent of legislation to ensure proper interpretations of the constitutional limits of public policy matters. Reliance on historical evidence alone is, however, an insufficient (if necessary) condition to justify contemporary policy preferences. That is, while an argument may legitimately appeal to historical and empirical evidence to explain and support a policy preference, the logical structure of the argument must also be valid and sound. When a normative argument is based solely on an appeal to history, it displays certain characteristics. Upon analysis, such an argument is discovered to contain a flaw rendering it logically fallacious. It may be revised as a valid argument

by inserting a normative premise with the premise about historical fact. The historical or genetic fallacy is thus avoided, but the additional premise of religious preference raises the question of soundness.

The logical structure of Moore's argument regarding the public acknowledgment of God exhibits the characteristics of an empirical appeal to history alone. His appeal to America's Christian heritage to defend religious presence in the public square involves a genetic fallacy. The argument may be reconstructed to remove this fallacy, but only by the insertion of a premise that challenges the logic of the liberal democratic state regarding the religious question.

Original Intent of the Doctrine of Separation

In his conflict with the American Civil Liberties Union and with the courts regarding the public acknowledgment of God, Moore argued that public officials have both a right and an obligation under their judicial oath of office to acknowledge God as the moral source and foundation of American law.³ Moore's emphasis on historical evidence to identify the proper relationship between church and state is essential to his argument. He considers the original intent of the founders of the American republic and the framers of the U.S. Constitution to be a binding historical precedent and defends his position on the roles of church and state by reference to that original intent. Moore's understanding of the historical meaning of the "doctrine of separation between church and state" is crucial.

Moore maintains that the doctrine of separation between church and state was advocated by the nation's founders to prevent one Christian sect from using political means to gain advantage over another sect.⁴ He defends his argument with references to Thomas Jefferson's letter to the Danbury Baptist Association in 1802, the origin of the phrase, "wall of separation between church and state." He also employs a claim found in James Madison's *Memorial and Remonstrance against Religious Assessments* of 1785, which argued against funding a religious establishment through individual tax assessments by the state of Virginia. According to Moore's understanding of the opinions expressed in these two historic documents, Jefferson and Madison advocated the protection of religion from politics, not the elimination of religion from the public square. The wall of separation was intended only to prevent government from interfering with the public acknowledg-

ment of God, not to prevent the acknowledgment of God in the public square.

In fact, Moore believes that the two authors' advocacy of the doctrine of separation was itself based on an earlier argument in John Locke's *A Letter Concerning Toleration* of 1689: "Herein lies the true meaning of separation of church and state."⁵ According to Moore, Locke argued against government's right to dictate forms of worship and confessions of faith, with the corollary that individuals must be free to worship without governmental interference. He maintains that Jefferson and Madison were influenced by Locke and understood that "the duty of government was to encourage public professions of faith," not to discourage them.

Moore asserts that Madison advocated the establishment clause of the First Amendment as proposed in 1789 in order to "restrict the federal government's power over the states, not to restrict the states from doing what the federal government can do."⁶ Even today, Moore points out, in a variety of settings the federal government is constitutionally permitted to invoke references to God, such as initiating each session of Congress with a prayer by a paid chaplain and commencing each term of the U.S. Supreme Court with the marshal's cry of "God save the United States and this honorable Court!" According to Moore, "Although the words *separation of church and state* are not found in the Constitution, the concept is implicit in the First Amendment and the law, which we all must uphold."⁷ He believes that if officials of the federal government are permitted to acknowledge God in the public square, state officials should also be permitted to do the same.

In support of his interpretation that the purpose of the doctrine of separation was not only to prevent government restrictions on religion but also to encourage religious activity, Moore refers to the nineteenth-century legal commentaries of a prominent associate justice of the U.S. Supreme Court. In his *Commentaries on the Constitution of the United States* of 1833, Justice Joseph Story asserted that "it is impossible for those, who believe in the truth of Christianity, as a divine revelation, to doubt, that it is the especial duty of government to foster, and encourage it among all the citizens and subjects."⁸ For Story, faith in God, especially as promulgated by Christianity, is the basis of civilized society; therefore the government, as the guarantor of civilized society, is responsible to promote religious activity in the public square. Citing Story's commentary, Moore concludes that "our forefathers clearly

intended to base our government on a belief in God and [furthermore] believed that schools were the proper place to encourage religious and moral development."⁹ Moore then asks a question:

If it be true that the First Amendment was never meant by our founding fathers to preclude the acknowledgment of God in schools, public institutions, and other facets of public life, and if the doctrine of separation of church and state has been twisted and wrongfully applied to deny the very freedom of conscience that doctrine was meant to preserve, then what motivates the courts to act with utter disregard to our history, our heritage, and the meaning, intent, and purpose of the First Amendment to the Constitution?¹⁰

Moore's answer is that during the past half-century the U.S. federal courts have given the doctrine of separation an erroneous interpretation. Beginning with *Everson v. Board of Education* (1947) and subsequent cases (including *Engel v. Vitale* [1962], *Abington v. Schempp* [1963], and *Wallace v. Jaffree* [1985]), opinions defending the decisions of the Supreme Court have failed to recognize the distinction in the intent and meaning between the terms "religion" and "religious activity."¹¹

Prior to the *Everson* case, according to Moore, the courts had consistently relied on Madison's definition of religion: "the duty which we owe to our Creator, and the manner of discharging it."¹² Relying on this definition, the courts typically interpreted the establishment and free exercise clauses as prohibiting the federal government from either prescribing particular religious duties for all citizens or prohibiting otherwise lawful ways of understanding and carrying out such duties. For example, Moore maintains that praying and reading the Bible are religious activities, yet they do not in themselves constitute religion. During the first 150 years of the republic, Bible reading and prayer were generally accepted by communities and judicial courts as endeavors that could legitimately be organized by public institutions and conducted in public places, including schools. Thus, says Moore, official government promotion and facilitation of religious activities were correctly adjudged by the courts as not constituting an endorsement of religion by the government.

Today, the federal courts have strayed from the interpretive path of their nineteenth- and early twentieth-century judicial predecessors. Now, Moore argues, they erroneously interpret any display of religious activity by the state in a public setting as establishment of religion. He

maintains that the courts fail to distinguish between religion and a religious activity: "Acknowledging God is not the same as establishing a religion. The establishment of a religion means setting up a church or state-supported church bureaucracy."¹³ Referring to his own battle over placement of the monument of the Ten Commandments in the Alabama Judicial Building, Moore claims that his action was an example of a legitimate religious activity, but not an act of religion: "We would tell the federal courts that I was not *Congress* making a *law* (judges can't make law), that the monument was not an *establishment* of anything, and most importantly that the monument (and any acknowledgment of God) was not *religion*, as defined by the founding fathers and even [in nineteenth-century decisions of] the Supreme Court."¹⁴ The federal courts' disagreement with Moore's reasoning simply confirmed for him that their contemporary decisions contravene the original doctrine of separation of church and state.

Moore's activism is fueled by his passionate drive to restore God to the public square. He appeals to history to justify public acknowledgment of God; his political activism is directed toward that end. Moore intends to take historical writings seriously. This approach is appropriate to determining the truth of oral and written narratives, philosophical claims, and legal arguments. The original intent of statements and assertions of a particular author, family, community, or nation is central to resolving disputes over prior interpretations, and to developing normative frameworks for the formation and implementation of public policy. Careful and responsible scrutiny of historical arguments favoring one interpretation over another is essential to such debate. Nevertheless, identifying proper historical interpretations does not settle the question of why the interpretations should continue to be ethically preeminent. A logical structure is necessary to unite history and ethics.

The Genetic Fallacy

The interpretive problem includes not only determination of the veracity and relevance of historical arguments, but consideration of the historical context within which those arguments were originally used. In dealing with the validity and soundness of logical arguments, appreciation of the historical context is vital. However, in deploying specific historical claims and interpretations to justify a particular conclusion

to his legal argument, Moore invites closer examination of his argument. Analysis of the argument reveals a flaw in its logical structure, independent of the intent and nobility of its cause. An analysis of the logical validity of the argument reveals a tendentious claim in Moore's position, which has implications for those who rely on the heritage of Christianity to justify religious participation in the public square and to sway the direction of public policy.

Moore appeals to the historical context that contains arguments bolstering his position of the proper understanding of the separation between church and state and of the free acknowledgment of God in the public square. References to the earlier practices, including Christian practices, that shaped the values and expectations of the American republic are historical claims; as such, they are empirically verifiable. Nonetheless, to argue that current public policy ought to be identical to that of the past simply because past policy can be historically verified is to make a suspect argument. It is to infer a normative, prescriptive conclusion directly from a single premise referring only to empirical, descriptive data. The essence of Moore's inference is as follows:

PREMISE: Christianity formed the original basis of American culture.

CONCLUSION: Therefore, American law ought to reflect Christianity.

Standing alone, this deduction from the historical evidence of America's Christian heritage involves a logical fallacy. According to logicians Morris R. Cohen and Ernest Nagel, "One form of this fallacy takes a logical for a temporal order. . . . The converse error is the supposition that an actual history of any science, art, or social institution can take the place of a logical analysis of its structure."¹⁵ According to Cohen and Nagel, this type of fallacious argument relies on the historical origins or genesis of a desired social institution as sufficient to justify its continued existence; logical analysis to justify the assertion is unnecessary. More specifically, Moore's error assumes that evidence about religious heritage can by itself satisfy the logical requirements of an argument demonstrating the necessity of a return to a Christian America. By appealing only to the historical statements and opinions of renowned jurists, philosophers, and statesmen, Moore illogically

equates empirical claims with normative presuppositions to justify his inference.

In a standard form, categorical syllogism—the logical structure necessary to justify Moore’s inference—the historical evidence alone is insufficient to justify the conclusion. The syllogism’s conclusion must be deduced from two premises. The conclusion must contain both descriptive and prescriptive terms, which must also be found in the syllogism’s premises. As depicted above, Moore’s argument before the courts has only one premise, limited to descriptive, historical evidence. Without an additional premise containing an ethical, moral, or normative imperative, Moore’s conclusion cannot be validly deduced from his observations and descriptions of the historical significance and heritage of Christianity. Moore’s reliance on the historical origins of a society as sufficient justification for their reestablishment or continuance is a mistake in reasoning; Cohen and Nagel refer to this mistake as the *genetic fallacy*.

The genetic fallacy appears as a result of arriving at a conclusion based solely on an appeal to historical origins. This common paralogism occurs when advocates refer, often nostalgically, to the social conditions of the past as the sole premise justifying their demand for continuation or renewal of those conditions. In other words, to derive an obligatory conclusion from historical evidence alone is to equate empirical evidence with a normative claim—a mistake in logic.

Moore’s argumentation before the courts may only appear to exhibit a genetic fallacy, however. The structure of Moore’s reasoning, as displayed in his public arguments and writings, is open to another interpretation. It may be better understood as an *enthymeme*. As an incomplete form of syllogistic reasoning, the enthymeme suggests the tacit presence of an additional premise that is not expressed.¹⁶ In other words, an enthymeme is a properly constructed, standard form syllogism, but with one of the two premises left unstated. Moore’s argument, thus understood, avoids the genetic fallacy; if Moore presumes the presence of a second premise that contains a normative claim, the validity of the underlying syllogism can be tested.

To be logically valid, the second, unstated, premise of Moore’s argument must assert that American law ought to recognize and be guided by the heritage and values found in the origins of American culture. Once this normative premise is coupled with the first premise containing historically accurate, empirical data, the conclusion then logically

follows that, since Christianity influenced the formation of the American republic, its values ought to continue to influence contemporary social values, and in turn these values ought to influence the direction of political decision making, public policy formation, and law. Moving away from expression of the argument as an enthymeme, the syllogism can be stated explicitly as follows:

FIRST PREMISE: Christianity formed the original basis of American culture.

SECOND PREMISE: American law ought to reflect the original basis of American culture.

CONCLUSION: Therefore, American law ought to reflect Christianity.

With the revelation of the enthymeme's syllogistic structure, the genetic fallacy is avoided and the argument is logically valid. Yet Moore does not make this second, normative premise explicit; in contrast with this logically valid syllogism, Moore appeals only to history to defend his position about the link between Christian heritage and public law. This form of argument insinuates something more than taking the historical evidence seriously.

With the disclosure of the second premise, the logical construction now presents a valid argument for the conclusion that American law ought to reflect Christian values. Yet, the advent of this premise reveals a particular religious bias. To bring this bias into focus, the normative contention of the second premise—that American law ought to reflect the original basis of American culture, with obvious references to its Christian heritage—must be defended. For this premise to be persuasive, as it must be for Moore's argument to be accepted, another syllogism is necessary, one that resides in the penumbra of the first. Moreover, Moore is not unmindful of the necessity of revealing both the hidden premise of his original enthymeme and the necessity of a second, supporting syllogism.

The Privileged Position of Christianity

Moore's appeal to history is not limited to the evidence of America's founding period. In his judgment, recent court decisions have not only misinterpreted the doctrine of separation between church and

state, and the establishment and free exercise clauses; they have also aided and abetted the nation's cultural slide away from Christianity and its social virtues toward secularism and its moral perversions. Moore believes that America is in the midst of a culture war, "a war between good and evil, between right and wrong. For 40 years we have wandered like the children of Israel. In homes and schools across our land, it's time for Christians to take a stand. This is not a nation established on the principles of Buddha or Hinduism. Our faith is not Islam. What we follow is not the Koran but the Bible. This is a Christian nation." He maintains that "the United States was founded as a Christian nation" and that Christians should "take back our land."¹⁷

To defend the privileged position of Christianity, Moore reaches back to the medieval era for additional historical evidence, citing Henry de Bracton, often referred to as the father of English common law.¹⁸ In the thirteenth century, Bracton clarified the close relationship between political government and the Christian religion in decisions of the English courts. His writings influenced subsequent English legal scholars, including Sir Edward Coke and Sir William Blackstone, whose writings in turn had an impact on legal thinking in colonial America. Relying on this select lineage, Moore seeks to bolster his argument that because Christianity has occupied a historically privileged position in the United States, it must continue to do so.¹⁹ In other words, Christianity is the preferred religion.

When Moore argues from the empirical fact that America was founded by Christians who embraced the arguments of Bracton, Coke, and Blackstone to the claim that America ought to continue to follow the Christian path as they understood it, he appears to present another enthymeme—if not an argument with a genetic fallacy. Expanding the insight of Cohen and Nagel, historian David Hackett Fischer argues that the genetic fallacy frequently involves the problem of "ethical historicism."²⁰ According to Fischer, this fallacy involves a claim that the mere fact that a particular system of ethical beliefs and related institutions has historical relevance and lineage is sufficient reason to accept it without logical analysis. Moore again draws an ethical conclusion from a single premise involving historical evidence. At best, according to Fischer, such an inference is relevant only to the historical era from which it originated. The only way to avoid the error of ethical historicism is to universalize the ethical system across time and place.

To defend his second argument, and thus validly support its normative conclusion that America today ought to acknowledge preference for Christianity and reinstate its heritage to become once more a Christian nation, Moore must construct a logically valid syllogism. This requires inserting a second premise that contains a universal normative claim. While the first premise contains the empirical claim that Christianity is preferred to all other religious and moral frameworks, the second premise must assert that American law and policy ought to reflect the preferred heritage of Christian teachings and beliefs. Once this premise is coupled with the first premise, the conclusion logically follows that, since the Christian religion is to be preferred to all others, its moral beliefs ought to form the foundation for cultural values and these values ought to be merged with and thus determine the direction of political decision making and public policy formation. The second completed syllogism is as follows:

FIRST PREMISE: Christianity is the preferred religion.

SECOND PREMISE: America ought to follow the preferred religion.

CONCLUSION: Therefore, America ought to follow Christianity.

With the completion of this syllogism, the genetic fallacy is again avoided and the argument is logically valid. The structure and conclusion of the second syllogism provide substantial support to the thrust and momentum of the first syllogism.

Arraying the two syllogisms in tandem provides a powerful argument for Moore and his supporters to justify the contention that contemporary American law and public policy ought to be predicated upon Christian values:

First Syllogism:

FIRST PREMISE: Christianity formed the original basis of American culture.

SECOND PREMISE: American law ought to reflect the original basis of American culture.

CONCLUSION: Therefore, American law ought to reflect Christianity.

Second Syllogism:

FIRST PREMISE: Christianity is the preferred religion.

SECOND PREMISE: America ought to follow the preferred religion.

CONCLUSION: Therefore, America ought to follow Christianity.

With these explicit constructions, both syllogisms demonstrate logically valid conclusions that avoid the mistake of the genetic fallacy.

For many who seek to restore a belief in a transcendent moral standard to the public square, the importance of a privileged position for religion in general, and for Christianity in particular, cannot be underestimated. They argue that the demarcation between state and society cannot be preserved when one addresses moral and religious values. According to Neuhaus, it is not possible to maintain simultaneously a secular state and a non-secular society²¹: "religion is the heart of culture and culture is the form of religion. . . . On this view, then, politics is a function of culture and culture, in turn, is reflective of (if not a function of) religion."²² As a comprehensive belief system, Neuhaus declares, religion addresses the human condition in all its aspects, including government.²³ He argues that, for law and laws to be legitimate, they must be related to basic presuppositions about right and wrong, good and evil.²⁴ A public ethic to serve as the basis of moral criticism cannot be maintained without being informed by religiously grounded values. Thus, only religion provides the transcendence of moral authority needed to judge the praiseworthiness of temporal political institutions and policies. Given this view, the arguments and conclusions of the two syllogisms regarding religion and Christianity must remain coupled.

Religious Pluralism and Liberal Democracy

While the reconstructed pair of syllogisms in defense of Moore's legal objectives are logically valid, the soundness of their premises is nonetheless open to inquiry. The assertion of a privileged position for Christianity resolves the purely logical problem, but this resolution appears contrary to the ethos of liberal democracy with respect to religion. Institutional guarantees of freedom of religion, speech, and association have stimulated the proliferation of alternative worldviews

throughout civil society and the public square. Arguments supporting these worldviews engage in increasingly bitter competition to influence the political direction of contemporary liberal democracies. The state thus presents itself with the challenge of finding a way that all religious and other moral arguments, not just those defending and promoting Christianity, may contribute to a public conversation on the nature of and search for the good society.

Civil society provides legitimacy for freedom of conscience and of religious belief, as well as for voluntary participation in religious organizations and institutions. From quietly living out one's faith, to active proselytization to bring in new converts to a particular denomination, to participation in politics, personal religious practices are protected and promoted, as are public expressions of moral concerns. Civil society values the protection limited government affords to individual freedoms, including freedom of religion; yet simultaneously, this protection encourages a proliferation of groups whose beliefs, theologies, and practices may undermine the rationale of civil society itself. Contrary to claims that it treats religion in a trivial, hostile, or captive fashion, the state's protection and promotion of religious and political freedom have given rise to social dynamics that often test the limits of liberal democracy.

When fundamentally opposed epistemologies conflict, however, the erratic promulgation of theological and philosophical arguments foreshadows fractious religious politics, straining the intent of civil society. By encouraging tolerance and pluralism, liberal democracy sows diverse religious winds, and confronts a whirlwind of its own making. Ironically, liberal democracy developed as a response to medieval arguments granting a privileged position to Christianity, arguments that are now regaining popularity.