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PUBLIC REASON AND ABOLITIONIST DISSENT*

DAVID A.J. RICHARDS**

Public reason plays a central role in the argument of *Political Liberalism* as the test for legitimate political argument in matters of constitutional essentials and basic justice. Rawls takes both antebellum abolitionist dissent and Martin Luther King's forms of dissent to be legitimate political arguments and thus adopts a more inclusive interpretation of public reason (appeals to God's law as a way of articulating a public reason) to encompass the legitimacy of such arguments.¹ The thought must be: if these forms of rights-based dissent were deemed illegitimate by a distinctively liberal political theory, such a theory would be fundamentally inadequate to its task. Critics of Rawls assume this idea when they take it to be the decisive objection to his theory, that it cannot, in fact, accommodate the significant role of religious argument in the abolitionist struggle for human rights in the United States.² Rawls's answer to these critics in *Political Liberalism* shows him, as usual, to be both the better historian and political and constitutional theorist; he suggests that the abolitionist arguments in question are consistent with a properly inclusive interpretation of public reason. His answer is, however, so brief and unelaborated that its point may easily be lost on his critics. A point of such importance can be made much more forcefully against his critics: the most reasonable interpretation of the legitimacy of rights-based dissent like that of the abolitionists turns on the level of public reason they, uniquely in the antebellum period, achieved. I defend this view at length in this essay; on the basis of it, my conclusion is that Rawls's interpretation of such rights-based dissent is no objection to his theory (though it is to those of his critics), but rather a tribute to its interpretive scope and depth. He, unlike them, gets the essential and central interpretive issue dead right about what, precisely, was both so historically remarkable in such dissent and so valuable as a model for later

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1. See JOHN RAWLS, *POLITICAL LIBERALISM* 247-51 (1993).

2. See STEPHEN L. CARTER, *THE CULTURE OF DISBELIEF: HOW AMERICAN LAW AND POLITICS TRIVIALIZE RELIGIOUS DEVOTION* 227-29 (1993). For more philosophical attempts to state related forms of argument, see KENT GREENAWALT, *RELIGIOUS CONVICTIONS AND POLITICAL CHOICE* (1988); Kent Greenawalt, *Political Self-Restraint* (in draft); MICHAEL J. PERRY, *LOVE AND POWER: THE ROLE OF RELIGION AND MORALITY IN AMERICAN POLITICS* (1991).

forms of such dissent, namely, the rigorous demands of public reason that abolitionist dissent brought to its arguments.

To make my case, I offer an interpretive account of two aspects of abolitionist dissent that have been most prophetically important in the later development of the American constitutional tradition: its anti-racism and anti-sexism. On the basis of this account, I offer some suggestions that a similar interpretation powerfully clarifies more contemporary forms of rights-based dissent, for example, those of Martin Luther King and feminists and others, that reasonably elaborate the principles of abolitionist dissent as basic principles of constitutional law today.³ The main aim of this essay, however, is to examine with care the nature and weight of abolitionist anti-racist and anti-sexist dissent as historically remarkable exemplars of the transformative power of public reason.

I. THE ARGUMENT FOR TOLERATION IN ABOLITIONIST MORAL, POLITICAL, AND CONSTITUTIONAL ARGUMENT

The great importance of the abolitionists in American moral, political, and constitutional thought was not only the substantive moral issue on which they aimed to fasten the public attention of the nation, but a mode of argument basic to the integrity of American revolutionary constitutionalism: namely, argument based on the demands of the right of free conscience. The abolitionists not only opposed the tyranny of unreflective majoritarian opinion of the age of Jackson; their voice was its proclaimed public enemy, the object of the anti-abolitionist mobs. These mobs, often led by Jacksonian community leaders, subjected courageous early abolitionist leaders like Theodore Weld and William Lloyd Garrison—who asked only to be heard—to unremitting violence, threats of death, insult, ridicule and, in the case of Elijah Lovejoy, murder.⁴ It was their appeal to conscience that was met by the age of Jackson's repression of free speech both at the state and national levels; such repression deprived the South and, for a long period, the nation of reasonable public discussion of the moral evils of slavery and of the merits and strategies of

3. The basic interpretive structure of my argument here derives from DAVID A.J. RICHARDS, *CONSCIENCE AND THE CONSTITUTION: HISTORY, THEORY, AND LAW OF THE RECONSTRUCTION AMENDMENTS* (1993), suitably adapted to the critical purposes of this essay. The extension of my earlier argument to feminist abolitionism is, however, new, part of an ongoing book in progress on justice, gender, and sexual preference.

4. For an excellent study, see LEONARD L. RICHARDS, "GENTLEMEN OF PROPERTY AND STANDING": ANTI-ABOLITION MOBS IN JACKSONIAN AMERICA (1970).

abolition.⁵ It was the abolitionist attack on the political and constitutional pathology behind the deprivation of these constitutional liberties that eventually was to awaken the public mind of the nation to the underlying constitutional principles of human rights that condemned equally the repression of conscience and the institution of slavery.⁶

To understand the importance of abolitionist thought to American political and constitutional development, we must interpret their thought in light of the political theory of toleration central to their intellectual, moral, and political project; that theory gives pivotal weight to the inalienable right to conscience and to the primacy of ethical reflection. The theory of toleration enables us to understand the power of their ethical criticism of both slavery and racism, and how they connected that criticism to a larger conception of political and constitutional legitimacy rooted in American revolutionary constitutionalism.

Theodore Weld, one of the most important and influential of the early abolitionists, presented in his widely circulated *American Slavery As It Is*⁷ not only a factual picture (gathered largely from Southern newspapers) of life in the South under slavery, but a normative argument in light of which those facts should be interpreted.⁸

The normative argument took it to be fundamental that persons have:

inalienable rights, of the ownership of their own bodies, of the use of their own limbs and muscles, of all their time, liberty, and earnings, of the free exercise of choice, of the rights of marriage and parental authority, of legal protection, of the right to be, to do, to go, to stay, to think, to feel, to work, to rest, to eat, to sleep, to learn, to teach, to earn money, and to expend it, to visit, and to be visited, to speak, to be silent, to worship according to conscience, in

5. See generally RUSSEL B. NYE, *FETTERED FREEDOM: CIVIL LIBERTIES AND THE SLAVERY CONTROVERSY 1830-1860* (1949); CLEMENT EATON, *THE FREEDOM-OF-THOUGHT STRUGGLE IN THE OLD SOUTH* (1940).

6. See generally, NYE, *supra* note 5; RICHARD H. SEWELL, *BALLOTS FOR FREEDOM: ANTI-SLAVERY POLITICS IN THE UNITED STATES 1837-1860* (1976).

7. "*American Slavery As It Is* sold more copies than any other antislavery pamphlet ever written: more than 100,000 copies within a year." DWIGHT L. DUMOND, *ANTI-SLAVERY: THE CRUSADE FOR FREEDOM IN AMERICA* 256 (1961); cf. GILBERT H. BARNES, *THE ANTI-SLAVERY IMPULSE 1830-1844*, at 139, 163 (1933).

8. On Weld and his importance in the early abolitionist movement, see generally BARNES, *supra* note 7. For other important works by Weld, see THEODORE H. WELD, *THE BIBLE AGAINST SLAVERY* (Pittsburgh, United Presbyterian Board of Publication, 1864) (1838); *The Power of Congress over Slavery in the District of Columbia* (1838); reprinted in JACOBUS TEN-BROEK, *EQUAL UNDER LAW* 243 (1965); *Persons held to Service, Fugitive Slaves, &c.* (1843), reprinted in *THE INFLUENCE OF THE SLAVE POWER WITH OTHER ANTI-SLAVERY PAMPHLETS* No. 12, at 1-8 (1970).

fine, their right to be protected by just and equal laws, and to be *amenable to such only*.⁹

The abridgement of such inalienable rights (including "free speech and rights of conscience, their right to acquire knowledge"¹⁰) required a heavy burden of justification.

Weld identified an important analogy between the inadequacies of the justifications in fact offered by Southerners and the comparably inadequate arguments offered in support of religious persecution, whether Puritan persecutions of the Quakers¹¹ or Roman persecution of Christians or Christian persecutions of pagans and heretics.¹² He was struck by the fact that persons, just and generous "with those of their own grade, or language, or nation, or hue," practiced "towards others, for whom they have contempt and aversion, the most revolting meanness, perpetrate robbery unceasingly, and inflict the severest privations, and the most barbarous cruelties."¹³ In language and thought very similar to Madison's theory of faction and its application by Madison to race prejudice,¹⁴ Weld observed:

Arbitrary power is to the mind what alcohol is to the body: it intoxicates. Man loves power. It is perhaps the strongest human passion; and the more absolute the power, the stronger the desire for it; the more it is desired, the more its exercise is enjoyed: this enjoyment is to human nature a fearful temptation,—generally an overmatch for it.¹⁵

The key to understanding the political evil of both religious persecution and slavery was the intrinsic corruptibility of human nature by political power over certain kinds of questions. The worst corruption was of conscience itself—a fact, he argued, well reflected in the cumulative blinding of Southern public morality to the evils of slavery.¹⁶

In the most important studies of the morality of slavery by an American philosopher in the antebellum period, William Ellery Channing had temperately stated the ethical dimensions of the abolitionist case for both the evil of slavery and the need for abolition in a similar

9. See THEODORE D. WELD, *AMERICAN SLAVERY AS IT IS* 123 (Arno Press, 1968) (1839); see also *id.* at 7-8, 143-44, 151.

10. *Id.* at 7-8.

11. See *id.* at 112-13.

12. See *id.* at 118-20.

13. *Id.* at 120.

14. For pertinent discussion and citations, see DAVID A.J. RICHARDS, *FOUNDATIONS OF AMERICAN CONSTITUTIONALISM* 32-39 (1989) [hereinafter RICHARDS, *FOUNDATIONS*].

15. See WELD, *supra* note 9, at 15.

16. See *id.* at 113-17, 120-21, 123-25, 146, 184-86.

way.¹⁷ Like Weld, Channing based his argument on the fact that “[a]ll men have the same rational nature and the same power of conscience,”¹⁸ a capacity for the powers of moral personality that he characterized, following Kant, as man’s nature as “an end in himself,”¹⁹ moral capacities of responsible moral freedom that reflect that we are “created in God’s image . . . ; because created to unfold godlike faculties and to govern himself by a divine law written on his heart.”²⁰ Our equal moral capacity to know and effectuate that moral law was “the foundation of human rights in human nature.”²¹

The fundamental wrong of slavery was that it deprived persons of the very foundation of human rights, freedom of conscience in knowing and acting on one’s moral rights and duties. The test of political legitimacy was the Lockean test of whether a state respected the inalienable rights that must, in principle, be reserved from political power. The idea that such rights were not reserved from political power was “the logic of despotism.”²² The American constitutional republic, in contrast to the Athenian democracy and Roman republic, rested on the distinctive mission of securing respect for the principles of Lockean political legitimacy.²³ While “the oppressions of ages have nowhere wholly stifled” the idea of human rights,²⁴ the existence of slavery today rested on the subversion of the idea of republican human rights,²⁵ whose force “is darkened, weakened among us, so as to be to many little more than a sound.”²⁶ The ultimate degradation was that slaves were so deprived of the “consciousness of rights” that their docility was taken to show they have no rights. In fact, “[t]he quiet of slavery is . . . the stillness of death.”²⁷

In order to understand such subversion of our consciousness of rights, Channing, like Weld, drew an analogy to the history of reli-

17. See *Slavery* 688-743 (1836), *Remarks on the Slavery Question* 782-820 (1839), *Emancipation* 820-853 (1842) in WILLIAM E. CHANNING, *THE WORKS OF WILLIAM E. CHANNING* (Burt Franklin ed., 1970). For commentary on Channing and his background, see ANDREW DELBANCO & WILLIAM E. CHANNING, *AN ESSAY ON THE LIBERAL SPIRIT IN AMERICA* (1981); DANIEL W. HOWE, *THE UNITARIAN CONSCIENCE: HARVARD MORAL PHILOSOPHY, 1805-1861* (1988). See also D.H. MEYER, *THE INSTRUCTED CONSCIENCE: THE SHAPING OF THE AMERICAN NATIONAL ETHIC* (1972).

18. See CHANNING, *Slavery*, *supra* note 17, at 693.

19. See *id.* at 696.

20. See *id.* at 695.

21. See *id.* at 698.

22. See *id.* at 699; see also *id.* at 700, 740.

23. See *id.* at 702, 716-18.

24. See *id.* at 698.

25. See *id.* at 716-18.

26. See CHANNING, *Emancipation*, *supra* note 17, at 843.

27. See CHANNING, *Slavery*, *supra* note 17, at 714.

gious persecution, whose injustice often rested on the corruption of conscience.²⁸ Channing drew instruction from the history of religious persecution because it exemplified both an abridgement of inalienable human rights and a familiarly inadequate way in which such abridgements have been justified. Proslavery views exemplified the same structure of argument, and should be condemned for the same reason.

The argument for toleration assumed by both Weld and Channing was an American elaboration of the argument for universal toleration that had been stated, in variant forms, by Pierre Bayle and John Locke.²⁹ The context and motivations of the argument were those of radical Protestant intellectual and moral conscience reflecting on the political principles requisite to protect its enterprise against the oppressions of established churches, both Catholic and Protestant.

That enterprise arose both from a moral ideal of the person and the need to protect that ideal from a political threat that had historically crushed it. The ideal was of respect for persons in virtue of their personal moral powers both rationally to assess and pursue ends and reasonably to adjust and constrain pursuit of ends in light of the equal moral status of persons as bearers of equal rights. The political threat to this ideal of the person was the political idea and practice that the moral status of persons was not determined by the responsible expression of their own moral powers, but specified in advance of such reflection or the possibility of such reflection by a hierarchical structure of society and nature in which they were embedded. That structure, classically associated with orders of being,³⁰ defined roles and statuses in which people were born, lived, and died, and exhaustively specified the responsibilities of living in light of those roles.

The political power of the hierarchical conception was shown not only in the ways in which people behaved, but in the ways in which it penetrated into the human heart and mind, framing a personal, moral, and social identity founded on roles specified by the hierarchical structure. The structure—religious, economic, political—did not need to achieve its ends by massive coercion precisely because its crushing force on human personality had been rendered personally and socially invisible by a heart that felt and mind that imaginatively entertained nothing that could render the structure an object of critical reflection.

28. See *id.* at 704-5; see also *id.* at 714, 715, 722, 839-43, 840, 843.

29. For fuller examination of the argument in Locke and Bayle and its American elaboration notably by Jefferson and Madison, see DAVID A.J. RICHARDS, *TOLERATION AND THE CONSTITUTION* 89-128 (1986)

30. See generally ARTHUR O. LOVEJOY, *THE GREAT CHAIN OF BEING* (1964).

There could be nothing that might motivate such reflection (life being perceived, felt, and lived as richly natural).

Of course, such a political order, being human, would make use of our rational powers when contexts and roles might call for the exercise of practical rationality (for example, in the organization of farming or in war). A few persons might even achieve a remarkably high level of competence in the exercise of critical moral powers (as in the literate elites of ancient hierarchical societies like those of Babylonia, Egypt, and the Maya). But the general life of society placed no value or weight on a more extended exercise of such powers.

In light of the moral pluralism made possible by the Reformation, liberal Protestant thinkers like Bayle and Locke subjected the political power of the hierarchical conception to radical ethical criticism in terms of a moral ideal of the person having moral powers of rationality and reasonableness; the hierarchical conception had subverted the ideal, and, for this reason, distorted the standards of rationality and reasonableness to which the ideal appealed.

Both Bayle and Locke argued as religious Christians. Their argument naturally arose as an intramural debate among interpreters of the Christian tradition about freedom and ethics. An authoritative Pauline strand of that tradition had given central weight to the value of Christian freedom.³¹ That tradition, like the Jewish tradition from which it developed, had a powerful ethical core of concern for the development of moral personality. Augustine of Hippo thus had interpreted the trinitarian nature of God, in whose image we are made, on the model of moral personality, *i.e.*, the three parts of the soul—will, memory, and intelligence³². Indeed, the argument for toleration arose from an internal criticism by Bayle of Augustine's argument for the persecution of the heretical Donatists; to wit, Augustine had misinterpreted central Christian values of freedom and ethics.³³ The concern was that religious persecution had corrupted ethics and, for this reason, the essence of Christianity's elevated and simple ethical core of a universal brotherhood of free people.

The argument for toleration was a judgment of and response to perceived abuses of political epistemology. The legitimation of religious persecution by both Catholics and Protestants (drawing authority from Augustine, among others) had rendered a politically

31. See RICHARDS, *supra* note 29, at 86-87.

32. See *id.* at 85-88.

33. See *id.* at 89-95.

entrenched view of religious and moral truth the measure of permissible ethics and religion, including the epistemic standards of inquiry and debate about religious and moral truth. By the late seventeenth century (when Locke and Bayle wrote), there was good reason to believe that politically entrenched views of religious and moral truth (resting on the authority of the Bible and associated interpretive practices) assumed essentially contestable interpretations of a complex historical interaction between Pagan, Jewish, and Christian cultures in the early Christian era.³⁴

The Renaissance rediscovery of Pagan culture and learning reopened the question of how the Christian synthesis of Pagan philosophical and Jewish ethical and religious culture was to be understood. Among other things, the development of critical historiography and techniques of textual interpretation had undeniable implications for reasonable Bible interpretation.³⁵ The Protestant Reformation both assumed and further encouraged these new modes of inquiry, and encouraged as well the appeal to experiment and experience that were a matrix for the methodologies associated with the rise of modern science.³⁶ These new approaches to thought and inquiry had made possible the recognition that there was a gap between the politically entrenched conceptions of religious and moral truth and inquiry and the kinds of reasonable inquiries that the new approaches made available. The argument for toleration arose from the recognition of this disjunction between the reigning political epistemology and the new epistemic methodologies.

The crux of the problem was this. Politically entrenched conceptions of truth had, on the basis of the Augustinian legitimation of religious persecution, made themselves the measure both of the standards of reasonable inquiry and of who could count as a reasonable inquirer after truth. But, in light of the new modes of inquiry now available, such political entrenchment of religious truth was reasonably seen often to rest not only on the degradation of reasonable standards of inquiry but on the self-fulfilling degradation of the capacity of persons reasonably to conduct such inquiries. In order to rectify these evils, the argument for toleration forbade, as a matter of principle, the enforcement by the state of any such conception of religious truth. The scope of legitimate political concern must, rather, rest on the pursuit

34. *See id.* at 25-27, 84-98, 105, 125.

35. *See id.* at 125-26.

36. For a recent review of the question, see PURITANISM AND THE RISE OF MODERN SCIENCE: THE MERTON THESIS (I. Bernard Cohen ed., 1990).

of general ends like life and basic rights and liberties (for example, the right to conscience). The pursuit of such goods was consistent with the full range of ends free people might rationally and reasonably pursue.³⁷

A prominent feature of the argument for toleration was its claim that religious persecution corrupted conscience itself, a critique we have already noted in the American abolitionist thinkers who assume the argument. Such corruption, a kind of self-induced blindness to the evils one inflicts, is a consequence of the political enforcement at large of a conception of religious truth that immunizes itself from independent criticism in terms of reasonable standards of thought and deliberation. In effect, the conception of religious truth, though perhaps having once been importantly shaped by more ultimate considerations of reason, ceases to be held or to be understood and elaborated *on the basis of reason*.

A tradition, which thus loses its sense of its reasonable foundations, stagnates and depends increasingly for allegiance on question-begging appeals to orthodox conceptions of truth and the violent repression of any dissent from such conceptions as a kind of disloyal moral treason. The politics of loyalty rapidly degenerates, as it did in the antebellum South's repression of any criticism of slavery, into a politics that takes pride in widely held community values solely because they are community values. Standards of discussion and inquiry become increasingly parochial and insular; they serve only a polemical role in the defense of the existing community values and are indeed increasingly hostile to any more impartial reasonable assessment in light of independent standards.³⁸

Such politics tends to forms of irrationalism in order to protect its now essentially polemical project. Opposing views relevant to reasonable public argument are suppressed, facts distorted or misstated, values disconnected from ethical reasoning, indeed deliberation in politics denigrated in favor of violence against dissent and the aesthetic glorification of violence. Paradoxically, the more the tradition becomes seriously vulnerable to independent reasonable criticism (indeed, increasingly in rational need of such criticism), the more it is likely to generate forms of political irrationalism (including scapegoating of outcast dissenters) in order to secure allegiance.

37. See RICHARDS, *supra* note 29, at 119-20.

38. See generally JOHN HOPE FRANKLIN, *THE MILITANT SOUTH 1800-1861* (1956); cf. W.J. CASH, *THE MIND OF THE SOUTH* (1941).

I shall call this phenomenon hereinafter the paradox of intolerance. The paradox is to be understood by reference to the epistemic motivations of Augustinian intolerance. A certain conception of religious truth was originally affirmed as true and politically enforced on society at large because it was supposed to be the epistemic measure of reasonable inquiry (*i.e.*, more likely to lead to epistemically reliable beliefs). But the consequence of the legitimation of such intolerance over time was that standards of reasonable inquiry, outside the orthodox measure of such inquiry, were repressed. In effect, the orthodox conception of truth was no longer defended on the basis of reason, but was increasingly hostile to reasonable assessment in terms of impartial standards not hostage to the orthodox conception. Indeed, orthodoxy was defended as an end in itself, increasingly by non-rational and even irrational means of appeal to community identity and the like. The paradox appears in the subversion of the original epistemic motivations of the Augustinian argument. Rather than securing reasonable inquiry, the argument now has cut off the tradition from such inquiry. Indeed, the legitimacy of the tradition feeds on irrationalism precisely when it is most vulnerable to reasonable criticism, contradicting and frustrating its original epistemic ambitions. The history of religious persecution amply illustrates these truths; and, as the abolitionists saw, no aspect of that history more clearly so than Christian anti-Semitism.

The radical criticism of political irrationalism implicit in the argument for toleration, once unleashed, could not be limited to religion proper, but was naturally extended by John Locke to embrace politics as such.³⁹ Reflection on the injustice of religious persecution by established churches was generalized into a larger reflection on how political orthodoxies of hierarchical orders of authority and submission (for example, patriarchal political theories of absolute monarchy like Filmer's⁴⁰) had been unreasonably enforced at large. In both religion and political theory, political enforcement at large of one view not only degraded standards of argument to the exclusive measure of the orthodox one; it also retained hold on political power by stunting people's capacity to know, understand, and give effect to their inalienable human rights of reasonable self-government. The generalization of the argument for toleration naturally suggested the political legitimacy of some form of constitutional democracy (in which the princi-

39. See RICHARDS, *supra* note 14, at 82-90; RICHARDS, *supra* note 29, at 98-102.

40. See ROBERT FILMER, *PATRIARCHA* (1680), reprinted in *PATRIARCHA AND OTHER WRITINGS* 1-68 (Johann P. Sommerville ed., 1991).

ple of toleration would play a foundational central role) as a political decision procedure more likely to secure a reasonable politics that respected human rights and pursued the common interests of all persons alike.⁴¹

The argument for toleration was motivated by a general political skepticism about enforceable political epistemologies. Such political epistemologies enforced at large sectarian conceptions of religious, moral, and political truth at the expense of denying the moral powers of persons to assess these matters in light of reasonable standards and as reasonable persons.

The leading philosophers of toleration thus tried to articulate some criteria or thought experiment in terms of which such sectarian views might be assessed and debunked from a more impartial perspective. Bayle thus argued:

[S]ince passions and prejudices only too often obscure the ideas of natural equity, I would advise a person who intends to know them well to consider these ideas in general and as abstracted from all private interest and from the customs of his country. It can happen that a fond and deeply rooted passion will persuade a man that an action he envisages as profitable and pleasant for him is consonant with the dictates of right reason. It can happen that the force of custom and the turn given to the soul while instructing it in earliest infancy, may cause honesty to be found where there is not any. To surmount both these obstacles, therefore, I would like whoever aims at knowing distinctly this natural light with respect to morality to raise himself above his own private interest or the custom of the country, and to ask himself in general: *"Is such a practice just in itself? If it were a question of introducing it in a country where it would not be in use and where he would be free to take it up or not, would one see, upon examining it impartially that it is reasonable enough to merit being adopted?"*⁴²

Bayle's use of a contractualist test was generalized by Locke into a comprehensive contractualist political theory.⁴³ Though Locke is not clear on the point, contractualism has nothing to do with history; nothing in the argument turns on the actual existence of a state of nature. Rather, as Jeffrey Reiman has strikingly put it, in contractualism "[t]he state of nature is the moral equivalent of the Cartesian doubt."⁴⁴ Descartes was not, of course, an ultimate epistemological skeptic, but rather a philosopher of knowledge worried by the unrelia-

41. See RICHARDS, *supra* note 14, at 78-97.

42. PIERRE BAYLE, *PHILOSOPHICAL COMMENTARY* 30 (Amie Godman Tannenbaum ed. & trans., 1987).

43. See RICHARDS, *supra* note 14, at 82-90; RICHARDS, *supra* note 29, at 98-102.

44. JEFFREY REIMAN, *JUSTICE AND MODERN MORAL PHILOSOPHY* 69 (1990).

ble ways in which beliefs were conventionally formed; he was, for this reason, concerned heuristically to discover what could count as a reasonable basis on which reliable beliefs may be formed, and the Cartesian doubt was a way of articulating what he took that basis to be.

In the same way, neither Bayle nor Locke were moral, political, or religious skeptics; they were concerned, rather, by the unreliable appeals to politically enforceable conceptions of sectarian truths (*i.e.*, politically enforceable epistemologies), and articulated a thought experiment of abstract contractualist reasonableness to assess what might legitimately be enforced through law. Bayle's use of a contractualist test made this point exactly: abstracting from your own aims and the particular customs of your society, what principles of legitimate politics would all persons reasonably accept? The test is, of course, very like Rawls's abstract contractualist test in the absence of knowledge of specific identity, and serves exactly the same political function.⁴⁵

Such a contractualist test assumes that persons have the twin moral powers of rationality and reasonableness in light of which they may assess human ends, their own and others.⁴⁶ The principles of prudence enable us to reflect on the coherence and complementarity among our ends and the more effective ways to pursue them subject to principles of epistemic rationality; and the principles of moral reasonableness enable us to regulate the pursuit of our ends in light of the common claims of all persons to the forms of action and forbearance consistent with equal respect for our status in the moral community. These self-originating powers of reason enable us not only to think for ourselves from our own viewpoint but also from the moral point of view that gives weight or should give weight to the viewpoints of everyone else.

Reason—epistemic and practical—can have the power that it does in our lives because it enables us to stand back from our ends, to assess critically how they cohere with one another and with the ends of others, and to reexamine and sometimes revise such judgments in light of new insights and experience and to act accordingly. Reason can only reliably perform this role when it is itself subject to revision and correction in light of public standards open, accessible, and available to all. Public reason—a resource that enables all persons better

45. See JOHN RAWLS, *A THEORY OF JUSTICE* (1971).

46. For a fuller account of these powers, see DAVID A.J. RICHARDS, *A THEORY OF REASONS FOR ACTION* (1971).

to cultivate their moral powers—requires a public culture that sustains high standards of independent, critically tested and testable, revisable argument accessible to all. In order to perform the role that it should play in the exercise of our internal moral powers, public reason cannot be merely or even mainly polemical. It must afford sufficient public space within which we may comfortably express what doubts we may have or should have about our ends, lives, and communities, and deliberatively discuss and resolve such doubts.⁴⁷ Respect for our capacity for reason, thus understood, requires a politics that respects the principle of toleration, in particular, that political argument about constitutional essentials and basic justice must be justified in light of public reasons available and accessible to all persons. Forms of traditional wisdom—that have a basis in public reason—will not be subject to the principle. But the principle does deny that convictions of sectarian truth *can be enforced through law solely on that basis* (the role of such convictions in private life is, of course, another matter). The principle thus limits the force in *political* life of convictions that draw their strength solely from the certainties of group loyalty and identification that tend, consistent with the paradox of intolerance, most to self-insulate themselves from reason when they are most reasonably subject to internal doubts on grounds of justice and the public good. Public reason, as a test for the legitimacy of political argument, thus rests on the basic principle of justice of equal respect and is a prophylaxis against the illegitimate political enforcement of oppressive political epistemologies that rest on the unjust denial of human rights to all persons inconsistent with this basic principle.

Contractualism, thus understood as a hypothetical test for public reason in politics, must tend in the nature of its enterprise to identify the more abstract features that characterize our moral powers as reasoning agents. Since the motivation of the entire enterprise is the degree to which the idea and practice of hierarchical orders of authority have been permitted to subvert our moral powers of rationality and reasonableness, the reclamation of such powers requires a demanding test of political legitimacy that constrains and limits political power in the ways that we have good reason to believe require limitation, in light of our historical experience, in order to do justice to the reasonable demands of our moral natures.

47. For a useful discussion of all these points, see ONORA O'NEILL, *CONSTRUCTIONS OF REASON* (1989). For Kant on public reason, see *An Answer to the Question: What is Enlightenment?*, in *KANT'S POLITICAL WRITINGS* 55 (Hans Reiss ed. & N. B. Nisbet trans., 1970) ("The public use of man's reason must always be free. . .").

Contractualism offers us such a test, asking us to think hypothetically in abstraction from our current particular ends and situations about the more general features of living a rational and reasonable life and what constraints on politics are required in order for all persons to be secure in living such a life. The idea of general goods or resources or capacities—all familiar in the contractualist literature—are corollaries of such a test;⁴⁸ they identify the kind of abstract features of living a life that reasonable persons, in the contractualist choice situation, would regard as properly subject to a distributive principle of a just politics. The principle of toleration is one such principle, concerned with the foundational principles that make possible both a politics of reason and a conception of political community that dignifies the capacity for reasonableness of all persons to be self-governing moral agents.

II. ABOLITIONIST CRITICISM OF AMERICAN RACISM

Our earlier consideration of the arguments of Weld and Channing suggested the role the argument for toleration played in the abolitionist criticism of slavery.⁴⁹ One group of abolitionist Americans, the group central to the development of abolitionist feminism, extended the argument for toleration to the criticism of American racism as such.

The key to this abolitionist position was their very unpopular attack on the colonization movement, the idea, advocated by Jefferson among others,⁵⁰ that abolition of slavery would be followed by colonization of freedmen abroad. Garrison prominently attacked colonization because it expressed and reinforced “those unchristian prejudices which have so long been cherished against a sable complexion” taking blacks to be “a distinct and inferior caste”⁵¹—what Lowell called “a

48. See, e.g., RAWLS, *supra* note 45; RICHARDS, *supra* note 46; Thomas M. Scanlon, *Preference and Urgency*, 72 J. PHIL. 655 (1975); AMARTYA SEN, *THE STANDARD OF LIVING* (1987); Ronald Dworkin, *What Is Equality? Part I: Equality of Welfare*, 10 PHIL. & PUB. AFF. 185 (1981), *What Is Equality? Part II: Equality of Resources*, 10 PHIL. & PUB. AFF. 283 (1981), *What Is Equality? Part III: The Place of Liberty*, 73 IOWA L. REV. 1 (1987), *What Is Equality? Part IV: Political Equality*, 22 U.S.F. L. REV. 1 (1987).

49. For fuller examination of this point, see RICHARDS, *supra* note 3, at 73-80.

50. See THOMAS JEFFERSON, *NOTES ON THE STATE OF VIRGINIA* 135-6 (1976) (Philadelphia, Wilson & Blackwell, 1803).

51. WM. LLOYD GARRISON, *THOUGHTS ON AFRICAN COLONIZATION* 21 (Arno Press and The New York Times, 1968) (1832). See also JAMES G. BIRNEY, *LETTER ON COLONIZATION ADDRESSED TO THE REV. THORNTON J. MILLS, CORRESPONDING SECRETARY OF THE KENTUCKY COLONIZATION SOCIETY* (New York, 1834); WILLIAM JAY, *INQUIRY INTO THE CHARACTER AND TENDENCY OF THE AMERICAN COLONIZATION, AND AMERICAN ANTI-SLAVERY*

depraved and unchristian public opinion.”⁵² The abolitionist accusation was that American conscience had assuaged its guilt about the evil of slavery by advocating a policy, abolition and colonization, which rested on the more fundamental evil of racism, the evil on which both the injustice of slavery and of discrimination against free blacks rested.

The most perceptive and probing abolitionist analysis of the moral evil of racial prejudice and its role in American politics was L. Maria Child’s *An Appeal in Favor of Americans Called Africans*.⁵³ Child offered the most elaborate abolitionist criticism of the common American racist assumption of the inferiority of blacks, urging, following Montesquieu, “that the present degraded condition of that unfortunate race is produced by artificial causes, not by the laws of nature.”⁵⁴ The evil of racial prejudice was to make of the product of unjust institutions, subject to criticism and reform, “a fixed and unalterable law of our nature, which cannot possibly be changed.”⁵⁵ In truth, “[w]e made slavery, and slavery makes the prejudice.”⁵⁶ Correspondingly, the alleged inferior capacities of blacks were themselves the product of unjust cultural patterns, and could not, without vicious circularity, justify unequal treatment:

[t]he wrongs of the oppressed have been converted into an argument against them. We first debase the nature of man by making him a slave, and then very coolly tell him that he must always remain a slave because he does not know how to use freedom. We first crush people to the earth, and then claim the right of trampling on them for ever, because they are prostrate.⁵⁷

The abolition of slavery in the North did not, Child argued, exempt the North from her criticism. The North practiced various discriminations against blacks (including laws requiring segregation and forbidding intermarriage, schooling, voting, travel, and the like) resting on unjust racial prejudice. Her cogent criticism of antimiscegenation laws was, in her historical context, remarkable (“the government ought not to be invested with power to control the affections, any

SOCIETIES (1853), reprinted in WILLIAM JAY, MISCELLANEOUS WRITINGS ON SLAVERY 7-206 (1968).

52. James R. Lowell, *The Prejudice of Color*, in I THE ANTI-SLAVERY PAPERS OF JAMES RUSSELL LOWELL 19 (Negro Univ. Press 1969) (1902).

53. L. MARIA CHILD, AN APPEAL IN FAVOR OF AMERICANS CALLED AFRICANS (Arno Press and the New York Times 1968) (1833).

54. *Id.* at 148.

55. *Id.* at 133.

56. *Id.* at 134.

57. *Id.* at 169; see also *id.* at 11, 66, 133-34.

more than the consciences of citizens"⁵⁸). And, anticipating Tocqueville,⁵⁹ Child argued:

Our prejudice against colored people is even more inveterate than it is at the South. The planter is often attached to his negroes, and lavishes caresses and kind words upon them, as he would on a favorite hound: but our cold-hearted, ignoble prejudice admits of no exception—no intermission.⁶⁰

Comparing the strength of racial prejudice in America with that in other countries (including countries that retained slavery), Child concluded: "no other people on earth indulge so strong a prejudice with regard to color, as we do."⁶¹

Such quite modern abolitionist critical insight into the cultural roots of racism (its essential confusion of culture with nature⁶²) was integral to their criticism of slavery on the basis of the argument of toleration. The abolitionists were committed to the right of radical Protestant moral conscience, and they criticized slavery's dependence on the abridgement of the right to conscience, both of slaves and of anyone who would criticize the institution. They understood, in a way in which no other Americans of their generation did, the extent to which the political legitimation of slavery in Protestant America depended on, indeed *compelled*, racist assumptions: blacks were, in their nature, what Augustinian intolerance supposed could be only the product of a culpable defect in will, namely, blind heretics. The 1834 Synod of South Carolina described blacks in exactly such terms: "that heathen of this country, . . . [who] will bear comparison with the heathen of any part of the world."⁶³ On the abolitionist view, racism was toleration's evil genius of unreason, arising and sometimes flourishing in reaction to what appear to be the greatest achievements of political reason (for example, a constitution committed to universal toleration).

The abolitionist theory of racism offered a cultural analysis of the construction of racism. American racism arose reactively as a way of justifying cultural boundaries of moral and political community—ostensibly universalistic in their terms—that had already excluded a class of persons from the community. Slavery was such an excluding

58. *Id.* at 196.

59. See ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 373, 390-91 (J. P. Mayer ed. & George Lawrence trans., Harper & Row, 1988) (1835).

60. CHILD, *supra* note 53, at 195.

61. *Id.* at 208.

62. See, e.g., PIERRE L. VAN DEN BERGHE, *RACE AND RACISM* 11 (1967).

63. *A Letter on Slavery*, reprinted in THEODORE PARKER, *THE SLAVE POWER* 32, 75 (James K. Hosmer ed., Arno Press 1969) (1847).

institution, and it was historically based on a folk bias against Africans that centered on their unfamiliar culture for which color became a kind of proxy. A public culture, based on the principle of toleration, is and should be open to all persons on fair terms of freedom of conscience and moral and cultural pluralism. American slavery violently disrupted and intolerantly degraded the culture of African slaves. The peculiarly onerous conditions of American slavery (prohibitions on reading and writing, on religious self-organization, and on marriage, and limitations and eventual prohibitions on manumission)⁶⁴ deprived black slaves of any of the rights and opportunities that the public culture made available to others. In particular, black Americans were deprived of the respect for their creative moral powers of rational and reasonable freedom in public and private life. The nature of American slavery and the associated forms of racial discrimination against free blacks both in the South and North had socially produced the image of black incapacity that ostensibly justified their permanent heathen status (outside the community capable of Christian moral freedom).

For the abolitionists, consistent with the argument for toleration, slavery and discrimination were forms of religious, social, economic, and political persecution motivated by a politically entrenched conception of black incapacity. That conception enforced its own vision of truth against both the standards of reasonable inquiry and the reasonable capacities of both blacks and whites that might challenge the conception. A conception of political unity, subject to reasonable doubt as to its basis and merits, had unreasonably resolved its doubts, consistent with the paradox of intolerance, in the irrationalist racist certitudes of group solidarity on the basis of unjust group subjugation.

Black Americans were the scapegoats of Southern self-doubt in the same way European Jews had been the victims of Christian doubt. Frederick Douglass, the leading black abolitionist, stated the abolitionist analysis with a classical clarity:

Ignorance and depravity, and the inability to rise from degradation to civilization and respectability, are the most usual allegations against the oppressed. The evils most fostered by slavery and oppression, are precisely those which slaveholders and oppressors would transfer from their system to the inherent character of their

64. On the special features of American slavery, in contrast to slavery elsewhere, see JOHN W. BLOSSINGAME, *THE SLAVE COMMUNITY* (1979); CARL N. DEGLER, *NEITHER BLACK NOR WHITE* (1986); STANLEY M. ELKINS, *SLAVERY* (1976); EUGENE D. GENOVESE, *THE WORLD THE SLAVEHOLDERS MADE* (2d ed. 1988); PETER KOLCHIN, *UNFREE LABOR: AMERICAN SLAVERY AND RUSSIAN SERFDOM* (1987); KENNETH M. STAMPP, *THE PECULIAR INSTITUTION* (1956).

victims. Thus the very crimes of slavery become slavery's best defence. By making the enslaved a character fit only for slavery, they excuse themselves for refusing to make the slave a freeman.⁶⁵

The abolitionists thought of the political evil of racism in America as more fundamental an evil than slavery itself. It was the political evil in terms of which Americans justified slavery; and its evils, if unrecognized and unremedied, would corrupt abolition by means of the illegitimate construction of the boundaries of moral and political community on terms that excluded blacks (as colonization had).

Jefferson's treatment of the advocacy of slavery in *Notes on the State of Virginia* illustrates their point. Jefferson powerfully urged the depravity and injustice of slavery as an institution:

The parent storms, the child looks on, catches the lineaments of wrath, puts on the same airs in the circle of smaller slaves, gives a loose to his worst of passions, and thus nursed, educated, and daily exercised in tyranny, cannot but be stamped by it with odious peculiarities. The man must be a prodigy who can retain his manners and morals undepraved by such circumstances. And with what execration should the statesman be loaded, who permitting one half the citizens thus to trample on the rights of the other, transforms those into despots, and these into enemies, destroys the morals of the one part, and the amor patriae of the other.⁶⁶

But he advocated emancipation with colonization abroad.

Posing the query: "[w]hy not retain and incorporate the blacks into the state . . . ?,"⁶⁷ Jefferson first conceded the force of "[d]eep rooted prejudices entertained by the whites";⁶⁸ then, he rather superficially reviewed other features "physical and moral"⁶⁹ of blacks essentially observed by him under the conditions of slavery, hardly the appropriate standard of comparison for an impartial assessment. For all his tentativeness about his conclusions about race differences,⁷⁰ the force of the account, driven by a "geyser of libidinal energy"⁷¹ focusing on black sexuality, stood "[u]ntil well into the nineteenth century . . . as the strongest suggestion of inferiority expressed by any native American."⁷² The argument is remarkable for its pseudo-scientific, assured tone with little of the doubt that another Virginian, St.

65. *The Claims of the Negro Ethnologically Considered*, in 2 THE LIFE AND WRITINGS OF FREDERICK DOUGLASS 295 (Philip S. Foner ed., 1975) [hereinafter LIFE AND WRITINGS].

66. JEFFERSON, NOTES, *supra* note 50, at 162-63.

67. *Id.* at 138.

68. *Id.* at 138.

69. *See id.*

70. "I advance it therefore as a suspicion only . . ." *Id.* at 143.

71. WINTHROP D. JORDAN, WHITE OVER BLACK: AMERICAN ATTITUDES TOWARD THE NEGRO, 1550-1812, at 458 (1968).

72. *Id.* at 455.

George Tucker, confessed to feeling about similar conclusions: "Early prejudices, had we more satisfactory information than we can possibly possess on the subject at present, would render an inhabitant of a country where negroe [sic] slavery prevails, an improper umpire between them [Hume vs. Beattie on race differences]."73

Both Jefferson and Tucker did argue for the abolition of slavery in Virginia, but the abolitionist point against them was that their failure to take racism seriously as a political evil subverted ostensibly abolitionist arguments into a kind of justification for the evil that in fact sustained the institution. Jefferson is thus not only a central figure in the history of scientific racism,⁷⁴ but his arguments about race were soon to be elaborated by Southern proslavery apologists into a full-scale justification of black slavery itself.

The abolitionists were familiar with these antebellum arguments of the infant American "science" of ethnology that pointed to alleged physical differences (for example, brain size) of blacks and whites to argue for differences in capacity.⁷⁵ Ethnology appealed to the Protestant respect for experience and scientific method, and was aggressively cultivated and used by Southerners to suggest that racist assumptions were not unreasonable in the way that abolitionists had suggested.⁷⁶ But, even in the relatively incoherent state of the human sciences in this period, abolitionists like James Russell Lowell,⁷⁷ Frederick Douglass,⁷⁸ and Charles Sumner⁷⁹ questioned both the validity of the general approach, its interpretation of data and its ignorance of

73. ST. GEORGE TUCKER, *BLACKSTONE'S COMMENTARIES*, Note H, *On the State of Slavery in Virginia*, at 75, n. Tucker, however, agrees with Jefferson's conclusions about colonization, citing his discussion at some length (at 74-75). For Hume's empirical argument for race differences, see DAVID HUME, *Of National Character*, in *ESSAYS, MORAL, POLITICAL, AND LITERARY* 208, n.10 (Eugene F. Miller ed., 1987) (1777). For James Beattie's attack on Hume's argument, see JAMES BEATTIE, *AN ESSAY ON THE NATURE AND IMMUTABILITY OF TRUTH* (Lewis White Beck ed., Garland Publishing 1983) (1770).

74. For general treatments of the topic, see JORDAN, *supra* note 71; GEORGE M. FREDRICKSON, *THE BLACK IMAGE IN THE WHITE MIND: THE DEBATE ON AFRO-AMERICAN CHARACTER AND DESINY*, 1817-1914 (1971); THOMAS F. GOSSETT, *RACE: THE HISTORY OF AN IDEA IN AMERICA* (1965); REGINALD HORSMAN, *RACE AND MANIFEST DESTINY: THE ORIGINS OF AMERICAN RACIAL ANGLO-SAXONISM* (1981).

75. For a good general study, see WILLIAM STANTON, *THE LEOPARD'S SPOTS: SCIENTIFIC ATTITUDES TOWARD RACE IN AMERICA 1815-59* (1960).

76. *See id.*

77. *See* 2 JAMES R. LOWELL, *Ethnology*, in *ANTI-SLAVERY PAPERS OF JAMES RUSSELL LOWELL* 26, 26-32 (1902).

78. *See* FREDERICK DOUGLASS, *The Claims of the Negro Ethnologically Considered*, in *LIFE AND WRITINGS*, *supra* note 65, at 289-309.

79. *See* CHARLES SUMNER, *The Question of Caste*, in *XVII CHARLES SUMNER: HIS COMPLETE WORKS* 131-83 (Negro Universities Press 1969).

other evidence, and its failure to take seriously moral ideas⁸⁰ and the importance of culture in the human sciences.⁸¹ In short, the crux of abolitionist anti-racism was their insistence on developing and elaborating arguments of critical public reason not hostage to the dominant racist political epistemology of their age, an epistemology itself illegitimately maintained by both dominant science and institutional religions. To make their point, leading anti-racist abolitionists like Garrison and Child gravitated to heterodox, anti-institutional forms of critical moral and religious inquiry couched in terms of secular arguments of public reason, arguments increasingly critical of the role dominant institutional religions played in the sectarian support of both racism and slavery.⁸²

The very ease and certitude with which proslavery apologists adopted this ostensibly scientific view suggest the increasingly polemical nature of Southern thought, no longer able to sustain even a Jefferson's gesture of tentativeness or a Tucker's doubts about impartiality. Some Southerners notably could entertain such doubts, but they were often on the verge of moral revolt against and self-imposed exile from Southern culture.

Mancure Conway, born into a Virginia slave-owning family, was a notable example. Conway had always believed blacks were inferior, but was searching for ways to justify his position. The new theory of Agassiz on race differences having appeared, Conway enthusiastically embraced it, giving a public lecture and writing an (unpublished) essay in support of it:

Something, however, perhaps 'the dumb answers of the coloured servants moving about the house, cheerfully yielding . . . unrequited services,' soon brought about a reaction which proved to be 'the moral crisis' of his life. Conway was shocked by 'the ease with which I could consign a whole race to degradation.' . . . The reaction constituted a religious conversion of the eighteenth-century variety, now extinct: 'an overwhelming sense of my own inferiority came upon me' and 'left me with a determination to devote my life

80. See FREDERICK DOUGLASS, *The Claims of the Negro Ethnologically Considered*, in LIFE AND WRITINGS, *supra* note 65 at 292, 307-08; SUMNER, *supra* note 79, at 138-39.

81. See especially FREDERICK DOUGLASS, *The Claims of the Negro Ethnologically Considered*, in LIFE AND WRITINGS, *supra* note 65, at 304-06.

82. For good general studies, see MERTON L. DILLON, *THE ABOLITIONISTS: THE GROWTH OF A DISSENTING MINORITY* 60, 121-22 (1974); Bertram Wyatt-Brown, *William Lloyd Garrison and Antislavery Unity: A Reprisal*, 13 CIV. WAR HIST. 5, 5-24 (1967); David B. Davis, *The Emergence of Immediatism in British and American Antislavery Thought*, 49 MISS. VALLEY HIST. REV. 209, 209-30 (1962).

to the elevation and welfare of my fellow-beings, white and black.' Thus began Conway's long career in the antislavery movement.⁸³

Conway had been reading Emerson, much struck by his emphasis on transcendental moral conscience self-reliantly pursued in criticism of traditional culture and values.⁸⁴ His awakening interest in the primacy of ethical impartiality led Conway to experience a reasonable doubt and indeed a piercing sense of guilt that neither his polemical culture nor its hard science of ethnology could support or sustain.

Strikingly, Conway thought of women as having a superior moral sense,⁸⁵ an intuition about moral personality not corrupted by intellectual constructions like ethnology, and the like. Harriet Beecher Stowe took the same view in *Uncle Tom's Cabin*, appealing to heart over head⁸⁶ (the latter exemplified by proslavery interpretations of the Bible⁸⁷). Both Conway and Stowe reflect the primacy of impartial ethical thought independent of the intellectual constructions that dominant political epistemologies tried to domesticate to the rationalizing ends of entrenched political power on the model of religious persecution.⁸⁸

III. ABOLITIONIST CRITICISM OF AMERICAN SEXISM

Two sisters, born and bred in a leading South Carolina slave-holding family, also exemplify both the force of such moral revolt and self-exile from the South's polemical culture and its increasingly self-conscious ethical foundations in women's critical moral experience and articulation of arguments of public reason.⁸⁹ Sarah and later Angelina Grimke, like Conway, felt it to be morally imperative to leave the South in service of the development of an independent moral conscience critical of slavery as an institution in general and their own

83. See STANTON, *supra* note 75, at 111. See also PETER F. WALKER, *MORAL CHOICES: MEMORY, DESIRE, AND IMAGINATION IN NINETEENTH-CENTURY AMERICAN ABOLITION* 58-62 (1978).

84. See JOHN D'ENTREMONT, *SOUTHERN EMANCIPATOR: MONCURE CONWAY, THE AMERICAN YEARS 1832-1865*, at 43-56 (1987). On Emerson's abolitionism, see generally LEN GOUGEON, *VIRTUE'S HERO: EMERSON, ANTISLAVERY, AND REFORM* (1990).

85. See D'ENTREMONT, *supra* note 84, at 18-19.

86. See HARRIET BEECHER STOWE, *UNCLE TOM'S CABIN OR LIFE AMONG THE LOWLY* 153, 210, 437 (Ann Douglas ed., Penguin Books, 1981) (1852) [hereinafter *UNCLE TOM'S CABIN*]. See also HARRIET BEECHER STOWE, *THE KEY TO UNCLE TOM'S CABIN* (Ayer Publishing Co., 1987) (1854) [hereinafter *THE KEY TO UNCLE TOM'S CABIN*].

87. See STOWE, *UNCLE TOM'S CABIN*, *supra* note 86, at 183, 184, 200, 279, 508; STOWE, *THE KEY TO UNCLE TOM'S CABIN*, *supra* note 86, at 460-73.

88. See STOWE, *THE KEY TO UNCLE TOM'S CABIN*, *supra* note 86, at 401-02, (identifies the analogy between proslavery thought and religious persecution).

89. The best general study is GERDA LERNER, *THE GRIMKE SISTERS FROM SOUTH CAROLINA: PIONEERS FOR WOMAN'S RIGHTS AND ABOLITION* (1971).

family's commitment to the institution in particular. Both initially gravitated to a Quaker expression of their antislavery views, settling in Philadelphia; but eventually, their growing moral independence led them beyond the confines of Quaker propriety into more radical forms of antislavery activism. The negative Northern response to that more radical activism prompted both women to deeper reflections about the analogy between race and gender as the objects of immoral prejudice. No abolitionist of their generation, and no feminist of the next generation carried the analysis further.

To measure how far they carried the analysis, we must examine the perspective from which they started. That perspective was the radical abolitionist criticism of colonization and the racial prejudice it assumed, a perspective that had been brilliantly stated, as we have seen, by L. Maria Child.

Child had published a later book, *A History of the Condition of Women, in Various Ages and Nations*.⁹⁰ Child's approach in the book was self-consciously historical, factual, and comparative; indeed, she prefaced her argument with a disclaimer: "This volume is not an essay upon woman's rights, or a philosophical investigation of what is or ought to be the relation of the sexes . . . I have simply endeavored to give an accurate history of the condition of women, in language sufficiently concise for popular use."⁹¹ Nevertheless, Child's treatment of the comparative status of women was edged with critical observations drawing analogies between her earlier insights into American slavery and racism and the treatment of women. In China, she observed, "[m]en consider their wives as an inferior race, and sell them when they please";⁹² and Islamic cultures "regard women as a very inferior race, created to serve them with unconditional submission."⁹³ Of the Islamic arguments urged in support of the treatment of women, Child exclaimed: "[p]recisely the same arguments for abusing the defenceless are urged by Christian slave-owners!"⁹⁴ As one would expect from so acute an analyst of American slavery and racism, Child pointed out the "dimness of moral perception, and the obtuseness of moral feeling"⁹⁵ that the institution of slavery inflicts on slave-owners, both men and women, about the maltreatment of women held in slav-

90. L. MARIA CHILD, *THE HISTORY OF THE CONDITION OF WOMEN, IN VARIOUS AGES AND NATIONS* (1838), 2 vols.

91. 1 *id.* at iii.

92. 1 *id.* at 137.

93. 1 *id.* at 238.

94. 1 *id.* at 238.

95. 2 *id.* at 214-15.

ery. Indeed, the testimony of the Grimke sisters, among others, was urged in support of this claim.⁹⁶

Child did not, however, press the moral analysis implicit in these observations very far. Her comparisons, rather, were explored mainly to emphasize the normatively superior attitudes of the Christian West: "The Mohammedan religion, which debases woman into a machine, and regards love as a merely sensual passion, was introduced into the East about the same time that chivalry arose in the West, to exalt women into deities, and chasten passion with the purity of sentiment."⁹⁷ On balance, "Christianity . . . has done so much for women".⁹⁸ Child affirmed the moral and intellectual equality of women; and the Grimke sisters acknowledged her as an abolitionist essentially sympathetic to their feminist position,⁹⁹ and Sarah Grimke explicitly used Child's book in her most extended articulation of abolitionist feminism.¹⁰⁰ Child, however, defended the equality of women while endorsing the dominant ideology of separate spheres:

Many silly things have been written, and are now written concerning the equality of the sexes; but that true and perfect companionship, which gives both man and woman complete freedom in their places, without a restless desire to go out of them, is as yet imperfectly understood. The time will come, when it will be seen that the moral and intellectual condition of woman must be, and ought to be, in exact correspondence with that of man, not only in its general aspect, but in its individual manifestations; and then it will be perceived that all this discussion and relative superiority, is as idle as a controversy to determine which is most important to the world, the light of the sun, or the warmth of the sun.¹⁰¹

The Grimke sisters objected, like Child, not only to American slavery but to its underlying moral pathology, American racism, what Angelina calls "the monster Prejudice"¹⁰² or "that American Jugger-naut, Prejudice".¹⁰³ The extraordinary power of their analysis, for

96. See 2 *id.* at 215-16.

97. 2 *id.* at 120. For Child's views on the paradoxical character of the religious idealization of the Christian romantic love tradition with its celebration of celibacy, see 2 *id.* at 109-11, 116.

98. 2 *id.* at 210.

99. See ANGELINA E. GRIMKE, Letter from Angelina E. Grimke to Jane Smith (May 20, 1837), in *THE PUBLIC YEARS OF SARAH AND ANGELINA GRIMKE: SELECTED WRITINGS 1835-1839*, at 133 (Larry Ceplair ed., 1989) [hereinafter *SELECTED WRITINGS*]. But cf. *id.* at 131 (Child's motion that Angelina's already adopted "province of women" motion be reconsidered).

100. See SARAH M. GRIMKE, *Letters on the Equality of the Sexes and the Condition of Woman*, in *SELECTED WRITINGS*, *supra* note 99, at 210.

101. See 2 *CHILDS*, *supra* note 90, at 211.

102. See ANGELINA E. GRIMKE, *Letters to Catherine E. Beecher*, in *SELECTED WRITINGS*, *supra* note 99, at 167.

103. See ANGELINA E. GRIMKE, *APPEAL TO THE WOMEN OF THE NOMINALLY FREE STATES* 43 (New York, William S. Dorr, 1837).

their generation, was the intimate knowledge that they, children of a slave-owning family, brought to it; no aspect of that knowledge more shocked their Northern audiences than their testimony of the tyrannies of women slave owners.¹⁰⁴ The public image of the character of Southern women, "their gentleness and love, . . . suavity," was, on their testimony, "the paint and the varnish of hypocrisy, the fashionable polish of a heartless superficiality."¹⁰⁵

Strikingly, Angelina Grimke's first important published antislavery works were, by their terms, addressed to Southern¹⁰⁶ and Northern¹⁰⁷ women, in particular, to the moral force she took women in American society to possess.¹⁰⁸ She thus formulated moral arguments in terms of rights central to women's moral experience as mothers, asking women to extend such rights on fair terms to all:

I appeal to you, my friends, as mothers; Are you willing to enslave *your* children? You start back with horror and indignation at such a question. But why, if slavery is *no wrong* to those upon whom it is imposed? . . . Do you not perceive that as soon as this golden rule of action is applied to *yourselves* that you involuntarily shrink from the test; as soon as *your* actions are weighed in *this* balance of the sanctuary that *you are found wanting*?¹⁰⁹

Grimke formulated four principles progressively to guide women's reflections on and responses to such questions: study of the subject of slavery, conscientious prayerful ethical self-examination, public speech, and public action.¹¹⁰ In her correspondence she called this unity of self-critical and mutually testing thought, speech, and action "pure *practical* christianity."¹¹¹

Like Mancure Conway and Harriet Beecher Stowe, Grimke identified moral argument not with the rationalizing intellectual constructions of proslavery thought, but with an authentic morality of the heart centering on the demands of creative moral personality,¹¹² demands for creative moral freedom and responsibility that both Angelina and Sarah associated with the Biblical idea that humankind was

104. See, e.g., GRIMKE, *supra* note 103, at 21-23.

105. See *id.* at 22.

106. See ANGELINA E. GRIMKE, *Appeal to the Christian Women of the South*, in *SELECTED WRITINGS*, *supra* note 99, at 36-79.

107. GRIMKE, *supra* note 103.

108. See GRIMKE, *supra* note 106, at 54-55, 64-67.

109. See *id.* at 51.

110. See *id.* at 55-57.

111. See ANGELINA E. GRIMKE, *Letter from Angelina E. Grimke to Theodore Dwight Weld and John Greenleaf Whittier*, in *SELECTED WRITINGS*, *supra* note 99, at 284.

112. For Angelina Grimke's later development of this theme, see *SELECTED WRITINGS*, *supra* note 99, at 148, 179, 200, 203.

made in God's image,¹¹³ demands which were, if anything, more accessible to women than men. It is from this perspective that the Grimkes' testimony of the tyrannies of Southern slave-owning women so shocked Northerners, tyrannies rooted, as Sarah Grimke pointedly put it, in "the vacuity of mind, the heartlessness, the frivolity"¹¹⁴ of the Southern woman's culture the Grimkes knew at first hand. Sarah could thus write autobiographically of the culture that made such moral heartlessness possible:

During the early part of my life, my lot was cast among the butterflies of the *fashionable* world; and of this class of women, I am constrained to say, both from experience and observation, that their education is miserably deficient; that they are taught to regard marriage as the one thing needful, the only avenue to distinction; hence to attract the notice and win the attentions of men, by their external charms, is the chief business of fashionable girls.¹¹⁵

Elsewhere Sarah anatomized related features of Southern life, in particular, the brutal suppression of dissenting free thought, speech and action by the dominant proslavery orthodoxy: "there is a diversity of opinion among them in reference to slavery and the REIGN OF TERROR alone suppresses the free expression of sentiment."¹¹⁶ In effect, Southern culture deprived women as well as men of all of Angelina Grimke's four principles of ethical action: critical study, self-examination, speech, and action.

The Grimkes brought to their analysis of the evils of slavery and racism critical demands defined, like Child, by the argument for toleration, only now very much interpreted through their experience as Southern women themselves struggling for the moral independence the argument requires. All their thought and action throughout their relatively brief public careers as antislavery activists centered on the critical abolitionist idea, found also, as we have seen, in Weld and Channing, that the murderous opposition to abolitionist analysis and advocacy was a form of illegitimate sectarian religious persecution. In the letter to Garrison that initiated her public career as an antislavery advocate, Angelina characterized the anti-abolitionist mobs in this way: "[r]eligious persecution always begins with mobs."¹¹⁷ The aboli-

113. See GRIMKE, *supra* note 104, at 7; SARAH M. GRIMKE, *An Epistle to the Clergy of the Southern States*, in *SELECTED WRITINGS*, *supra* note 99, at 93.

114. See GRIMKE, *supra* note 100, at 220.

115. *Id.* at 220.

116. See GRIMKE, *supra* note 113, at 112.

117. See ANGELINA E. GRIMKE, *Letter of Angelina E. Grimke to William Lloyd Garrison, August 30, 1835* (printed in *THE LIBERATOR*, September 19, 1835), reprinted in *SELECTED WRITINGS*, *supra* note 99, at 26.

tionists' appeals to conscience were, on Angelina's view, in the great tradition of Protestant reformers and subject, like them, to politically illegitimate persecution by an orthodoxy threatened by their challenge.¹¹⁸

In her *An Epistle to the Clergy of the Southern States*,¹¹⁹ Sarah Grimke made her case against American slavery and racism in clear terms of the argument for toleration. Identifying her role with that of the Biblical prophets challenging corrupt politicians,¹²⁰ Grimke grounded her analysis on the rational and reasonable powers of persons, made in God's image of creative moral freedom, and on the respect owed persons as originators of claims to inalienable human rights—to be treated as persons, not as things or as machines.¹²¹ American institutions of slavery blatantly violated such respect, depriving blacks held in slavery of their inalienable rights to conscience, speech, work, family life, and the like;¹²² American racism, in turn, unjustly ascribed a degraded nature to persons, as permanent heathens, on the basis of systematic denials of such rights, rights essential to reasonable moral freedom.¹²³ At the root of these evils lay a polemically entrenched proslavery political epistemology that, consistent with the paradox of intolerance, refused to allow reasonable debate and discussion about the abolition of the institution precisely when such debate, in light of the success of British emancipation in the West Indies, was most needed.¹²⁴ Grimke pointed, as I earlier noted, to the political "REIGN OF TERROR"¹²⁵ that deprived the South of the reasonable scope of constitutional guarantees of freedom of conscience, thought, and action regarding the abolition of slavery; in effect, no serious public dissent to the dominant political epistemology was permissible, freezing public debate to the sectarian terms of the dominant orthodoxy. The roots of such politically illegitimate repression lay, Grimke argued along lines similar to Madison's theory of faction,¹²⁶ in the corruptions of group-based political power; its worst ravages were on the life of the mind and of the heart:

118. See GRIMKE, *supra* note 106, at 59-60, 72, 76; GRIMKE, *supra* note 102, at 161-62, 176, 179.

119. See GRIMKE, *supra* note 113, at 90-115.

120. See *id.* at 91-92, 108; for Angelina Grimke's similar appeals, see GRIMKE, *supra* note 102, at 170, 174-75.

121. See GRIMKE, *supra* note 113, at 92-93, 96.

122. See *id.* at 105-08.

123. See *id.* at 104-05, 112, 114.

124. See *id.* at 113-14.

125. *Id.* at 112.

126. For fuller elaboration, see RICHARDS, *supra* note 14, at 32-39.

The lust of dominion inevitably produces hardness of heart, because the state of mind which craves unlimited power, such as slavery confers, involves a desire to use that power, and although I know there are exceptions to the exercise of barbarity on the bodies of slaves, I maintain that there *can be no exceptions* to the exercise of the most soul-withering cruelty on the *minds* of the enslaved.¹²⁷

In effect, the Protestant South now enforced an Inquisition worse than any it reasonably condemned in Europe:

Perhaps all of you would shrink with horror from a proposal to revive the Inquisition and give to Catholic superstition the power to enforce in this country its wicked system of bigotry and despotism. But I believe if all the horrors of the Inquisition and all the cruelty and oppression exercised by the Church of Rome, could be fully and fairly brought to view and compared with the details of slavery in the United States, the abominations of Catholicism would not surpass those of slavery, while the victims of the latter are ten fold more numerous.¹²⁸

Grimke ended her analysis with an appeal to the special responsibility of the Protestant Christian churches of the South, central historical exponents of the argument for toleration, not to support “this heart-breaking, this soul-destroying system.”¹²⁹ In effect, proslavery political epistemology had complicitously corrupted the role of religion, consistent with the argument for toleration, as one of the agents of morally independent thought and protest. In this political, religious, and moral vacuum, Grimke, a Southern woman self-exiled to the North, appealed to the special need of the South to hearken to its outcasts, for “the weak things of the world . . . confound the things that are mighty.”¹³⁰

To this point, the abolitionist arguments of Angelina and Sarah Grimke worked within the general framework of abolitionist criticism of slavery and racism earlier discussed. Their great novelty and arresting appeal for the Northern public mind were both the evident moral and intellectual courage they displayed in making them and the moving personal testimony they, children of a slave-owning family, brought to those arguments. Their arguments evolved into the strikingly original abolitionist feminism that they pioneered in self-conscious response to criticisms of them in the North both for the substance of their abolitionist arguments (in particular, their anti-racism) and for their growing willingness to speak in public regarding

127. *Id.* at 112.

128. *Id.*

129. *See id.* at 114.

130. *See id.* at 115.

these matters to audiences of both men and women. Angelina Grimke was, evidently, a particularly powerful public speaker; and her speeches, sometimes to tumultuously antagonistic mixed audiences of men and women, challenged explicitly not only Northern complacency about slavery but implicitly its ideology of separate gender spheres and roles.¹³¹

Two criticisms were particularly important in prodding the sisters into the abolitionist feminism most extensively defended in Sarah Grimke's *Letters on the Equality of the Sexes and the Condition of Women*.¹³² First, a prominent defender of the ideology of separate spheres, Catharine Beecher, wrote her Essay on Slavery explicitly "Addressed to Miss A. D. Grimke," [sic] criticizing, *inter alia*, the Grimkes for their public speeches.¹³³ Second, Congregational ministers belonging to the General Association of Massachusetts authorized Reverend Nehemiah Adams of Boston to pen an attack on, *inter alia*, women abolitionist agents; it was both read from the pulpits and printed in the *New England Spectator*.¹³⁴ Rev. Adams argued that the "power of woman is in her dependence," her need for protection; her role as "a public reformer" challenges this protected role "and her character becomes unnatural."¹³⁵ The letter was clearly publicly understood to be directed against the Grimke sisters; they, certainly, so understood it.

The abolitionist arguments of the Grimkes had heretofore focussed on what they knew best, the repressive proslavery political orthodoxy of the South. They were self-exiles from that culture in order to think, speak, and act the antislavery beliefs that had become central to their sense of themselves as morally responsible agents. That exile caused them and their families great pain, all the more so when it became irrevocable after publication of views in the North that debarred, under threat of violence, return to their families.¹³⁶ Their remarkable moral pilgrimage did not end, however, either with their move to Philadelphia or their espousal of the most antislavery of American religions, Quakerism.¹³⁷ They bridled at the exclusiveness

131. For a good historical narrative of these events, see LERNER, *supra* note 89, at 146-242.

132. See Grimke *supra* note 100, at 204-272.

133. For discussion, see SELECTED WRITINGS, *supra* note 99, at 139.

134. For commentary, see SELECTED WRITINGS, *supra* note 99, at 139.

135. GRIMKE, *supra* note 100, 204, 211 (pastoral letter).

136. See LERNER, *supra* note 89, at 147.

137. For a good study focussing on the central role of Quaker women both in abolitionism and feminism, see MARGARET HOPE BACON, *MOTHERS OF FEMINISM: THE STORY OF QUAKER WOMEN IN AMERICA* (1986).

of the church and its insistence on forms of control and surveillance particularly of its female members.¹³⁸ Angelina's form of public anti-slavery activism was discountenanced by her church; and her response, after further painful reflection, was that her growing sense of moral responsibility and individuality required her to break with her church; she articulated her decision in terms of emancipation:

I hav [sic] borne them as long as I possibly could with peace of mind, & now that my Master has burst my fetters & set me free, I never expect to suffer myself to be manacled again. I never before was in bondage to any man, & I believ [sic] it is realy [sic] sinful to be influenced by any human authority, as to forget our individual responsibility to Him whose we ar [sic] & whom we ought to serv [sic], independent of the opinion of man.¹³⁹

In effect, both Angelina's and Sarah's moral needs could no longer be sustained by any form of authority less than their own increasingly free and reasonable minds.

Abolitionist feminism arose when the Grimkes' increasingly demanding moral independence was confronted not by proslavery Southern intolerance (from which they fled) or Quaker constraints (which they burst), but by the Northern political culture of separate gender spheres, which would have silenced their speaking in their own voice in the public space that was conventionally defined as that of men alone. Angelina Grimke saw that, if this Northern claim were accepted by women, "then may *we* well be termed 'the white slaves of the North'—for, like our brethren in bonds, we must seal our lips in silence and despair."¹⁴⁰ Grimke recognized in the common wrong to blacks and women a ground of common moral indignation and sympathy: "Women ought to feel a peculiar sympathy in the colored man's wrongs, for like him *she* has been accused of mental inferiority, and denied the privileges of a liberal education."¹⁴¹ The common principle at issue was "the broad ground of *human rights* and human responsibilities . . . , the principle of moral being, . . . [namely,] *All moral beings have essentially the same rights and the same duties*, whether they be male or female."¹⁴² As she put the point in her correspondence, "I feel as if it is not the cause of the slave only which we plead, but the cause of woman as a responsible moral being."¹⁴³

138. See, e.g., ANGELINA E. GRIMKE, *Letter from Angelina E. Grimke to Sarah M. Grimke*, in *SELECTED WRITINGS*, *supra* note 99, 79, 79-80; GRIMKE, *supra* note 99, at 81-82.

139. See GRIMKE, *supra* note 99, at 82.

140. See GRIMKE, *supra* note 103, at 13.

141. See *id.* at 36.

142. See *id.* at 19.

143. See GRIMKE, *supra* note 99, at 142.

The Grimkes had struggled to moral independence through the dislocations of exiles from home and family and later from a protective church, and now through forging a new role of public moral responsibility for women in the face of bitter criticism and disdain, some of it from more conventional fellow women like Catherine Beecher. This last confrontation compelled them to examine and defend the presuppositions of their journey as part of a larger struggle for human rights in terms of the argument for toleration. As we have seen, the claim for one's inalienable human rights (for example, the right to conscience) arises as a challenge to a dominant political epistemology that illegitimately entrenches a political hierarchy of order and submission. The Grimkes came to see the ideology of separate gender roles as such an illegitimate hierarchy, defining women as such in terms of gender roles deferential to masculine guidance on basic issues of conscience inconsistent with morally independent thought, speech, and action. Angelina Grimke saw and articulated the larger point exactly: "No station or character can destroy individual responsibility, in the matter of reproofing sin."¹⁴⁴ Inalienable rights, qua inalienable, cannot legitimately be varied or conferred by human law or convention; women's "*rights* are an integral part of her moral being; they cannot be withdrawn; they must live with her forever,"¹⁴⁵ "as a *moral*, an *intellectual*, an accountable being."¹⁴⁶ "If [such rights are] not [recognized], they [women] are mere slaves, known only through their masters."¹⁴⁷

Angelina Grimke articulated her fullest version of abolitionist feminism in the relatively brief letter XII of her *Letters to Catherine E. Beecher*,¹⁴⁸ referring the reader to Sarah Grimke's more extensive discussion of these issues.¹⁴⁹ Angelina's articulation started from the central role that her abolitionist criticisms of slavery and racism played in the development of her feminism:

The investigation of the rights of the slave has led me to a better understanding of my own. I have found the Antislavery cause to be the high school of morals in our land—the school in which *human rights* are more fully investigated, and better understood and taught, than in any other. Here a great fundamental principle is uplifted and illuminated, and from this central light, rays innumera-

144. See GRIMKE, *supra* note 102, at 180.

145. See *id.* at 191.

146. See GRIMKE, *supra* note 103, at 67.

147. See GRIMKE, *supra* note 102, at 194.

148. See GRIMKE, *supra* note 99, at 194-98.

149. See *id.*, at 198. The reference is to GRIMKE, *supra* note 100, at 204-72.

ble stream all around. Human beings have *rights*, because they are *moral* beings; the rights of *all* men grow out of their moral nature; and as all men have the same moral nature, they have essentially the same rights.¹⁵⁰

In particular, men and women stand, like people of different races, "on the same platform of human rights."¹⁵¹ Since our common and equal moral nature is regulative of our physical nature, "*the mere circumstance of sex* does not give to man higher rights and responsibilities, than to woman."¹⁵² Rather,

When human beings are regarded as *moral* beings, *sex*, instead of being enthroned upon the summit, administering upon rights and responsibilities, sinks into insignificance and nothingness. My doctrine then is, that whatever it is morally right for man to do, it is morally right for woman to do. Our duties originate, not from difference of sex, but from the diversity of our relations in life, the various gifts and talents committed to our care, and the different eras in which we live.¹⁵³

The root of Angelina Grimke's abolitionist feminism was, as one would expect in light of her remarkably courageous struggle to moral independence, indignation at what we would call a sexist culture that "has robbed woman of essential rights, the right to think and speak and act on all great moral questions."¹⁵⁴ As we have seen, in her first abolitionist writing to the women of the South, Grimke had articulated ethical responsibility in terms of four principles: study, conscientious self-reflection, speech, and action. In light of her confrontation with Northern sexism, she came to see that these principles of ethical responsibility were not only at threat for both men and women of the South from its increasingly polemical and intolerant proslavery political culture but for all American women from a comparably polemical and intolerant sexist culture of separate gender roles, a culture that heretofore enjoyed unchallenged sway over the hearts and minds of Americans nationwide.

Both Angelina and Sarah Grimke had given eloquent testimony to the injuries that American slavery and racism had unjustly inflicted on the very minds and hearts both of its perpetrators and its victims; their searing portraits of the tyrannies of Southern women bespeak the former, and their memorialization of the degradation of the slaves to illiterate permanent heathens the latter. Their confrontation with

150. See GRIMKE, *supra* note 102, at 194.

151. See *id.* at 196.

152. See *id.* at 194.

153. See *id.* at 195.

154. See *id.*

American sexism prodded them to think more deeply than any American of their generation, or indeed long after, about the roots of the opposition they had always faced, first as Southern women and later as expatriate women in the North, from other women as well as men. If slavery and racism were, as Sarah Grimke had described them, "this heart-breaking, this soul-destroying system,"¹⁵⁵ so too, on examination, was sexism, in particular, in view of its blatant contempt for the self-originating moral capacities through which persons both rationally order their own ends and lives and reasonably regulate the pursuit of those ends by acknowledging and acting on ethical principles of action and forbearance from action that express equal respect for persons. Such failure to respect what Angelina Grimke called "the fundamental principle of moral being"¹⁵⁶ must discredit the conventional morality that expressed such contempt, "the anti-christian doctrine of masculine and feminine virtues."¹⁵⁷ Such conventional morality, despite its empty romantic rhetoric of idealized women and chivalric men, "has nevertheless been the means of sinking her from an *end* into a mere *means*— . . . of destroying her individuality, and rights, and responsibilities."¹⁵⁸

Angelina Grimke had always discussed questions of ethics as matters of ethical responsibility and duty (for example, the duty to abolish slavery immediately), distinguishing such questions from consequentialist expediency.¹⁵⁹ The incommensurable moral evil of slavery and racism was, as we have seen, their corruption of the very moral capacities through which persons come to know, understand, and act on their ethical duties as morally responsible agents; now, the confrontation with the ideology of gender spheres led the Grimkes to see that sexism inflicted exactly the same profound moral evil, denying to women the very propriety of exercising the moral powers through which persons are dignified as responsible and accountable moral agents. This fundamental moral wrong was, Angelina briefly suggested, inflicted through an entrenched culture that illegitimately deprived women of their proper morally creative role both in religion and in politics; even the Quakers, she observed, "allowed [women] no

155. See GRIMKE, *supra* note 113, at 114.

156. See GRIMKE, *supra* note 102, at 195.

157. See *id.* at 195.

158. See *id.* at 196.

159. See, e.g., GRIMKE, *supra* note 106, at 58, 64; GRIMKE, *supra* note 102, at 176-7, 192.

voice in framing the Discipline by which she is to be governed."¹⁶⁰ Both forms of spiritual disempowerment must be addressed:

*If Ecclesiastical and Civil governments are ordained of God, then I contend that woman has just as much right to sit in solemn counsel in Conventions, Conferences, Associations and General Assemblies, as man—just as much right to sit upon the throne of England, or in the Presidential chair of the United States.*¹⁶¹

Of the two forms of disempowerment, the more fundamental, for Grimke, because closer to the sources of ethical responsibility, was the religious: "until this principle of equality is recognised and embodied in practice, the church can do nothing effectual for the permanent reformation of the world."¹⁶²

Both Angelina and Sarah Grimke were, by the American measure of their time, quite religiously heterodox; but, their moral independence centered, like that of most Americans of their time, on Bible interpretation; and they therefore naturally thought that the institutional failure of American religions to embody the principle of equality in their practice (including, of course, a central role for women as scholars, preachers, and teachers) was fundamental to the failure of American religion adequately to understand the central place of the principle of equality in ethics and in reasonable Bible interpretation. This is the main argument of the Grimkes' central contribution to abolitionist feminism, Sarah Grimke's *Letters on the Equality of the Sexes and the Condition of Woman*.¹⁶³

Sarah Grimke's argument centered, first, on making her case that the dominant Biblical interpretations of central texts of both the Hebrew Bible and the New Testament wrongly ascribed to them the moral ideology of separate spheres and the inferiority of women and, second, making her case for how illegitimately this had happened. Both aspects of her argument brilliantly elaborated the argument for toleration to the ends of feminist liberation. The dominant misogyny of Bible interpretation rested, on examination, on a wholly corrupt and illegitimate political epistemology that unreasonably entrenched a masculine hierarchy of power and privilege over women (including masculine monopoly of Bible interpretation); this corrupt epistemology narrowed the terms of debate to the cramped measure of mascu-

160. See GRIMKE, *supra* note 102, at 197.

161. *Id.*

162. *Id.*

163. See GRIMKE, *supra* note 100.

line self-protection and for this illegitimate reason excluded women from reasonable participation in its dialogue.

Grimke's substantive exercises in Bible interpretation rested on a normative conviction that she took to be central to the entire narrative and, thus understood, to be reasonably supported by the narrative, namely, that all persons, made in the image of God, have the creative powers of "a moral and responsible being."¹⁶⁴ As such, each person was ultimately ethically responsible for one's self and accountable as such directly to God and to no other person. In the light of this normative perspective, the strategy of Grimke's substantive exercises in Bible interpretation was twofold: first, to show that the texts most commonly urged as supporting women's moral inferiority did not reasonably require that reading; and second, to point to the often ignored texts that support women's equality as creative moral agents. As regards the former, two texts were central: the Adam and Eve narrative and St. Paul's epistles.

Grimke's reading of the Adam and Eve narrative argued that it cannot reasonably be interpreted to justify women's inferiority as God's punishment for the fall. In fact, both Adam and Eve shared equal moral fault in the fall; certainly, "Adam's ready acquiescence with his wife's proposal, does not savor much of that superiority in *strength of mind*, which is arrogated by man."¹⁶⁵ Adam and Eve were punished by the loss of Paradise, but that punishment did not change their natures as equal morally accountable agents.¹⁶⁶ God's statement, "Thou wilt be subject unto thy husband, and he will rule over thee,"¹⁶⁷ was, properly understood, a prophecy of man's corrupt subjection of women, not a normative command for such subjection. The contrary view rested on the failure of male Bible interpreters to note the ambiguity of the pertinent Hebrew word for "will" (between the normative "shall" and the predictive "will"), a failure Grimke explained in terms of "translators . . . accustomed to exercise lordship over their wives, and seeing only through the medium of a perverted judgment."¹⁶⁸ Grimke's hermeneutic principle was that, between two readings of an ambiguous text, the one should be preferred that better coheres with the basic normative purposes of the text as a whole, in this case, the primary ethical principle that all persons are equal moral

164. *See id.* at 205.

165. *See id.* at 208.

166. *See id.* at 206.

167. *See id.* (quoting *Genesis* 3:16).

168. *See id.* at 207.

agents. The prophetic interpretation of the text better accorded with this principle since all persons retained this status, albeit some of them exercised it wrongly to the disadvantage of others.

Grimke appealed to this hermeneutic principle in repudiating the misogynist interpretation traditionally assigned to various passages in Paul's epistles,¹⁶⁹ for example, "Wives submit yourselves unto your own husbands as unto the Lord."¹⁷⁰ For Grimke, the traditional reading conflicted with the primary ethical principle of the Bible, the equality of all persons, and therefore cannot be believed: "Now I must understand the sacred Scriptures as harmonizing with themselves, or I cannot receive them as the word of God."¹⁷¹ Other reasonable readings were, however, available, that interpreted such passages without compromising this principle. Such passages might, for example, be contextualized to a specific historical circumstance (Christian women converts married to unconverted men) urging women in those circumstances patiently to bear evil.¹⁷² This interpretation granted that husbands had no right to oppress women, but insisted that the response to such evil not appeal to what Grimke took to be un-Christian principles of violent resistance.

Grimke's affirmative interpretive case placed great weight, as her sister earlier had,¹⁷³ on the role of powerfully active female prophets in the Hebrew Bible,¹⁷⁴ and the comparably important role played by women as preachers in early Christianity.¹⁷⁵ Grimke's argument was very much in the radical Protestant spirit of the argument for toleration as it had been earlier interpreted by Bayle and Locke against the Augustinian tradition of intolerance.¹⁷⁶ Bayle and Locke had there argued that the Augustinian tradition (dominant in their period in both Catholic and Protestant thought and practice) rested on the politically illegitimate enforcement on society at large of a corrupt political epistemology that narrowed both the scope of discussion and of participants therein to the measure of the entrenched interests of a dominant political and religious hierarchy; both Bayle and Locke argued as religious Protestants who claimed that this illegitimately en-

169. See *id.* at 241-57, 266-67.

170. See *id.* at 244 (quoting *Ephesians* 5:22).

171. See *id.* at 245.

172. See *id.* at 244-45.

173. See, e.g., GRIMKE, *supra* note 106, at 60-61, 65-66; ANGELINA E. GRIMKE, *Motion of Angelina E. Grimke, Proceedings of the Anti-Slavery Convention of American Women*, (New York, May 1837), in *SELECTED WRITINGS*, *supra* note 99, at 110; GRIMKE, *supra* 102, at 189-90.

174. See GRIMKE, *supra* note 100, at 246-50.

175. See *id.* at 250-57.

176. For further discussion, see RICHARDS, *supra* note 29, at 89-98.

forced political epistemology included a corrupt tradition of Bible interpretation that betrayed the humane tolerance central to pre-Augustinian Christianity.¹⁷⁷ Sarah Grimke's central claim was that the dominant Christian tradition endorsing the subjection of women was similarly illegitimate, giving rise to an unreasonable genre of Bible interpretation that betrayed early Christianity's treatment of women as the moral and spiritual equals of men, a view strikingly taken to similar effect today by, among others, Elaine Pagels.¹⁷⁸

At the very center of Grimke's elaboration of this argument was her indictment of the unreasonable exclusion of women from the Christian ministry, with all the consequences this exclusion inevitably had, in her view, for the development of a corrupt tradition of misogynist Bible interpretation:

It is manifest, that if women were permitted to be ministers of the gospel, as they unquestionably were in the primitive ages of the Christian church, it would interfere materially with the present organized system of spiritual power and ecclesiastical authority, which is now vested solely in the hands of men.¹⁷⁹

But, Grimke based her argument on the political illegitimacy of this exclusion of women not only on the usual grounds urged by Bayle and Locke (the failure to respect the rights of persons to conscience, speech, and the like), but on further grounds specific to the qualitatively grave deprivation of rights associated with the traditional political and religious treatment of women.

For Sarah Grimke, consistent with her sister's similar arguments, the essential issue of political illegitimacy was posed in terms of a morally precise analogy between the rights-based subjection of women and slavery. Her arguments included both diachronic and synchronic claims.

Diachronically, Grimke argued, very much along the lines of Gerda Lerner's recent exploration of similar historical themes,¹⁸⁰ that women's subjugation was the historically generative pattern for slavery. Dating this subjugation from the fall of Adam and Eve, Grimke claimed that

177. On tolerance in early Christianity, see *id.* at 85-86.

178. See generally ELAINE PAGELS, ADAM, EVE, AND THE SERPENT (1988).

179. See GRIMKE, *supra* note 100, at 266.

180. See GERDA LERNER, THE CREATION OF PATRIARCHY 76, 99 (1986) [hereinafter LERNER, THE CREATION OF PATRIARCHY]. See also GERDA LERNER, THE CREATION OF FEMINIST CONSCIOUSNESS: FROM THE MIDDLE AGES TO EIGHTEEN-SEVENTY (1993) [hereinafter LERNER, THE CREATION OF FEMINIST CONSCIOUSNESS].

[t]he lust of dominion was probably the first effect of the fall; and as there was no other intelligent being over whom to exercise it, woman was the first victim of this unhallowed passion . . . Here we see the origin of that Upas of slavery, which sprang up immediately after the fall, and has spread its pestilential branches over the whole face of the known world.¹⁸¹

The nerve of the issue of enslavement was “to regard woman as property, and hence we find them sold to those, who wished to marry them, as far as appears, without any regard to those sacred rights which belong to woman, as well as to man in the choice of a companion.”¹⁸² Women, objectified as property, are thus not only exchanged as slaves, but afford the model for the institution of slavery as such (later generalized to include men as well).¹⁸³

Synchronically, Grimke argued that the kinds of contemporary deprivations of rights of women as such were illegitimate on the same grounds as slavery as an institution. To establish her case, Grimke pointed to the kind of systematic unity among the deprivations of rights to which women, like slaves, were subject: voting rights,¹⁸⁴ rights to bring legal actions against her master-husband,¹⁸⁵ freedom from chastisement,¹⁸⁶ liberty of religious and moral conscience,¹⁸⁷ and work and property rights.¹⁸⁸ Grimke’s argument was that such laws “approximate too nearly to the laws enacted by slaveholders for the government of their slaves,”¹⁸⁹ and were illegitimate for the same reason, the failure to take seriously women as persons with inalienable rights of moral agency and self-government. The consequence of such unjust denials of central rights of moral agency was a cultural construction of woman’s roles which “have a tendency to lessen them in their own estimation as moral and responsible beings, . . . teaching them practically the fatal lesson to look upon man for protection and indulgence.”¹⁹⁰ Such a debasing insult to “self-respect”¹⁹¹ was, in turn, extended to the devaluation of women’s work.¹⁹² Grimke, like her sister a probing critic of American racism as the root of American

181. See GRIMKE, *supra* note 100, at 209. For later appeal to this idea, see *id.* at 263.

182. See *id.* at 210.

183. See generally LERNER, THE CREATION OF PATRIARCHY, *supra* note 180.

184. See GRIMKE, *supra* note 100, at 231.

185. See *id.* at 232.

186. See *id.* at 234.

187. See *id.*

188. See *id.* at 235.

189. See *id.* at 236.

190. See *id.* at 236-37.

191. See *id.* at 223.

192. See *id.* at 222.

slavery, generalized that argument to criticize sexism as the unjustifiable basis of the subjection of women.

The brilliance of Grimke's analysis of these matters is, I believe, to anatomize the common indignity to women and the slave on what she, like her sister, calls "the same platform of human rights."¹⁹³ The core of this common indignity is its debasement of the essential culture-creating moral powers of conscience, free speech, and association through which persons reasonably understand their ethical responsibilities and the meaning of their lives. In particular, Grimke argued that such contempt for women's moral autonomy—reflected, *inter alia*, in corrupt traditions of male-dominated Bible interpretation—had deprived them of the resources of coming to know, understand, and act on a reasonable understanding of their ethical rights and responsibilities as persons.¹⁹⁴ From the perspective of this corrupt moral culture, women, like slaves, were "a kind of machinery,"¹⁹⁵ defined in terms of meeting masculine interests in their own physical needs and comforts.¹⁹⁶ The distinctively woman's sphere thus defined "destroy[s] her character as a rational creature," resulting in "the vacuity of mind, the heartlessness, the frivolity which is the necessary result of this false and debasing estimate of women."¹⁹⁷ The nerve of the problem was a woman's intellectual and moral "servitude" when "she permits her husband to be her conscience-keeper."¹⁹⁸ In effect, women lived in a heretically idolatrous worship of men.¹⁹⁹

On Grimke's analysis, both the enslavement of blacks and its associated racism and the subjection of women and its associated sexism rest on a common radical moral evil, the politically illegitimate failure to regard a whole class of persons as bearers of human rights and their debasement to a servile status on that basis; both cases exemplify the evil of what I shall call moral slavery. Such moral slavery centers on two related kinds of radical evil: the denial of rights of conscience and free speech and the denial of associational liberty, including intimate life. The radical abolitionist analysis of the evils of slavery and racism made both these points; the interest of Grimke's analysis is her elabo-

193. See *id.* at 239, 259; cf. GRIMKE, *supra* note 102, at 196.

194. See GRIMKE, *supra* note 100, at 213-14, 216, 237, 241, 243, 245, 248, 258-60, 265, 266-67.

195. See *id.* at 221.

196. See *id.* at 216-19.

197. See *id.* at 220.

198. See *id.* at 239. See also *id.* at 262.

199. See *id.* at 241, 258-59. For a probing exploration of idolatry as an important term of Judaeo-Christian religious criticism, see MOSHE HALBERTAL & AVISHAI MARGALIT, *IDOLATRY* (Naomi Goldblum trans., 1992).

ration of both of these points to the situation of women. Women's unjust servile status, for Grimke, thus centered on the servitude of her moral life (an insult to rights of conscience and free speech) and of her personal and public life (an insult to associational liberty). Grimke had, as we have seen, anatomized the diachronic background of the servile status as women in terms of regarding "woman as property" to be effectively sold accordingly "without any regard to those sacred rights which belong to woman, as well as to man in the choice of a companion."²⁰⁰ This historical indignity remained, for Grimke, central to the proper analysis of the contemporary indignity of sexism because it set the stage for the contemporary objectification of women in terms of their sexuality and the relationship of that sexuality to men's interests.²⁰¹ A corrupt moral culture, centering on such objectification, deprived women of any of the rights of associational liberty (including not associating with men) inconsistent with such objectification.

Moral slavery, thus understood, deadens moral sensibility and responsibility; and Grimke, anticipating later critics of both racism and sexism, indicted it most severely on precisely these grounds. In particular, Grimke sensitively articulated the ways in which a sexist moral culture, because it silences the voice of woman's moral autonomy, distorts consciousness to its conventional demands. Grimke made the same point about the injuries of sexism that DuBois was later to make of those of racism—

a world which yields him [a black person] no true self-consciousness, but only lets him see himself through the revelation of the other world. It is a peculiar sensation, this double-consciousness, this sense of always looking at one's self through the eyes of others, of measuring one's soul by the tape of a world that looks on in amused contempt and pity. One ever feels his two-ness,—an American, a Negro; two souls, two thoughts, two unreconciled strivings, two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder.²⁰²

Grimke thus spoke piercingly of the obverse side of women's idolatry of men, namely, their "love to be idolized."²⁰³ Not properly the master of herself, the corrupt sexist culture

makes our case too hard, and compels us to be double minded, and unstable in our ways. Deception gives a mortal stab to moral recti-

200. See GRIMKE, *supra* note 100, at 210.

201. See *id.* at 216-19.

202. See W.E.B. DuBois, *The Souls of Black Folk*, reprinted in W.E.B. DuBois, *WRITINGS* 364-65 (Nathan Huggins, ed., New York: The Library of America, 1986).

203. See GRIMKE, *supra* note 100, at 263.

tude. The moment we admit the idea, that we may do evil that good may come, we lose our self-respect, and adopt policy as our rule, instead of righteousness . . . It is of unspeakable importance to woman, to the world, that she should disenthral her mind of the opinion which spell-binds her as by sorcery, that she is to look to man as the regulator of her actions, the prescriber of the sphere in which she is to move.²⁰⁴

Such colonialization of consciousness—common to both the evils of racism and sexism—rests on the illegitimate exclusion of groups from a public culture ostensibly based on respect for human rights.²⁰⁵ The Grimkes had been astute critics of the racist public culture that thus excluded black Americans from its terms; and the brilliance of their abolitionist feminism was their comparable criticism of the sexist public culture that would silence them and any women who would address the public culture on terms of equal respect for their basic rights of conscience, speech, and association. Both Angelina and Sarah Grimke had achieved the degree of moral independence they did through their growing demands to be taken seriously as both religious and moral thinkers and actors on a par with men. It is for this reason that the fullest development of their abolitionist feminism was so preoccupied, as we have seen, with what for the Grimkes were interconnected questions, the sexist corruption of both Bible interpretation and ethics. Their plea was for nothing less than “a great work of public reformation”²⁰⁶ that would fairly extend the argument for toleration, in the spirit of the Renaissance and the Protestant Reformation, not only to slavery and racism but to the subjection of women and sexism and all ancillary evils.

The Grimkes’ ultimate recognition was that their abolitionism and their feminism rested, for reasons we have now examined, on “the same platform of human rights,”²⁰⁷ resting on a common evil (degradation of bearers of human rights to a servile status) requiring a comparable remedy. Abolitionist argument, consistently pursued in a principled way, required the condemnation of both the slavery of blacks and of women and of racism and sexism on the grounds of respect for human rights.

The Grimkes effectively retired from public life after Angelina’s marriage to Theodore Weld on May 14, 1838. Sarah Grimke had writ-

204. *See id.* at 263.

205. For further development of this theme, see RICHARDS, *supra* note 3, at ch. 5.

206. *See id.* at 216.

207. *See id.* at 239.

ten of the corrupt "fear of being thought unfeminine"²⁰⁸ as a deterrent to the exercise of woman's moral independence, when, in fact, such independence would, if anything, make women better mothers.²⁰⁹ Her sister's marriage to Weld would be a test of this proposition; in correspondence at this time, Angelina made precisely this point and took it as the challenge she and her sister (who joined her household) would have to meet: "we are *thus* doing *as much* for the cause of woman as we did by public speaking."²¹⁰ The sisters clearly thought of their feminist principles as equally at stake in private and public life, and retired to private life with that thought centrally in mind. Their public legacy was, as we have seen, the leading public argument for the links of principle between abolitionism and feminism.

The political tenor of the age was not, however, hospitable to the Grimkes' conception of abolitionist feminism, which may, in addition to their exhaustion, explain their retirement. Feminism was even more controversial than abolitionism; even Theodore Weld thought it politically unwise to press, as the Grimkes had, their feminist arguments of principle (with which he agreed) at the expense of abolitionist advocacy.²¹¹ The breaking point came, shortly after the Grimkes' retirement, at the World Antislavery Convention in London in the summer of 1840. The American delegation included a number of women; but despite the strong objection of some American leaders, the convention ruled, after vigorous debate, that only men delegates could be seated. Among the women compelled to sit passively in the galleries were Lucretia Mott and the young wife of an antislavery leader, Elizabeth Cady Stanton. Mott and Stanton began discussions about their common sense of indignation, and the need for an independent statement of feminist principles that eventually culminated in the Seneca Falls Convention of 1848, usually taken to mark the emergence of an independent woman's rights movement in the United States.²¹²

208. See *id.* at 260.

209. See *id.* at 221-22.

210. See ANGELINA E. GRIMKE, *Letter from Angelina E. Grimke to Anne Warren Weston*, in *SELECTED WRITINGS*, *supra* note 99, at 326; see also *id.* at 330.

211. See LERNER, *supra* note 89, at 200-203.

212. For a fascinating narrative by participants, see 1 ELIZABETH CADY STANTON, ET AL., *HISTORY OF WOMAN SUFFRAGE* 50-87 (Ayer Company 1985) (1848-1861). Good secondary sources on these and later developments include ELEANOR FLEXNER, *CENTURY OF STRUGGLE: THE WOMAN'S RIGHTS MOVEMENT IN THE UNITED STATES* (rev. ed. 1975); AILEEN S. KRADITOR, *THE IDEAS OF THE WOMAN SUFFRAGE MOVEMENT, 1890-1920* (1965); ELLEN CAROL DUBOIS, *FEMINISM AND SUFFRAGE: THE EMERGENCE OF AN INDEPENDENT WOMEN'S MOVEMENT IN AMERICA 1848-1869* (1978).

IV. PUBLIC REASON AND ANTIRACIST AND ANTISEXIST DISSENT

Four features of abolitionist thought and practice are notable. First, the abolitionists were the most principled and morally independent advocates of the inalienable rights of conscience and free speech in the antebellum period against the hostile tyranny of majoritarian antebellum complacency so notably anatomized by Tocqueville.²¹³ Second, their principled commitment to the inalienable right to conscience and free speech enabled the abolitionists to elaborate and extend the argument for toleration critically to identify new modes of unjust sectarian oppression of basic rights that could not be reasonably justified on the terms of public justification that were politically and constitutionally required. The abolitionist criticism of both slavery and racism rested on the remarkable moral and intellectual independence with which they made and pressed this argument.²¹⁴ Third, the forms of political and constitutional theory generated by the abolitionists critically tested conventionally popular moral and constitutional views against the most demanding standards of more abstract moral, political, and constitutional argument. Consistent with the argument for toleration, they critically debunked what they found to be, on critical examination, polemical sectarian arguments for deprivation of human rights whose political force crucially depended on the viciously circular failure to allow any fair testing of the empirical and normative claims that allegedly justified the deprivation of basic rights (for example, slavery or racist subjugation). And fourth, abolitionist argument, while often meeting and surpassing the highest intellectual and moral standards of the age, was not largely generated by mainstream politicians, judges, or academics, but by remarkably courageous moral, political, and constitutional activists whose concern was not with winning votes or securing judicial or academic tenure, but with confronting the American public mind and conscience with its failures of intellect, of morality, of civic republican fidelity to its revolutionary constitutionalism.²¹⁵ The abolitionists show us that the best theory and practice work in tandem stimulating one another to a more impartial realization of both the thought and practice of a political and

213. See DE TOCQUEVILLE, *supra* note 59, at 264-80.

214. For two notable examples of arguments along these lines, see CHANNING, *Slavery, supra* note 17; CHILD, *supra* note 53.

215. For some important recent general studies, see LOUIS FILLER, *THE CRUSADE AGAINST SLAVERY 1830-1860* (1960); JAMES BREWER STEWART, *HOLY WARRIORS: THE ABOLITIONISTS AND AMERICAN SLAVERY* (1976); RONALD G. WALTERS, *THE ANTISLAVERY APPEAL: AMERICAN ABOLITIONISM AFTER 1830* (1978); MERTON L. DILLON, *THE ABOLITIONISTS: THE GROWTH OF A DISSENTING MINORITY* (1974).

constitutional community constituted around the normative demands of a principled commitment to basic human rights for all persons subject to its political power.

Abolitionist feminism is an important part of this story along each of its four dimensions. First, its advocates rested their case on the moral independence of their assertion of their rights as conscience, free speech, and association against both the racist and sexist orthodoxies of their age. Second, their principled commitment to such inalienable rights enabled them to elaborate the argument for toleration to identify critically new modes of sectarian oppression of basic rights that could not be reasonably justified publicly. Their criticism of slavery and the subjection of women rested on the astonishing moral and intellectual independence with which they pressed this argument. Third, consistent with the argument for toleration, they critically debunked what they found to be polemical sectarian arguments for deprivation of human rights whose political force crucially depended on the viciously circular failure to allow any fair testing of the empirical and normative claims that allegedly justified the deprivation of basic rights, for example, racist and sexist subjugation. Finally, their arguments, while pitched at the highest critical standards of their age, were generated by exiles and outcasts from its dominant political and educational culture, who forged through their own dissenting struggles for moral independence and responsibility, as persons, a prophetic vision of our constitutional principles of respect for the human rights of all persons.

Our interpretive interest in abolitionist feminism lies, I believe, in the self-conscious unity of principle they brought to their rights-based criticism of the evils of racism and sexism and the institutions of slavery and the subjection of women they sustained. The principle, central to these criticisms, was moral slavery, the condemnation of laws, institutions, conventions, practices, and attitudes that illegitimately abridged the central human rights of conscience, speech, and association and rationalized a servile status on that basis. Moral slavery was, for the Grimkes, radical moral evil because of the unity among the rights it illegitimately abridged, enforcing a total moral subjugation, in central areas of conscience and association, to the will of another. The moral slave was thus stripped of the human and cultural resources through which we acknowledge persons, as persons, capable of freedom and reason in private and public life. The Grimkes' severest criticisms of moral slavery came in their indictment of a religiously and ethically bankrupt political epistemology (including practices of Bible

interpretation) that, consistent with the paradox of intolerance, corrupted reason and crushed freedom in order further to entrench an illegitimate hierarchy of order and submission.

The Grimkes insisted that abolitionist political morality placed all persons "on the same platform of human rights"²¹⁶ and demanded the condemnation of all forms of the radical rights-denying evil of moral slavery on that basis. The Reconstruction Amendments are properly interpreted, I have argued, in terms of the abolitionist political morality they clearly express, affirming the equal status of all persons as bearers of human rights and condemning both slavery and rights-denying subjugation on that basis.²¹⁷ Our best interpretation of these principles cannot, I believe, be always reliably guided by how political institutions at one point or another would have construed them, for abolitionist principles are sometimes best reforged in the moral conscience of outcast dissenters to dominant political institutions. We more reasonably interpret these principles, consistent with their protection of the human rights of all persons, when we interpret them today as a continuing community of principle best elaborating such traditions of dissent in our circumstances. On this basis, we best interpret the enduring moral meaning of the Reconstruction Amendments for the American community of principle when we hermeneutically frame our interpretations as rooted in the condemnation of the radical rights-denying evil of moral slavery and interpret its affirmative guarantees of basic rights and equal protection against that background.

The arguments of Angelina and Sarah Grimke anticipated many of the arguments and practices of later feminists. Their concern with misogynist Bible interpretation was a central preoccupation of Elizabeth Cady Stanton²¹⁸ and a growing concern of contemporary feminists.²¹⁹ Their emphasis on woman's rights of associational liberty anticipates the importance of this theme in contemporary feminism, including both the right to abortion services and the right not to associate with men, central to arguments against institutions of compul-

216. See GRIMKE, *supra* note 100, at 239.

217. See generally RICHARDS, *supra* note 3.

218. See ELIZABETH CADY STANTON, *THE WOMAN'S BIBLE* (New York: European Publishing Company, Parts I and II, 1895, Part III, 1898).

219. See, e.g., LERNER, *THE CREATION OF PATRIARCHY*, *supra* note 180; LERNER, *THE CREATION OF FEMINIST CONSCIOUSNESS*, *supra* note 180; PAGELS, *supra* note 178; ROSEMARY RADFORD RUETHER, *WOMANGUIDES: READINGS TOWARD A FEMINIST THEOLOGY* (1985); MARY DALY, *BEYOND GOD THE FATHER: TOWARDS A PHILOSOPHY OF WOMEN'S LIBERATION* (1986); ALICIA SUSKIN OSTRIKER, *FEMINIST REVISION AND THE BIBLE* (1993).

sory heterosexuality.²²⁰ Sarah Grimke's concern for the devaluation of women's work is a theme central to the later work of feminists like Charlotte Perkins Gilman and others.²²¹ The Grimkes' central preoccupation with sexism's injury to moral conscience and consciousness was carried forward by feminists from Margaret Fuller²²² to Simone de Beauvoir²²³ to Gerda Lerner today.²²⁴ Their concern with political epistemology is central to deepening contemporary feminist concerns with these and related issues.²²⁵ The feminist renaissance and reformation, which they argued to be morally necessary for the emancipation of women from their moral slavery, is now very much part of the agenda of our critical public culture.

The continuities between the antisexist arguments of the Grimkes and later feminists are no more a matter of mere historical interest than the continuities between the anti-racist arguments of Garrison, Child, and Douglass and those of later anti-racist advocates. The critical procedures of their abolitionist feminism are central to the proper interpretation of the Reconstruction Amendments, and the most reasonable contemporary articulation of these procedures must accordingly frame such contemporary interpretation. The forms of interpretive argument, forged by the abolitionists, were precisely the same forms that have critically tested and transformed the interpretation of the Reconstruction Amendments often in service of the demands of activist civil rights advocates who have played a role, in the twentieth century, quite analogous to that of the abolitionists in the nineteenth century. The abolitionist argument of Frederick Douglass

220. See Adrienne Rich, *Compulsory Heterosexuality and Lesbian Existence*, in *WOMEN: SEX AND SEXUALITY* 62-91 (Catharine R. Stimpson & Ethel S. Person eds., 1980).

221. See CHARLOTTE PERKINS GILMAN, *WOMEN AND ECONOMICS* (Carl N. Degler ed., 1966). For contemporary treatments to similar effect, see CLAUDIA GOLDIN, *UNDERSTANDING THE GENDER GAP: AN ECONOMIC HISTORY OF AMERICAN WOMEN* (1990); VICTOR R. FUCHS, *WOMEN'S QUEST FOR ECONOMIC EQUALITY* (1988); Sylvia A. Law, *Women, Work, Welfare, and the Preservation of Patriarchy*, 131 U. PA. L. REV. 1249 (1983).

222. See S. MARGARET FULLER, *WOMAN IN THE NINETEENTH CENTURY* (University of South Carolina, 1980) (Madeleine B. Stern ed. 1845).

223. See SIMONE DE BEAUVOIR, *THE SECOND SEX* (1974).

224. See LERNER, *THE CREATION OF PATRIARCHY*, *supra* note 180; LERNER, *CREATION OF FEMINIST CONSCIOUSNESS*, *supra* note 180.

225. See, e.g., SANDRA HARDING, *THE SCIENCE QUESTION IN FEMINISM* (1986); *WHOSE SCIENCE? WHOSE KNOWLEDGE?: THINKING FROM WOMEN'S LIVES* (1991); LORRAINE CODE, *WHAT CAN SHE KNOW?: FEMINIST THEORY AND THE CONSTRUCTION OF KNOWLEDGE* (1991); *DISCOVERING REALITY: FEMINIST PERSPECTIVES ON EPISTEMOLOGY, METAPHYSICS, METHODOLOGY, AND PHILOSOPHY OF SCIENCE* (Sandra Harding & Merrill B. Hintikka eds., 1983); ANNE FAUSTO-STERLING, *MYTHS OF GENDER: BIOLOGICAL THEORIES ABOUT WOMEN AND MEN* (1985); CYNTHIA FUCHS EPSTEIN, *DECEPTIVE DISTINCTIONS: SEX, GENDER, AND THE SOCIAL ORDER* (1988); SANDRA LIPSITZ BEM, *THE LENSES OF GENDER: TRANSFORMING THE DEBATE ON SEXUAL EQUALITY* (1993).

was very much, both in thought and practice, the tradition self-consciously carried forward by a civil rights advocate like Martin Luther King.²²⁶ The abolitionist feminism of Angelina and Sarah Grimke is another aspect of that abolitionist tradition, a tradition contemporary advocates of basic constitutional justice in matters of gender and sexuality may reasonably claim and elaborate as one central to the interpretive integrity of our arguments of constitutional principle.

In particular, such contemporary advocates may reasonably lay claim to the Grimkes' piercing analysis of the incommensurable rights-based wrong of moral slavery as the hermeneutic background to the proper interpretation today of the prohibition on slavery and involuntary servitude in the Thirteenth Amendment and the ancillary normative requirements of both the Fourteenth and Fifteenth Amendments. The Grimkes articulated a general rights-based moral theory condemning, as moral slavery, both racism and sexism and, by implication, any comparable institutions that illegitimately subjugated persons on terms that deprived them of a fair respect for their central human rights of conscience, speech, and association. The evil of moral slavery is subjugation of persons to the terms of a political orthodoxy tainted by such rights-denying illegitimacy. Both racism and sexism exemplified, for the Grimkes, institutions condemned as moral slavery because they rested on such a political orthodoxy, in particular, one that crucially *depended* on an historically entrenched public culture of exclusion, marginalization, and colonialization of, respectively, blacks and women. In particular, racism and sexism exemplified the radical evil of denying classes of persons their full status as bearers of basic rights like conscience, speech, and association. On this view of moral slavery, its abolition would crucially require both deconstruction of the illegitimate force of such a public culture along all its rights-denying dimensions of exclusion, marginalization, and colonialization and full and equal guarantee to all of the basic rights of conscience, speech, and association. The constitutional principles of both the Fourteenth and Fifteenth Amendments would, on this view, embody various dimensions of the general prohibition on moral slavery in the Thirteenth Amendment.

226. For Frederick Douglass, see 2 *LIFE AND WRITINGS*, *supra* note 65; for commentary, see WILLIAM S. McFEELY, *FREDERICK DOUGLASS* (1991); ERIC J. SUNDQUIST, *FREDERICK DOUGLASS: NEW LITERARY AND HISTORICAL ESSAYS* (1990). For Martin Luther King, see *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS OF MARTIN LUTHER KING, JR.* (James M. Washington ed., 1986) [hereinafter *ESSENTIAL WRITINGS*]; for commentary, see TAYLOR BRANCH, *PARTING THE WATERS: MARTIN LUTHER KING AND THE CIVIL RIGHTS MOVEMENT 1954-63* (1990).

To interpret the Reconstruction Amendments in this way makes powerful normative sense of their volcanic significance in American constitutional history and interpretation both retrospectively and prospectively. Retrospectively, it makes enduring sense of the Reconstruction Amendments as the culmination of the most profound moral struggle of the American people over the meaning of their constitutionalism since its founding, in particular, over the radical rights-denying evil of slavery. The struggle clarified for Americans the ultimate justification of legitimate political power, namely, the protection of human rights, and the gravest threats to such rights, to wit, rights-denying institutions of moral slavery (including, as we have seen, arguments condemning in such terms both racism and sexism). Interpreting the amendments as a central condemnation of moral slavery makes powerful normative sense of this struggle in terms adequate to its rights-based emancipatory meaning.

Prospectively, this interpretation preserves and elaborates the amendments as a permanent normative heritage to posterity, condemning all forms of moral slavery that entrench the illegitimate subjugation of persons. Each generation has the interpretive responsibility to make the best sense of the Reconstruction Amendments in its own terms of public reason, including its best interpretation of moral slavery. Such interpretation must in its nature not only identify the basic rights (like those to conscience, speech, and association) that have been denied, but also both the inadequate grounds on which they have been denied and the institutional structures that have sustained such subjugation. Such interpretive analysis may reasonably elaborate, on grounds of principle, pertinent analogies among forms of moral slavery anticipated, as we have seen, by strands of abolitionist anti-racist and anti-sexist moral and political analysis that made precisely such arguments about rights, inadequate grounds, and supporting structures; on this basis, we may draw illuminating analogies, as a matter of rights-based principle (on the platform of human rights), between racism, sexism, and homophobia. In each case, a group of persons has been radically excluded from the central human rights of conscience, speech, and association on inadequate grounds and has been degraded by such an unjust public and private culture to a servile, marginal, and, in the case of homosexuals, unspeakable status, deprived of the resources that enable persons to come to know, understand, and claim their rights as free and equal persons.

It is against this background that the idea of public reason makes normative sense as a requirement for legitimate political argument

about matters of constitutional essentials and basic justice. Advances in arguments of human rights, of the sorts I have described in various domains, crucially turned on the appeal to arguments of public reason not themselves hostage to existing political practices that enforced political epistemologies resting on the denial of human rights; criticisms of slavery, racism, the subjection of women, and sexism all rested on this crucial normative move, namely, the appeal to public reason. Public reason, thus understood, crucially introduces publicly accessible arguments and standards available, in principle, to all.

The critical normative point of the appeal to public reason is both negative as to certain claims and affirmative as to others. Negatively, the requirement denies the public authority of essentially sectarian arguments that appeal to an entrenched political epistemology often resting on the deprivation of human rights. Affirmatively, the requirement makes available normatively empowering arguments through which traditionally silenced persons may both reasonably criticize the unjust, rights-denying political practices that have silenced them and make positive claims in their own voice both to respect for their human rights and for fair concern for their interests in the definition and pursuit by the state of the public interest.

Both the negative and affirmative roles of public reason derive from the deeper moral, political, and constitutional ideal of equal respect for persons. The requirement of public reason, as a condition for the legitimacy of political power, guarantees respect for the free exercise of the reasonable moral powers of each and every person. Its negative role is directed against politically enforceable epistemologies that, in violation of equal respect for persons, illegitimately enforce on persons sectarian claims that they cannot reasonably acknowledge as publicly available and accessible forms of reasoning. Its affirmative role is precisely to empower persons to exercise their self-authenticating moral powers as free and equal persons, *viz.*, to recover and exercise their powers of reasonable self-government as agents. To achieve both these ends, public reason must articulate impartial standards of both epistemic and practical reason not hostage to existing political epistemologies, *i.e.*, morally independent standards in terms of which the politically illegitimate claims made by such epistemologies may be critically evaluated and resisted.

Our study of abolitionist and related forms of dissent brings interpretive history reasonably to bear on the crucial role arguments of public reason played in such dissent. Abolitionist criticism of both the evils of slavery and racism thus centrally addressed the unreasonable

circularity of the arguments in defense of such evils. For example, the alleged radical inferiority of blacks itself rested on the radically rights-denying character of slavery and related institutions of racial discrimination. Such circularity could, the abolitionists argued, rationalize such practices only on the basis of factual and normative views already polemically committed to the institution. Abolitionist criticism achieved its level of impartial ethical criticism of such practices precisely in virtue of its demand that such practices be assessed in light of arguments of public reason not themselves already hostage to the polemical rationalization of existing practices.

To make these points, abolitionist criticism increasingly addressed itself not only against the dominant science of ethnology but against the dominant established churches who resisted its criticisms of both slavery and racism:

No major domination endorsed abolitionism. This reluctance on the part of clergymen and church bodies was to have profound consequences for the course of the antislavery movement. It helped push Garrison and others into taking militant anti-clerical stands, and it caused the movement in the later 1830s and 1840s to adopt increasingly secular policies.²²⁷

Indeed,

To the extent that slavery became a concrete symbol of sin, and support of the antislavery cause a sign of Christian virtue, participation in the reform became a supplement or even alternative to traditional religion . . . The immediatist . . . put his faith in the innate moral capacities of the individual.²²⁸

The anti-institutional character of abolitionist dissent was central to its articulation of arguments of public reason not themselves hostage to the illegitimate political epistemologies entrenched by both institutional science and religion. The important point in the interpretive understanding of the role of public reason in such abolitionist dissent is no more its religious or irreligious character than its scientific or anti-scientific character, but its critical moral independence in all domains (including science and religion) in forging arguments of public reason in opposition to the role that both dominant established science and religion played in the defense of slavery and racism. The gravitation of abolitionist dissent to increasingly heterodox, highly individualistic forms of religious inquiry and experience (including in-

227. DILLON, *supra* note 82, at 60. See also *id.*, at 121-22. See also Bertram Wyatt-Brown, *William Lloyd Garrison and Antislavery Unity: A Reappraisal*, 13 CIV. WAR HIST. 5-24 (1967).

228. See David Brion Davis, *The Emergence of Immediatism in British and American Antislavery Thought*, 49 MISS. VALLEY HIST. REV. 209-230, 229 (1962).

terpretively original forms of Bible interpretation) reflect the impact of such arguments, which afforded the kind of impartial standards of thought and argument necessary to the reasonable ethical criticism of the role organized religion illegitimately played in the support of slavery and racism. In short, the religious character of abolitionist dissent, to the extent it was religious, was marked by its insistence, remarkable by the standards of its age, that religious inquiry (for example, Bible interpretation) be conducted in terms of arguments of public reason not hostage to illegitimately entrenched political epistemologies (including religious epistemologies). In particular, abolitionist dissent centrally articulated its arguments of public reason to address all persons, including black Americans and women in general, in a way that would enable all, on equal terms, reasonably to lay claim to their basic human rights. Public reason was the indispensable moral vocabulary of such egalitarian empowerment and emancipation.

These themes are, if anything, more starkly exemplified in the relatively short but intense development of abolitionist feminism by the Grimke sisters. Indeed, abolitionist feminism is a kind of radiantly transparent microcosm for the close study of the essential role of public reason in rights-based political discourse in an era when serious American moral and political discourse was largely conceived in ethico-religious terms centering on Bible interpretation. The Grimkes worked within that domain of discourse, but their articulation of arguments of abolitionist dissent was directed not only against the evils of slavery and racism but the subjection of women and sexism as well; the propulsive motor of such emancipatory inquiries was, as we have seen, their development of increasingly heterodox forms of religious inquiry in terms of ethical arguments of public reason. They gravitated, first, to the Quakers, one of the most religiously heterodox (and antislavery) of American religions, and then revolted even against Quakerism in order to do justice to the moral imperative of abolitionist dissent. The imperatives of such dissent crucially required them, contrary to the dominant sexist orthodoxy of the age, reasonably to speak in their own voice about what their experience led them to argue were the generic evils of moral slavery (to which both blacks and women had been illegitimately subjected). To do so, they forged arguments of public reason that made possible impartial ethico-religious criticism of a dominant ethico-religious epistemology resting on the unjust abridgement of human rights. Arguments of public reason in their nature empower groups unjustly subjugated by an illegitimately enforced orthodoxy reasonably to come to know, understand, and

claim their rights. The Grimkes, who were central architects of such arguments in the domain of race, generalized such arguments to gender, and thus articulated and claimed their own rights, as women, on grounds of public reason. Public reason both procedurally was the voice of their claims to human rights, and afforded the substantive arguments in terms of which such arguments were made.

As we have seen, Sarah Grimke gave the most advanced substantive statement of abolitionist feminism, and it took the form of a very heterodox exercise in Bible interpretation in the emancipatory terms of rights-based public reason. In particular, Grimke's basic hermeneutic stance on Bible interpretation was that such interpretation, to qualify as reasonable, must be justifiable to all persons (including women) in terms consistent with their basic human rights of conscience, speech, and association; the demands of public reason thus framed her interpretation of the Biblical account of the creation of humankind as an ethical demand to respect all persons as equals made in the image of the creative moral freedom of a just God. Grimke's interpretive stance was thus highly critical of the traditionally misogynist character of Bible interpretation for the same reason she and other abolitionists were critical of proslavery and pro-racist interpretations of the Bible:²²⁹ such readings were the corrupt product of an entrenched politico-religious epistemology that rested on the unjust, rights-denying subjugation of persons from their reasonable role both procedurally and substantively in Bible interpretation. Accordingly, Grimke generalized the characteristically anti-establishment character of abolitionist religious dissent to the rights of women, and did so in terms of arguments of public reason addressed by a woman to women as reasonable claimants to basic human rights.

The important feature of arguments of public reason, thus understood, was not their religious or antireligious character, but their demand that any form of argument (religious or irreligious) bearing on respect for basic human rights must, in order to be legitimate, be conducted in the terms of public reason that could, in principle, be critically addressed to all persons as equal bearers of human rights. The same basic pattern extends as well to the later elaborations of forms of abolitionist dissent mentioned earlier, extending from Frederick Douglass to Martin Luther King to forms of contemporary arguments against sexism and homophobia. The elaboration of anti-racist princi-

229. For an example of such abolitionist readings of the Bible, see RICHARDS, *supra* note 3, at 75-76, 91, 133, 231. For opposing proslavery readings, see *id.* at 38-39, 76-77, 88, 152.

ples thus centrally appealed to arguments that attacked the dominant racist orthodoxy (including religious orthodoxy) on terms of public reason that appealed to and empowered blacks and others to claim their basic human rights on fair terms.²³⁰ Martin Luther King's "Letter from Birmingham City Jail" was thus, in the tradition of abolitionist dissent, directed against dominant religious opinion that failed, in King's view, to take seriously the public evil of segregation ("[a]ny law that degrades human personality is unjust"²³¹) and the appropriate role of public nonviolent civil disobedience in resisting such an evil. King's arguments, combining both religious and secular elements, crucially turned on arguments of public reason available and accessible to all moral persons, in particular, offering the resources of public reason by which the subjugated group might reasonably lay claim to its basic human rights on equal terms with all other persons against an unjustly subjugating politico-religious epistemology.²³²

Our interpretive study of abolitionist dissent makes clear, I believe, the central role of public reason in such dissent, including the religious forms such dissent took. Public reason, as a requirement for legitimate political argument, calls for a kind of impartial justification not hostage to illegitimately entrenched political epistemologies, including religious epistemologies. Its religious forms thus gravitate to anti-establishment forms of argument that question and criticize dominant religious authority on morally independent grounds of public reason that question, for example, its modes and institutions of Bible interpretation, and the like. As we have seen in the case of Sarah Grimke, religious arguments (for example, the Biblical narrative of Creation) are crucially reinterpreted and reframed in light of arguments of public reason.²³³

The Western religious tradition was for most of its history as supportive of and complicitous with rights-denying institutions like slavery and the subjection of women as most other religious traditions have been; *qua* religion, much of its historical record is as ethically defective and politically regressive as many other religions. In the hands of the abolitionists and others, Judaeo-Christian religious argu-

230. For fuller discussion of this development (including important developments in the interpretive human sciences), see RICHARDS, *supra* note 3, at ch. 5.

231. See MARTIN LUTHER KING, *Letter from Birmingham City Jail*, in ESSENTIAL WRITINGS, *supra* note 226, at 293.

232. For the contemporary elaboration of similar forms of argument in the areas of gender and sexual preference, see RICHARDS, *supra* note 3, at ch. 5.

233. For a contemporary example of feminist Bible interpretation focusing also on this narrative, see PAGELS, *supra* note 178.

ment took a different turn when interpreted in terms of arguments of public reason; its internal ideals of respect for persons (made in the image of a just God) were then plausibly reinterpreted to require a demanding and morally independent critical stance against which existing politico-religious epistemologies could be critically tested and found wanting (in the spirit of a progressively unfolding historical revelation, as they conceived it, of the meaning of the Protestant Reformation).²³⁴ Abolitionist dissent offered such a radical interpretation of religious argument against the dominant religious orthodoxy of its age in the larger terms of public reason that it brought to many domains (including science) in order to advance its ethically emancipatory point in all domains relevant to the recognition and enforcement of basic human rights.

It is for this reason quite ahistorically false and seriously misleading to interpret the religious terms of abolitionist dissent as inconsistent with public reason as a measure of legitimate political argument. It is false because, in fact, religious argument performed the role that it did then (and sometimes performs now) precisely because, as we have seen, it was the vehicle of critical moral independence that lent itself to such rights-based arguments of public reason against the dominant religious orthodoxy of its age. It is misleading because it places improper emphasis on the exclusively religious character of abolitionist thought at the expense of its multidisciplinary catholicity of approaches in service of forging arguments of public reason relevant to its emancipatory purposes. Religion as such hardly deserves the exclusive compliment of supporting abolitionist dissent when, in fact, most of it opposed it. The intellectual and moral demands of abolitionist dissent was at the cutting edge of the best critical public thought of its age; it extended over all domains relevant to its emancipatory project, and cannot be reasonably understood in terms of any one such domain, be it science or religion; certainly, it resisted at every turn the uncritical polemics of sectarian religious and scientific insularity. As we have now seen in detail in several areas, those critical demands were crucially articulated in terms of rights-based public reason, and the legitimacy of religious or political or scientific argument was assessed and indeed interpreted in light of those demands. Public reason was the abolitionist theory of legitimacy in all these domains, and certainly central to the ways in which abolitionists,

234. For fuller elaboration of this theme, see RICHARDS, *supra* note 29; RICHARDS, *supra* note 3.

like Sarah Grimke and others, distinctively interpreted religious texts. Rawls, in contrast to his critics, gets this point exactly right.

Criticisms of the idea of public reason, as a requirement for politically legitimate argument in the United States, appeal to what they take to be a longstanding American tradition of undifferentiated religious argument in service of the struggle for human rights in the United States. These criticisms get American history conspicuously wrong, failing to understand the critical dimensions of the religious tradition they claim to value. Historically, they fail to interpret the heterodox character of the arguments of public reason central to that tradition. In fact, as Rawls has suggested, the reasonable interpretation of this tradition must appeal to the role of public reason in it; its distinctive character, as a form of anti-establishment religious argument, turned on the kinds of arguments of public reason it made against dominant politico-religious epistemologies. The critics of public reason crudely and uncritically conflate the distinctive kinds of demanding and morally independent ethico-religious arguments central to such dissent (motivated, as they were, by public reason) with conventional and sometimes highly sectarian religious arguments. In fact, the tradition of abolitionist dissent was, in the terms of its age, religiously quite heterodox, critical of sectarian religious arguments, and increasingly secular and individualistic in demanding standards of critical impartiality as high as any of its age. Indeed, it took such a secular and individualistic turn precisely in order better to forge the morally independent arguments of public reason it needed against the dominant rights-denying scientific and religious orthodoxy of its age. The religious character of abolitionist thought crucially construed its religious responsibilities, indeed the meaning of true religion, in terms of the high critical demands of public reason against corrupt mainstream religions.

It cannot do historical justice to such a distinctive tradition of dissent and protest, directed against the dominant established churches of its age, to deem its arguments to be essentially religious in the terms of mainstream, dominant religions today. As the argument of this essay makes clear, the history urged in support of this view is starkly Orwellian. The burden of my interpretive argument compels rejection of such history. Such history may uncritically serve the needs for polemical apologetics of conventional contemporary religion, but it dishonors the tradition it claims to value. As history, it gets conspicuously and perversely wrong the critical moral independence of abolitionist ethico-religious thought and practice that cru-

cially tested religion against public reason, and that urged skepticism on such grounds precisely against such polemical abuses of argument in service of established religions. The abolitionists transcended and transformed conventional dichotomies of secular versus religious in service of passions of free moral personality that may appear spiritually mysterious and indeed inexplicable in terms of the comforting stereotypes and bromides of conventional religious and secular people of any age. Abolitionist dissent in its nature breaks such conventional modes, and truth to its integrity requires that we should not domesticate it to the terms of such modes, which distort both its character and its challenge. Its moral authority derived from its original personal blending of religiosity and secularity in service of a creative moral freedom that the abolitionists identified with God's image in us, a moral freedom and responsibility that sustained a skeptically unconventional moral independence and civic courage that originated and forged public arguments that elevated the progressive ethical conscience of all persons. Their moral and intellectual rigor in service of human rights rested on the higher standards of public reason they forged against conventional wisdom, new transformative resources of intelligence and imagination made available to all persons as bearers of human rights. Conventional religion, ethics, politics, and constitutional law would never be the same, because abolitionist thought and practice transformed what the public mind would and could now find reasonable in all its domains.

Religion served abolitionist dissent when it took a certain form of critical moral independence of public reason in service of human rights, and that form often addressed its criticisms at dominant religious epistemologies that illegitimately rested on the deprivation of human rights. It misinterprets that historical tradition and devalues its importance for us today to trivialize its demands to any conventional orthodoxy, religious or irreligious. For example, the progressive understanding and enforcement of human rights today, as basic principles of American constitutional law owed all Americans, may have in the areas of sexuality and gender as much need for the strenuous critical demands of abolitionist moral independence against dominant religious and other orthodoxies.²³⁵ Further progress in these areas may require a critical moral independence at least as rigorously skeptical of and challenging to conventional sexist and homophobic wisdom, rooted in dominant religions, as that achieved by anti-racist and anti-

235. For a sketch of such an argument, see RICHARDS, *supra* note 3, at ch. 5.

sexist dissent against the conventional rationalizations of rights-denying evil of its age; our intellectual and moral responsibilities along these lines may barely be understood, let alone met. To be adequate to such demands (whether we define them as ethical or religious), we must define in our best terms the reasonable demands of public reason against the rights-denying political epistemologies of our age. Dominant religions can for this reason no more be the measure of such abolitionist responsibilities in ethics or religion today than they were earlier. Our intellectual and moral needs are not met by comfortable conventional pieties, but by the reasonable challenge to them when, on public reflection, they rest on injustice.

The demand of public reason, as a requirement of political legitimacy, sets the appropriate constitutional and ethical standard. We need to hold ourselves to its high standard of moral intelligence and imagination if we are to be worthy of our best religious, ethical, and constitutional traditions and their role in the progressive understanding and enforcement of basic human rights. We both better interpret our history and harness its legacy to our interpretive responsibilities today when we demand in our terms the best arguments of public reason available to us against all entrenched epistemologies (religious and non-religious) that rest on the unjust degradation of moral personality. Public reason affords both the democratic procedure and substance of such empowering demands for the inalienable human rights of all persons.