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# RELIGION, DEMOCRACY, AND AUTONOMY: A POLITICAL PARABLE

STEVEN D. SMITH\*

## I.

Should legislators feel free to rely on their religious beliefs in deciding how to vote on, say, an abortion regulation, or a same-sex marriage bill? Should citizens be encouraged to resort to their religious faith as they vote in an election? Should judges consult their religious convictions in deciding how to rule in a difficult case? Or does such reliance on religion in public decision making somehow violate, if not the Constitution itself, at least the meaning or spirit of democracy?

Debate focusing explicitly on these questions—or what one might call the “religion-and-democracy” debate—has raged in the academy for about a decade and a half by now,<sup>1</sup> and the contours of the debate have become familiar. For me, the debate continues to be interesting in part because it is a sort of pale reflection of other debates that might have been common in less civilized times but that, in the freedom of the modern enlightened academy, we are no longer able to have. So I want very quickly to make several

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1. For an early exchange of views on the issue, see Kent Greenawalt, *The Limits of Rationality and the Place of Religious Conviction: Protecting Animals and the Environment*, 27 WM. & MARY L. REV. 1011 (1986), and responses by Michael Perry, Fred Schauer, Michael Smith, and Diane Zimmerman. See Michael J. Perry, *Comment on “The Limits of Rationality and the Place of Religious Conviction: Protecting Animals and the Environment,”* 27 WM. & MARY L. REV. 1067 (1986); Frederick Schauer, *May Officials Think Religiously?*, 27 WM. & MARY L. REV. 1075 (1986); Michael E. Smith, *Religious Activism: The Historical Record*, 27 WM. & MARY L. REV. 1087 (1986); Diane Leenheer Zimmerman, *To Walk a Crooked Path: Separating Law and Religion in the Secular State*, 27 WM. & MARY L. REV. 1095 (1986). For a more recent collection of well-argued perspectives, see RELIGION AND CONTEMPORARY LIBERALISM (Paul J. Weithman ed., 1997).

observations about the character of the current debate, to identify what I think is a "red herring," and to describe what seems to me to be the real, underlying issue. I will then use the bulk of this Essay to explore—in an oblique, law professor's way—this underlying issue that is crucial, I think, not only to this particular debate, but to a good deal of our modern self-understanding.

Let me start by observing something obvious: In the contemporary academic debate about religion in politics, *democracy* provides the axiom from which virtually everyone argues. Some professors will contend that citizens, or perhaps legislators, have a right to invoke the Bible or appeal to theology in debating and deciding political issues, but the professors themselves typically do not exercise any such right in debating *these* issues. They would not think to approach the question, for instance, by asking whether *God would want* people to rely on faith in making their political decisions. And even if this question does occur to the professors, the conventions of academic discourse prevent it from being raised and considered, at least in any straightforward manner. So instead, law professors and political theorists argue about whether it is *more consistent with democracy* for people to debate and vote on public matters on whatever grounds (religious or secular) appeal to them or, conversely, to check their faith at the door before entering the public domain. In effect, academics treat the issue they are arguing about with respect to *the broader political culture* (is it permissible to rely upon religious grounds?) as an issue that has already been resolved, in the negative, for purposes of *the academy* itself. This treatment, to say the least, gives the debate a somewhat peculiar quality.

Even framed in this way, though, the debate does not necessarily imply a negative answer to the issue for the broader culture. On the contrary, when the debate is understood as one about the implications of democracy, perhaps the more obvious answer is an affirmative one: Wouldn't democracy imply that "the people" can act on any grounds they see fit to act on?<sup>2</sup> The puzzlement is reflected in Sanford Levinson's question: "Why doesn't liberal democracy give

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2. But see FRANK I. MICHELMAN, BRENNAN AND DEMOCRACY 33-34, 38 (1999) (arguing that the meaning and requirements of democracy cannot be democratically determined).

everyone an equal right, without engaging in any version of epistemic abstinence, to make his or her arguments, subject, obviously, to the prerogative of listeners to reject the arguments should they be unpersuasive . . . ?"<sup>3</sup> There is an important, even portentous answer to that question, I think, but it is not the most familiar answer, which I believe to be a "red herring." The familiar answer suggests that democratic deliberation, or perhaps even democratic legitimacy, requires that public decisions should be made on the basis of reasons "accessible" to all citizens.<sup>4</sup> This position has been effectively criticized,<sup>5</sup> however, and I doubt that it fully captures democracy-based resistance to religion in public discourse.

One major reason for this doubt is that the accessibility position, taken at face value, does not faithfully serve the purposes of its own proponents. This is because, if "accessible" is taken to mean something like "intelligible" or "understandable," the constraint excludes the wrong things. Many complicated scientific and philosophical analyses will not be "accessible" in this sense to many or most of us; conversely, many of the most controversial religious rationales will be readily understandable. "God prohibits homosexual conduct" is an idea not especially difficult to understand in an ordinary sense,<sup>6</sup> though of course its truth, its admissibility, and its philosophical meaningfulness are all debatable. Conversely, if "accessible" is taken to mean something more like "believable" or "generally accepted," then the "accessibility" requirement would

3. Sanford Levinson, *Religious Language and the Public Square*, 105 HARV. L. REV. 2061, 2077 (1992). For an expression of a similar puzzlement, see Douglas Laycock, *Freedom of Speech That Is Both Religious and Political*, 29 U.C. DAVIS L. REV. 793 (1996).

4. For a helpful and generally sympathetic discussion of the "accessibility" constraint, see MICHAEL J. PERRY, *LOVE AND POWER: THE ROLE OF RELIGION AND MORALITY IN AMERICAN POLITICS* 105-22 (1991). Of course, not all proponents and critics use exactly the same vocabulary or mean the same thing by "accessibility."

5. Following a thorough examination, for example, Kent Greenawalt concluded that "the claim that citizens and legislators should rely exclusively on secular grounds," a claim that Greenawalt understood and discussed largely in "accessibility" terms, was "definitely wrong" and "at the deepest level . . . not only wrong but absurd." KENT GREENAWALT, *RELIGIOUS CONVICTIONS AND POLITICAL CHOICE* 258 (1988).

6. A possibly sacrilegious billboard that I passed recently on the Indiana Turnpike reads:

WHAT PART OF "THOU SHALT NOT" DIDN'T YOU UNDERSTAND?

--GOD

become unduly severe. Disagreements are likely to arise precisely because people differ about the believability of the premises or rationales that support different conclusions; if such differences are enough to make a premise or rationale inadmissible in democratic deliberation, then there will be precious little to deliberate about.<sup>7</sup>

So the argument about "accessibility," I believe, is artificial, and it has distracted us from the deeper and more far-reaching reason for resistance to the use of religion in democratic politics. And what is that deeper reason? It was hinted at by Alexander Hamilton during the Constitutional Convention.<sup>8</sup> At one contentious point in the proceedings, Benjamin Franklin proposed that daily sessions be opened with prayer.<sup>9</sup> The proposal was rejected, and Hamilton is said to have remarked that the convention had no need of "foreign aid."<sup>10</sup> Hamilton was no great democrat, of course, but this remark, if actually made, suggests that he was ahead of his time in anticipating the implications of a modern conception of democracy. The basic thought is that democracy means self-government, and self-government means government of and by ourselves: we should make our own decisions, without outside assistance or interference.

In this respect, modern democracy is merely an extension to the political level of what "autonomy" is thought to mean on the individual level. Theorists may associate this position with Kant. Kant, after all, was a major proponent of a highly influential view of the autonomous, rational person which holds that enlightened autonomy means "thinking for yourself,"<sup>11</sup> and that an "inability to make use of one's own understanding without the guidance of

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7. Theorists often try to minimize this difficulty by either equivocating—invoking a value such as "equality" that at some level is widely shared, while smuggling in a controversial version of "equality" that is *not* shared—or by marginalizing those citizens who do not share a particular view. For expositions of these tricks, see for example, STANLEY FISH, *THE TROUBLE WITH PRINCIPLE* 189-91, 198-201 (1999); Michael P. Zuckert, *Is Modern Liberalism Compatible with Limited Government? The Case of Rawls*, in *NATURAL LAW, LIBERALISM, AND MORALITY* 72, 77-78 (Robert P. George ed., 1996).

8. See Douglas Adair & Marvin Harvey, *Was Alexander Hamilton a Christian Statesman?*, 12 WM. & MARY Q. 308, 315 n.8 (1955).

9. See *id.*

10. See *id.*

11. Immanuel Kant, *An Answer to the Question: What is Enlightenment?*, reprinted in *WHAT IS ENLIGHTENMENT? EIGHTEENTH-CENTURY ANSWERS AND TWENTIETH-CENTURY QUESTIONS* 58 (James Schmidt trans., ed., 1996).

another" is a form of "immaturity" reflective of "[l]aziness and cowardice."<sup>12</sup> Autonomy entails "not submitting to groundless authorities," or to "alien' authorities"—a contestable category, no doubt, but one that at least includes "state, church, majority, tradition, or dictator."<sup>13</sup> This commitment to autonomy supports a cluster of intertwined Kantian propositions that have become virtually axiomatic for much of modern liberal democratic theory: that "autonomy is the supreme good,"<sup>14</sup> that only obligations that we legislate for ourselves are binding on us,<sup>15</sup> that autonomy is the essential basis of human dignity,<sup>16</sup> and that "[t]here is no place for others to tell us what morality requires, nor has anyone the authority to do so—not our neighbors, not the magistrates and their laws, not even those who speak in the name of God."<sup>17</sup>

It is clear enough, even on the face of these assertions, that projecting this notion of *individual* autonomy onto the *political* level

12. *Id.*

13. Onora O'Neill, *Vindicating reason*, in *THE CAMBRIDGE COMPANION TO KANT* 280, 298-99, 305 (Paul Guyer ed., 1992).

14. GERALD DWORKIN, *THE THEORY AND PRACTICE OF AUTONOMY* 8 (1988); see also William A. Galston, *What is Living and What is Dead in Kant's Practical Philosophy?*, in *KANT AND POLITICAL PHILOSOPHY: THE CONTEMPORARY LEGACY* 207, 216 (Ronald Beiner & William James Booth eds., 1993) (observing that for Kant, only "rational being has 'absolute worth'"); cf. IMMANUEL KANT, *GROUNDWORK OF THE METAPHYSIC OF MORALS* 96 (H.J. Paton trans., 1964) ("Persons, therefore, are not merely subjective ends whose existence as an object of our actions has a value for us: they are *objective ends* . . . ; for unless this is so, nothing at all of *absolute* value would be found anywhere."); ROBERT PAUL WOLFF, *IN DEFENSE OF ANARCHISM* 72 (2d ed. 1998) ("When I place myself in the hands of another, and permit him to determine the principles by which I shall guide my behavior, I repudiate the freedom and reason which give me dignity. I am then guilty of what Kant might have called the sin of willful heteronomy.").

15. See WOLFF, *supra* note 14, at 14 ("[Man] is *autonomous*. As Kant argued, moral autonomy is a combination of freedom and responsibility; it is a submission to laws which one has made for oneself.").

16. See VITTORIO HOSLE, *OBJECTIVE IDEALISM, ETHICS, AND POLITICS* 49 (1998) (arguing that "[o]nly Kant's conception of freedom can give dignity to human beings").

17. J.B. Schneewind, *Autonomy, obligation, and virtue: An overview of Kant's moral philosophy*, in *THE CAMBRIDGE COMPANION TO KANT*, *supra* note 13, at 309, 310; see also HOSLE, *supra* note 16, at 41:

Kant's thought implies a Copernican revolution not only in theoretical, but also in practical philosophy: all heteronomous attempts at founding ethics are rejected, and ethics is grounded in the autonomy of the subject. The indissoluble link between freedom and ethics tries to bring the Enlightenment into its truth: no external validity claims are accepted; every authority has to justify itself before reason.

will raise some delicate questions. Robert Paul Wolff argues enthusiastically, for instance, that if the concept of autonomy is carefully considered, it leads us inexorably to embrace anarchism.<sup>18</sup> Setting aside that sort of question, though, it is not hard to see how someone with this general orientation would look with suspicion on the resort to religion in democratic decision making—not necessarily because of any singular hostility to religion per se, but because religion typically includes something like deference to God, and God (if there is a God) is an “alien authority.”<sup>19</sup> Doing what God wants because God wants it is not the same as thinking and acting “for yourself.” So deferring to God’s will is a way of submitting to “foreign aid,” as Hamilton put it.

At this point, professors of philosophy might eagerly launch into a discussion about what Kant really meant, or about how some of his pronouncements should be understood in light of others, or about which among modern positions that invoke the authority of Kant in opposing deference to authority correctly understand his views and which do not. Of course, the professors would disagree about those matters, as professors of philosophy always do.<sup>20</sup> I do not want to get into such a discussion here, however, for several sufficient reasons. In the first place, I lack the training (and probably the kind of mind) needed to contribute much to that kind of debate. More importantly, for our purposes it does not make much difference what Kant really meant, or what he would or should have said with regard to our issues. Like other great thinkers, Kant released some potent ideas into the world, and thereafter they no longer belonged to him. Others may have misapprehended these ideas—or they may have apprehended them more clearly than Kant himself did; but, in any case, what matters for practical purposes is what Kant’s ideas came to mean, not what

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18. See generally WOLFF, *supra* note 14.

19. If there is not a God, then relying on religious reasons may seem like deferring to an illusion, which is also something that enlightened theorists frown upon (whether or not they succeed in avoiding the practice). Cf. Steven D. Smith, *Idolatry in Constitutional Interpretation*, in PAUL F. CAMPOS ET AL., *AGAINST THE LAW* 157 (1996).

20. Cf. JOHN E. HARE, *THE MORAL GAP: KANTIAN ETHICS, HUMAN LIMITS, AND GOD’S ASSISTANCE* 7 (1996) (“Kant is like other great philosophers; the basic components of his theory are in dispute between interpreters, and so all the parts of the theory relying on these components become controversial.”).

he meant. Or, probably more realistically, it may be that Kant was not so much originating new ideas as articulating (in his own idiosyncratic and ponderous way) notions that were (and *are*) “in the air.” So for some purposes the more cogent question might ask *not* how well others understood Kant, but how well *he* understood *them*. (Perhaps not all that well, I suspect, in either case).

In any event, for purposes of the present discussion what matters is not what Kant meant, but instead what the ideas—or sentiments, or slogans—often associated with him and lumped under the heading of “autonomy” mean for us, and whether “autonomy” is incompatible with the use of religion in public deliberation, and whether “autonomy,” as it has come to be understood, is a coherent and attractive ideal. In short, *is the introduction of religion into public deliberation inappropriate because it offends a justified commitment to human autonomy?* This is the real question, I think, that runs through the religion and democracy debate. It is a difficult question and I for one am not completely sure about my views on some aspects of it. In addition, as a law professor and not a professional philosopher, I hardly feel competent to address this sort of question directly. Instead, I wish to explore the question in a way more fitting to a law professor—that is, by posing a hypothetical story.<sup>21</sup>

## II.

Imagine that with the onset of a new millennium and the spiritual exhaustion of conventional, Clintonesque politics, our political culture experiences a series of dramatic and unexpected developments. Among other things, a virulent nostalgia, or perhaps a yearning for the “reenchantment” of the world, generates surprisingly widespread support for a new political party that calls itself the Democratic Royalist Party (the DRP). The DRP is led by a charismatic figure named James (Jimmy) Stuart.

Like many historic figures, Stuart is a complex and probably contradictory personality—passionate but also thoughtful, pure-

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21. This story is, as noted, hypothetical, and all characters in the story are purely fictional.



hearted and strong-willed. Born in one of the few remaining domestic log cabins, and largely self-tutored, Stuart is a quintessential man of the people. But he also exudes a sort of innate nobility, and this quality has surfaced in his political thought. Somewhere in his self-education, Stuart stumbled upon some faded seventeenth-century monarchical tracts and these led him to the conclusion that the British monarch does indeed possess the right of rulership, and that all English-speaking people owe allegiance to the crown.

Stuart also continues to believe in democracy, however, and so he goes to Washington with a novel proposal: adhering scrupulously to the procedures of the Constitution (including Article V), Americans should cede all political power to the Queen of England for a ten-year term. At the end of that term, another election will be held to determine whether this benevolent despotism will be renewed for a second term, and so on. In this way, Stuart claims, the Queen's right to rule will be respected, but the system will remain fundamentally democratic.

As you might expect, this platform provokes fierce opposition. Some of Stuart's opponents attack his ideas on the merits. They criticize his monarchical assumptions on theoretical grounds; they protest his proposal on pragmatic grounds. A few go so far as to argue that the British royal line does not even exist. These critics contend that the current so-called "royal family" is nothing more than a sort of fraudulent facade; consequently, modern political philosophy must cast off all vestiges of monarchical thought and proceed with a constant awareness of the "death of royalty."

However, one of Stuart's most sophisticated critics—a descendant of a long line of opponents of monarchy, or at least of English monarchy, with the improbable name of Ronald the Bruce—adopts a different perspective. Rather than criticize the DRP platform on its merits, Ronald asserts that what Stuart offers is not even a bad political philosophy; it is no philosophy at all. That is because monarchical ideas are inherently incompatible with democratic assumptions: One cannot coherently maintain *both* that the British crown has a right to rule *and* that democracy is the correct form of government. So Stuart's views cancel themselves out so to speak. And the proper conclusion, Ronald sometimes says, is not merely

that Stuart's royalist views are wrong, but that Stuart himself does not really hold those views (even though he *thinks* he does). In fact, as Ronald sometimes says, monarchism is by now not even "a thought to be had."

Though Stuart complains that this last claim overreaches, he is brought by these criticisms to reconsider his views. Upon further thought, he concludes that monarchy and democracy are indeed incompatible if viewed *as basic accounts of political authority*. But he still thinks there is something valuable and valid in his royalist notions—something that needs to be articulated in a better, more coherent way. Seeking to achieve reflective equilibrium between his general democratic assumptions and his royalist intuitions, Stuart comes to the conclusion that the Queen should be deferred to—*not* because the royal line has any "right to rule," as he had inaptly put the point, but rather because the Queen is quite simply the wisest and most benevolent person in the world. Therefore, we in this country should freely choose to defer to her judgments, not because she has "authority" over us, but because this course of deference is most conducive to our own welfare.

This revised view leads to a revised platform for the DRP, but one that still lets the party keep its name. As modified, the platform no longer calls for any official cession of political authority to the Queen. In form, politics and lawmaking in this country will continue as they have always done: Elections will be held, the bicameral Congress will meet, bills passed in both houses will be presented to the President and so forth. But the party pledges that if it gains a dominant position in government, it will solicit and defer to the Queen's judgments, categorically and on all matters. Technically, the Queen's judgments will be advisory only, but in practice they will be more than that; the party will treat them as dispositive. It would make little sense to follow the Queen only when she recommends what we would have independently chosen anyway. The reason for deferring to the Queen, after all, is that she is the embodiment of wisdom and benevolence, and if that is true then it is precisely in cases of disagreement that deference to a wiser source is most imperative.

Stuart maintains that this new position is thoroughly democratic while also possessing the true and beneficial features of royalism.

Again, of course, many of his critics attack the platform on its merits, arguing that the Queen is a fool, that she knows next to nothing about this country, that deferring to her judgment would be practically disastrous, and that she is not even a real queen. But as it happens, conditions in the country are such that many citizens—indeed, a majority—are drawn to Stuart's exalted opinion of the Queen; a view that many thought had passed irretrievably from the world has turned out to have surprising vitality after all. So Ronald the Bruce does not challenge that view directly; he concedes, for purposes of argument at least, that the Queen is the Queen and that she is a veritable incarnation of wisdom and benevolence. Nonetheless, Ronald still argues that the DRP platform is deeply undemocratic. Indeed, he now adds that the platform is unconstitutional because it violates the "republican form of government" clause, which of course applies to the national government through incorporation into the Fifth Amendment's Due Process Clause.<sup>22</sup>

Stuart and his supporters are at first incredulous: How can their program be undemocratic if it carefully preserves all of the central democratic features—elections, majority rule, and so forth—and if a majority of citizens choose to vote for it? Wouldn't it be *more* undemocratic to prevent the citizens from adopting the program that most of them prefer? But Ronald patiently explains that the self-styled democratic royalists still have not thought through their position carefully enough. The meaning of democracy cannot be democratically determined, Ronald points out: If three-fourths of the electorate voted for the proposition that "Democracy means the absolute dictatorship of Napoleon" their vote would not make it so. Nor is democracy merely a set of *forms*, or *procedures*—or merely hoops to jump through in making public decisions. There is nothing sacred about democratic procedures for their own sake. In fact, the forms in themselves are manifestly inefficient, expensive, and often downright unseemly. We nonetheless adhere to those forms only because they implement a deeper, more substantive political and moral value or commitment.

And what is that value? Ronald explains that the value underlying democracy is the ideal of self-rule, or self-determination,

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22. Cf. *Bolling v. Sharpe*, 347 U.S. 497 (1954).

or "autonomy"—the concept of thinking and making decisions for ourselves, or of being the authors of our own lives. The only duties or moral obligations that are truly obligatory are the product not of outside forces or authorities, but of *self-legislation*. And it is only by virtue of possessing and exercising such autonomy that human beings have a unique dignity and worth. Moreover, the ideal of self-rule or autonomy cannot be realized through forms alone, devoid of substance. Rather, in order to be responsible and autonomous human beings, we ourselves must actually think through and then make our own decisions. If instead we delegate those decisions to some outside authority, we sacrifice our autonomy, our dignity—indeed our very humanity.

In more familiar situations, Ronald continues, we readily understand this point. In a marriage, for example, it sometimes seems that one of the partners always does whatever the other partner says to do. Suppose we cross-examine the deferential spouse about this practice and he or she responds, "No, you don't understand. I'm fully autonomous. It's true that I always and unquestioningly obey my spouse, but *I freely choose* to do that. So there's no conflict between complete autonomy and total submission." We would easily see the delusion in this stance. Similarly, we do not allow people to sell themselves into slavery—even if that is what they say they want. We understand that such a condition would in reality be a forfeiture of autonomy; and so we would promptly reject the argument that, by allowing and enforcing contracts to enter into slavery, we would better facilitate the exercise of people's autonomy. On similar reasoning, we do not allow a legislature to bind itself in the future because, as the old sages like Dicey and Blackstone explained, to allow the legislature to do this would be to infringe on the legislature's own sovereignty.

So even though the current DRP platform retains the outward forms of democracy, Ronald concludes, the platform would effect a wholesale forfeiture of autonomy by entrusting all real thinking and decision making to the Queen. But autonomy, or self-rule, is the central value supporting democracy. Indeed, democracy is little more than autonomy writ large—autonomy projected onto the political stage. Consequently, the DRP philosophy remains

incoherent (not really a philosophy at all, as Ronald sometimes says) and deeply undemocratic in the most fundamental sense.

Let us suppose that Ronald succeeds in convincing the electorate on this point; consequently, the once vigorous DRP fades into oblivion. Even Jimmy Stuart eventually concedes his error: Convinced by Ronald that his underlying commitment has been to autonomy all along, Stuart resolves to follow the path of autonomy faithfully, wherever it may lead. The democracy-autonomy argument will also have the effect of discrediting several DRP offshoots. For example, one splinter faction wants to adopt a policy of total deference, not to the Queen of England, but rather to the Queen of Sheba, who is said to have acquired tremendous wisdom somewhere along the line. This faction hopes to avoid the rhetoric, which proved highly effective in getting Ronald's main point across to the philosophically innocent public, that the DRP program would in essence rescind the Declaration of Independence and the Revolutionary War, so that American patriots would have bled and died in vain. After all, the Sheba party argues, we never fought a war for independence from *Sheba*. Another faction, influenced by Plato, proposes that deference be given to Jurgen Habermas on the ground that he is the smartest philosopher in the world; and still a third group proposes to confer the honor on Richard Rorty because he is not only a really smart guy (though perhaps not *quite* as smart as Habermas) but an American citizen to boot.

Although these proposals gain a smattering of initial support, political theorists and citizens in general quickly realize that the distinctions offered by these splinter parties are spurious. The autonomy argument means that we should not delegate our decision-making responsibilities to *anyone*. It doesn't really matter whether the delegee is a monarch, or British, or a philosopher, or a foreigner: The critical fact is that she or he is not *us*. What is objectionable, in other words, is that we give decisional responsibility away—*not* to whom we give it.

In fact, it doesn't really matter whether the recipient of deference is a "who" or a "what." The point becomes important because still another new political party, the AI Party, proposes that political decisions be made by a new, staggeringly powerful supercomputer dubbed "Shepherd." Shepherd has been programmed to make

decisions based on consulting all the political philosophies ever devised and then applying those philosophies to a wealth of data far surpassing the information that could be assimilated by any human, or any discrete body of humans. The autonomy rationale proves crucial here because the arguments on the merits are more touch-and-go than they were for some of the other proposals. Scientists and philosophers are still arguing, that is, about the precise nature of Shepherd's intellectual qualities—whether Shepherd really “thinks,” how Shepherd chooses among competing philosophies, and so forth—but no one denies that, in some sense, Shepherd has vastly greater cognitive capacities than even the smartest human being. Moreover, with the other proposals there was always the nagging concern that the recipient of deference might be corrupted; he or she might use this newly conferred power for his or her own interests and, thus, against ours. But Shepherd is incorruptible and has no “self-interest,” having been programmed to act solely for the public good.

Nonetheless, the AI Party is voted down, mostly, it seems, on autonomy grounds. After all, an opponent explains (in what has become a familiar refrain), it is only autonomy that gives us the dignity that makes us, as humans, distinctively valuable. Maybe Shepherd *would* consistently make sounder, better informed decisions than we do. But so what? What would it profit us to gain the whole world and lose our own autonomy?

Ronald the Bruce feels the flush of success as one opponent of autonomy after another goes down in defeat. But his satisfaction turns to frustration when his own arguments come to be used against him. It happens in this way: A new political movement has given rise to a political party that calls itself the “Party of Principle.” This party proposes that all public decisions will be made in accordance with what have come to be known as “the two-and-a-half principles.” These principles have been developed and defended through intricate and abstruse argumentation by a group of high profile philosophers. The merits of this political philosophy are very much in dispute, of course, and it seems safe to predict that the dispute will end only if and when people finally just lose interest in the subject—or rather when political philosophers lose interest, because they are the only people who manifest any interest

in the philosophical issues even now. Ronald the Bruce heartily supports the Party of Principle. But critics of the Party object that, regardless of the substantive merits of the formidable philosophical issues, the "Platform of Principle" should be rejected because it is undemocratic.

Ironically, it is Jimmy Stuart, chastened by his earlier experiences, who now offers himself as the champion of autonomy. Stuart makes this argument: "Ronald the Bruce said we couldn't defer to the Queen, whether or not she is the best and wisest person on earth, because this would forfeit our autonomy, which is what gives us dignity and worth. On the same reasoning, we couldn't defer to Habermas, or Rorty, or even to Shepherd, a machine. So I want to know: Why is it any less a sacrifice of our autonomy to let our decisions be determined by some set of *principles*? If it's demeaning to let your life be governed by a *person*, isn't it even more demeaning to turn your life over to a *formula*?"<sup>23</sup> Indeed, what's the difference between Shepherd and a set of principles? Shepherd is just a set of principles embodied in circuitry rather than ink; the main difference is only that Shepherd is a lot more sophisticated and less simple-minded than the two-and-a-half principles. Or what if Shepherd were programmed *only* with the two-and-a-half principles: *Then* would it be okay to make a dumbed-down Shepherd our effective dictator? That in essence is what the Party of Principle proposes."

Angered by this abuse of his ideas, Ronald agrees to debate Stuart on national television. It would be tedious to recite the full debate, but I need to report on one of the pertinent exchanges:

RONALD: You completely misunderstand. When we act on a principle we don't sacrifice autonomy, because we ourselves have willed—have legislated for ourselves—the principle. Acting on a principle is not a violation of

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23. Though Stuart himself reads philosophers only occasionally, a bookish friend points out that in enjoining "thinking for oneself" and condemning the "[l]aziness and cowardice" that lead most people to trust themselves to the "guidance of another," Kant did not seem to distinguish between deferring to *personal* or *impersonal* authorities. It was objectionable to defer to a "pastor who has a conscience for me" but also to "a book that has understanding for me"; and "[r]ules and formulas" could be the "fetters of an everlasting immaturity" as much as kings or bishops could. KANT, *supra* note 14, at 58-59.

autonomy; on the contrary, it is precisely the way we realize and exercise our autonomy.

STUART: Well, of course, most of us *haven't* approved the two-and-a-half principles. We don't even understand them, or at least we don't accept the logic of the arguments you give for those principles. So *we* aren't legislating for *ourselves*; and you want to adopt the principles anyway.

But set that problem aside: even if every last one of us did understand and approve those principles, we'd still be turning our decisions over to them—letting a formula or a set of principles determine our decisions in the same way we'd have been letting Shepherd determine our decisions if the AI Party had been elected.

RONALD: It isn't the same thing at all. If *you* approve the principles, then *you* choose to follow them. You're still legislating for yourself.

STUART: That's just what I said about the Queen. It would have been *my* decision—*our* decision—to defer to her. And the decision would have been just as free as a decision to be governed by a set of principles. Even more free, maybe: aren't you always saying that if we are reasonable and rational, then we "have to" adopt the two-and-a-half principles because they are supported by "compelling" arguments. But you said that sort of decision was throwing away our autonomy.

RONALD: That was totally different. If we defer to the Queen, we won't be thinking about the merits—the substance—of individual decisions at all. If we adopt the two-and-a-half principles, on the other hand, we *will* have thought about the merits of our decisions. We'll have thought through the merits in advance, so to speak, in deciding to adopt the two-and-a-half principles.



STUART: Well, political views and philosophies have never stayed stagnant, you know. And I see no reason to suppose that the two-and-a-half principles will be the end of political reflection. So wouldn't we need to think through the substance of those principles fresh for each new decision—to have the whole debate all over again in the circumstances surrounding each new issue and in light of our current views? If we really want to be autonomous, I mean?

RONALD: Why on earth would we need to do that?

STUART: Because otherwise we might be turning our lives over to principles that we once found attractive but that, if we were to rethink them in light of further experience and new considerations, we wouldn't even agree with.

RONALD: I don't understand. Nothing in the Platform of Principle says that in adopting the two-and-a-half principles, we have to adopt them irrevocably and for all time. If the principles turn out to be deficient, we can always revise or replace them.

STUART: But how will we know whether we would think they are deficient, in any given case, unless we rethink them in *every* case—have the full debate in light of current considerations and current views?

RONALD: This makes no sense. You seem to want a sort of perpetual rethinking and rearguing of first principles. Obviously that wouldn't be feasible; but there's an even more serious problem. What you want would actually eviscerate the meaning of living by a principle altogether. What would it even mean to commit yourself to a principle, or to have the sort of integrity that comes from living by a principle, if you intend in every situation to consider the matter from scratch and

to follow the principle only if it happens to dictate doing what seems best to you anyway?

Besides, nothing in our constitutional system works like that. Take the privilege against self-incrimination. We don't reexamine that privilege in every case; we may not even remember for sure why it was adopted in the first place. If we were to start from square one, *maybe . . .*, just maybe, we'd still choose to adopt a privilege against self-incrimination—maybe we wouldn't. You could say the same for any other basic constitutional principle. And of course sometimes we *do* abandon old principles, or adopt new ones. But until we decide to do that, we treat ourselves as bound. That's what it means to be a "community of principle."

What you want, on the other hand, seems to be a sort of perpetual, radical *ad hocery*. That would destroy our constitutional system.

STUART: Maybe it would. But so far as I can see, that's where the logic of autonomy leads. And remember—it's autonomy that gives us dignity. Autonomy is the source of human worth. So if our constitutional order is inconsistent with the logic of autonomy, then I think we will just have to relinquish our constitutional order.

At this point the debate reached an impasse. In post-debate interviews, Ronald insisted that Stuart had misunderstood the meaning and implications of autonomy. Most mainstream political philosophers agreed. But a few more adventurous political thinkers and actors took just the opposite view. In fact, they thought that Stuart had not actually taken the logic of autonomy far enough. So, in the aftermath of the debate, new political factions emerged.

For instance, the Anti-Formalist Party argued that the very notion of constitutionalism was undemocratic, because the Constitution clearly placed a whole variety of limits on the people's right of self-rule. This party started with a small insight: Somebody noticed that the cumbersome amending procedures specified in Article V severely limited "We the People" from expressing and

implementing their will. So democratic Anti-Formalists started saying that constitutional amendments should be allowed outside the bounds of Article V. Amendments should not even have to be written out and voted on at all if "We the People" did not feel so inclined. (Ironically, this much of the Anti-Formalist's anti-constitutional agenda was inspired by Ronald the Bruce himself, who earlier in his career had devoted three entire books—admirers reverently referred to these books simply as "the trilogy"—to the development of these ideas.) More farsighted Anti-Formalists quickly realized that the same logic applied to *all* of the formalities that the Constitution places upon lawmaking.

Anti-Formalist Party conventions tended to be chaotic and a lot of fun, with a good deal of posing and shouting. Sadly, the Party never managed to agree on any formal platform. Some Anti-Formalists advocated pure majority rule; others, who regarded themselves as "purists," favored spontaneous mass direct democracy. Perhaps the most attractive Anti-Formalist proposal, or at least the one most often and enthusiastically defended by the party's more respectable members, called for an implementation of the general will of "We the People" by a small group of professors and jurists who would acquire an uncanny, almost mystical access to that will by attending conferences at Ivy League law schools.

An even more radical party, known as the Anti-Socialists, advanced a platform that was individualistic to the point of being anarchist. In contrast to the familiar sort of radicals who argue that the government is illegitimate because it is not truly representative, the Anti-Socialists argued that the government should be overthrown because it *is* representative; after all, turning over one's decision-making responsibility to a representative is a classic forfeiture of autonomy. Autonomy, they stressed, means *self*-rule, and the polity doesn't have a "self": Only individuals have selves.

Jimmy Stuart initially sympathized with both of these parties, but he soon concluded that the logic of autonomy was inconsistent with organized political action altogether—there was something faintly ridiculous about an organized *political party* of anarchists—and so he retired from public activity, determined to lead a life of pure, solitary self-legislation. Consequently, what happened afterwards is perhaps not strictly relevant to a *political* parable. But, in

case it matters, I can very quickly relate the rest of Stuart's curious career.

He happened to run into Ronald the Bruce one evening at a sidewalk cafe; and now that their political battles were over the old antagonists actually felt like sitting down for a cordial chat. At least it was cordial in the beginning. Stuart, who was wearing an old sport coat, a tie, and a swimsuit but no shoes, explained his current thinking. In order to be autonomous, he said, he was adopting a policy of complete spontaneity—at least for the moment. "I do what I feel like doing. Say what I feel like saying. Take what I feel like taking."

Unconsciously putting his hand on his wallet, Ronald explained that in a wholly nonjudgmental way he fully and equally respected Stuart's views about the good life—even though he felt obligated to add, with all due respect, that as a strictly philosophical matter Stuart was utterly confused, as usual. "Autonomy" most emphatically did not mean "doing whatever you *feel like* doing at the moment." On the contrary, Stuart ought to realize that he was a rational being, that he truly exercised his autonomy only by acting rationally, that acting rationally entailed acting only on principles that he could consistently will to be universally observed, and that it followed from this that he ought to treat all other rational beings with respect—as "ends" not "means."

Stuart replied that none of this made any sense. He *was* a rational being, to be sure, but he was also an emotional being, an intuitive being, and a spiritual being. If "rationality" was what separated him from stones, plants, and beasts, as Ronald had argued, emotion, intuition, and spirit were what distinguished him from Shepherd. So he did not understand how "autonomy" justified letting his "reason" enslave or subordinate the rest of him: To identify the rational part of him with his "self," or his "being," seemed arbitrary—indeed irrational. Moreover, even insofar as he was a rational being it did not seem to follow that he must act only on universal principles—"You've heard of *instrumental* rationality, haven't you?"—and in any case he was quite sure he could craft universal principles that would suit anything he truly felt like doing, and in this sense would capture his sincere motivation. "I take your beret," he said, seizing Ronald's beret, on the universal

principle that 'Jimmy Stuart gets whatever he wants.' I really, sincerely wish that everyone *would* accept and act on that principle. It's not going to happen, of course—but where's the logical inconsistency?" Finally, the part about all persons being "ends" not "means" seemed intolerably vague and a *non sequitur* to boot (though it *was*, Stuart conceded, a "charming sentiment"). "So I still don't see how being 'autonomous' doesn't mean doing whatever I choose to do."

At this point, Ronald lost patience and called Stuart a "philosophical moron." Stuart shot back that Ronald simply lacked the courage of his convictions, and, hence, was constantly resorting to sophistry to invent spurious limits on autonomy whenever the concept became troublesome. "When did philosophizing about 'autonomy' ever lead you to a conclusion you didn't like in the first place?" Stuart demanded. The conversation broke down, but rather than part as permanent enemies the pair agreed to meet again—same time, same place—one week later. At the appointed time, Ronald came to the restaurant prepared with a lucid presentation organized around three extremely subtle distinctions that Stuart, and nearly everyone else, had somehow overlooked. But he wasn't able to give the presentation, because Stuart never showed up.

Several weeks later the two happened to pass on the sidewalk. For a moment Ronald failed to recognize Stuart, who was shirtless, unshaven, and a bit wild-eyed, but Stuart grabbed Ronald by the arm and, in what Ronald charitably interpreted as a friendly gesture, gave him a vigorous slap on the back. Taken by surprise, Ronald stammered "hello" and then asked why Stuart had not appeared at the scheduled meeting. "Well, I know I had promised to come," Stuart said. "And I even intended to come. But at the last moment, I didn't feel like it. And I thought, . . . —let's see, what did I think?—oh, yes, I'm like, 'Jimmy, you're an autonomous self. I'm not sure whether you're the same autonomous self that was in the restaurant with Ronald last week . . . , but be that as it may, you're an autonomous self, and you can't be bound by old promises.' . . . 'Dead hand of the past,' 'Can't bind the sovereign,' and all that, you know. . . . So I'm like, 'Jimmy, you're only bound by obligations that you legislate for yourself, and keeping promises—or at least

keeping *this* promise—isn't an obligation that you choose to impose on yourself.' So in the plenitude of my autonomy, I freely decided not to come." And he erupted in a roar of laughter that to Ronald sounded almost maniacal.

Realizing that the case was hopeless, or worse, Ronald shook his head sadly and walked on. An image of Frankenstein flashed through his mind, and he glanced back over his shoulder once or twice. But Stuart did not follow. And in fact, that was the last time the two ever met.

Years later, though, Ronald heard reports about what had happened to Stuart. The reports were second or third-hand, and they seemed to contradict each other. So Ronald was not sure which of the reports, if any, was correct.

According to one story, Stuart ended up in a mental institution, suffering from severe schizophrenia. A different report had it that Stuart, desperate and sick to death of autonomy, finally resolved to act on his original inclination. So he took a vow of fidelity to the Queen. Given that Stuart was not known to have had any personal audience with the Queen, it was not exactly clear what this vow might have meant. Stuart had believed, of course, that the Queen was the embodiment of wisdom and benevolence, so maybe his vow meant that he would make decisions by reflecting, using a sort of "imaginative reconstruction," about what a truly wise and good person would recommend. Or maybe Stuart had gotten hold of information about the Queen's views and values. In any case, according to this story, Stuart's vow of fidelity somehow helped him pull his fragmented self back together, so that, in the end, he achieved a kind of peace, and even self-mastery, that had previously eluded him. In trying to relinquish his autonomy, ironically, he had actually acquired it.

Nothing in these reports led Ronald to question his own entrenched commitment to autonomy—to "autonomy," that is, interpreted in the way that reasonable people would understand it. But he was moved to wonder whether autonomy was a concept, or possibly a conception, that could safely be entrusted to non-philosophers. Maybe the mass of people would be better off exercising their freedom under the benign, watchful tutelage of the enlightened. In order to be effective, of course, this tutelage would

need to be regularized and supported by the means typically used by the state; it would need to take the form of a sort of enforceable "freedom's law."

### III.

So much for the story. What is the moral? But as you know perfectly well, the Socratic code of the law professor prohibits me from answering that question for you. And in a Socratic spirit I am also constrained to say that I do not know the answer.

But I suppose it would not transgress the rules to say this much as a partial conclusion to the story: It seems that the fundamental modern concept of "autonomy"—the concept that pervades the religion and democracy debate, as well as modern political thought generally—is a problematic notion.<sup>24</sup> Whether this notion offers a coherent and attractive ideal for guiding our moral and political deliberation seems very much open to question.

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24. For a helpful critical consideration, see generally DWORKIN, *supra* note 14 (describing and criticizing various theories regarding autonomy).