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# Justice, Creativity, and Popular Culture: The "Jurisprudence" of Mary Chapin Carpenter

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# Justice, Creativity, and Popular Culture: The “Jurisprudence” of Mary Chapin Carpenter

F. Patrick Hubbard\*

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## ABSTRACT

This Article takes the position that normative “truth” is contingent and, culture bound and defines “law” as decisions by officials of the state, the entity with an effective geographic monopoly on violent force. One approach to

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developing normative political theory in this contingent context is to view justice as a cultural construct, consisting of shared views about important normative ideals, that can be used to make “meaningful” statements about justice. More specifically, this cultural approach acts on a “creativist” faith or belief in three interconnected tenets: first, given the state’s monopoly on violence, agreement on political theory is uniquely important; second, agreement is preferable to coercion and, therefore, interpersonal agreement means more than mere preference; and third, the creative aspect of humanity can be used, along with rational analysis, to implement and improve the shared normative perspective. Adopting this “creativist” approach requires criteria for determining how shared cultural views should be utilized in developing a normative political theory.

This article begins the process of developing such measures by proposing three criteria: (1) Popularity; (2) provision of framework for dialogue and consensus, rather than force, to resolve disagreement over basic values; and (3) “fit” with existing political theories. The use of these criteria is demonstrated by applying them to the songs of Mary Chapin Carpenter. As a successful singer-songwriter, she satisfies the popularity criterion. Her “fit” with traditional political theory is addressed by considering the extent to which Carpenter’s scheme complements John Rawls’s theory of justice. The usefulness of Carpenter’s framework in fostering dialogue and the pursuit of common ground is illustrated by discussing the ways and extent that her scheme provides a basis for dialogue between potentially conflicting feminine and masculine points of view. The conclusion argues that the analysis of Carpenter’s songs is a useful beginning on the neglected task of fitting traditional political theory with popular culture.

“The life of the law has not been logic: it has been experience.”\*\*

“Life’s a dance you learn as you go.”\*\*\*

This article addresses the problem of developing a theory of justice in a context in which all “truth” is challenged as contingent and culture-bound. One approach to this problem is to view political theory as a creative cultural product that can provide the basis for a meaningful critique of a law as just or unjust. Adopting this cultural approach requires that popular views about justice be included in or related to political theory. This article addresses the nature and role of such popular views by considering the work of Mary Chapin Carpenter, a popular singer-songwriter, as an example of popular views on justice. This consideration indicates how her views relate to traditional positions in political philosophy. In particular, her scheme provides a conception of autonomous persons who, though fundamentally different, can establish relationships based on dialogue and concern for one another. The article concludes by sketching some implications of the cultural approach as exemplified by Carpenter’s songs.

## I. POLITICAL THEORY AND POPULAR CULTURE

### A. *Law and the Problem of Justice*

Central to political theory is the concept of the “state,” which is the entity that can claim a minimally effective monopoly of deadly coercive force within some geographic area.<sup>1</sup> In order to make this monopoly effective, the state must prevent or limit violent, physically coercive self-help as a dispute resolution device. Thus, in order to provide a minimum level of order, the effective state must “settle,” “suppress,” “resolve,” or otherwise manage at least some disputes that could involve violent self-help.<sup>2</sup> As the state uses this monopoly to impose order and

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\*\* OLIVER WENDELL HOLMES, *THE COMMON LAW* 5 (Howe ed. 1963).

\*\*\* JOHN MICHAEL MONTGOMERY, *Life’s a Dance*, on LIFE’S A DANCE (Atlantic Records 1992) (written by Allen Shambin and Steve Seskin). Montgomery, like Carpenter, is a country music artist.

1. This concept, like any other concept, is a social construct and, therefore, subject to challenges like those discussed herein. However, even though the nation state can be viewed as a contingent, culture-bound construct, the state is unlikely to disappear soon. Therefore, it will be treated as a given in the same way that aspects of the empirical world are treated as “objective facts.” For a discussion of such “objective facts,” see *infra* note 4.

2. The text indicates that the monopoly of deadly coercive force is only required to be “minimally effective” and that the state need only “limit” private violence, so that this violence does not exceed some “minimal level.” Managing violent self-help does not require total control of all instances of private violence; all states have occasional private use of violent force that is either permitted (for example, force used in self-defense) or not detected or punished. On the other hand, where anarchy or civil war are involved, the concept of the state as used in the text would not be applicable. It should also be noted that limiting violence is not

resolve disputes, people customarily recognize that the state may use special terms and refer to its armed agents as “police,” its coercive monetary exactions as “taxes,” its decisionmakers and enforcers as “officials,” and the acts and decisions of these officials as “law.” Thus, “law” is (at least in part) decisions—e.g., rules and orders—by state “officials” backed (at least in part) by the state’s monopoly of coercive force.<sup>3</sup>

One traditional task of political or legal philosophy has been to distinguish just laws from unjust laws. The distinction can be meaningful even if there are some official decisions that cannot be identified as just or unjust. So long as a “significant” number of decisions can be identified as just or unjust, it does not matter if the scheme used to identify justice is too vague or contradictory to give a single right answer in all cases.

One approach for identifying just laws relies upon the concept of “objective truth” that exists “out there,” independent from any particular state, culture, or time. This objective truth provides the basis for a divine law or natural law perspective for critiquing the justice of a particular regime or law. One such approach relies upon the empirical world of “objective facts” as the basis for objective truth about humans and society.<sup>4</sup> This approach makes it possible to construct some limited statements about “the minimum content of natural law.”<sup>5</sup> However, such empirically based statements are too limited to provide a basis for a theory of

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necessarily the only purpose of the state.

3. The parenthetical references, “at least in part,” are used in the text above in order to avoid a range of issues which, though important, are peripheral to the focus of this article. For example, the definition of “law” in the text avoids problems such as the detailed definition of “rule” or “official.” It also ignores conduct by the state as it takes social or economic actions in a manner like a “private” entity.

The textual definition also avoids issues like the role of natural law or divine law and the nature of legitimacy and obligation. These concerns are very much related to the concerns of this article. However, they cannot be addressed until the problem of normative “meaning” has been addressed. As will be indicated below, the approach of this article excludes traditional concepts of natural law and divine law as the basis for “meaningful” statements about justice. See *infra* notes 4-10 and accompanying text. Similarly, legitimacy and obligation cannot be based on some natural law or divine law framework; an alternative basis is needed. This alternative is discussed herein but will not be explicitly developed in terms of obligation and legitimacy.

4. Though the exploration of the nature of “scientific truth” is beyond the scope of this article, the positions taken herein are based on three premises about “scientific” or “empirical truth.” First, scientific truth is “constructed” by humans. For example, the “truth” about the earth has shifted from a Ptolemaic conception of the Earth in the center to a Copernican conception of the Earth revolving around the sun. Regardless of whether there is an objective empirical reality “out there,” our ability to conceptualize it is structured by such models. Second, despite the fact that scientific truth is constructed by scientists, technology and the physical sciences have “progressed” in a way that political philosophy has not. Third, this difference gives us reason to believe that the subject matter of science and the techniques appropriate for that subject matter are different from the subject matter and techniques of political theory. Because of this difference, scientific constructs, including the concept of objective facts, can be treated (at least provisionally) as “givens” that can be used as one basis for constructing and critiquing normative structures.

5. See, e.g., H.L.A. HART, *THE CONCEPT OF LAW* 193-200 (2d ed. 1994); F. Patrick Hubbard, “*One Man’s Theory . . .*”: *A Metatheoretical Analysis of H.L.A. Hart’s Model of Law*, 36 MD. L. REV. 39, 48-102 (1976).

justice and should perhaps be left for development by legal sociologists.<sup>6</sup> In order to develop a view of justice based on divine law or natural law, a broader, more normative approach is needed.

Unfortunately, attempts to ground divine law or natural law on a broader theory of objective normative truth have been unsuccessful. There may be an objective normative truth "out there" somewhere, and individuals or groups may think they have discovered this truth (and perhaps they have). However, no one has devised a consistent way to demonstrate this truth to others. The systems that have been proposed for discovering any such objective normative truth, whether through revelation, intuition, or reason, have provided widely varied and conflicting theories about justice. Given this variety and conflict, it appears that there is no reliable system for discovering and demonstrating objective normative truth.<sup>7</sup> Without such a system, any theory of justice based on objective normative truth is inherently suspect. Moreover, experience with religious intolerance, persecution, and war also indicates that "revealed truth" from "out there" is a questionable basis for building a political theory for modern industrialized states.

It is important to stress that reason, in the sense of rational or logical argument, fares no better than revelation or intuition as a system for discovering objective normative truth. Partly because of the subjective nature of revelation and intuition, their role as a basis for discovering objective normative truth has declined in western societies. Rational analysis, in contrast, still has considerable respect because of its utility in critiquing theories by identifying: (1) Assumptions; (2) vague or ambiguous terms, concepts, or tests; (3) internal contradictions; and (4) incomplete arguments. Consequently, reason may appear to offer a basis for an interpersonal, objective process for discovering and demonstrating objective normative truth. Unfortunately, however, reason is too limited to play such a role because rational argument is only applicable *after* basic premises or postulates have been assumed. Reason can use logic to manipulate these assumptions and "construct" theories based on these assumptions. However, if someone challenges the assumptions, logical analysis alone cannot answer such a challenge. This limit on rationality is important because the chosen premises can fundamentally affect the content of a theory of justice. For example, if one

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6. See, e.g., DONALD BLACK, *THE BEHAVIOR OF LAW* (1976); DONALD BLACK, *THE SOCIAL STRUCTURE OF RIGHT AND WRONG* 1-21 (1993).

7. See, e.g., DAVID LUBAN, *LEGAL MODERNISM* (1994); ALASDAIR MACINTYRE, *AFTER VIRTUE* (1981); Arthur Lef, *Unspeakable Ethics, Unnatural Law*, 1979 *DUKE L.J.* 1229 (1979); Henry Mather, *Natural Law and Right Answers*, 38 *AM. J. JURIS.* 297 (1993). The "critical legal studies" movement or school of thought adopts this view as a basic starting point for its critique of law and of the legitimacy of the legal system. See *infra* notes 10, 21, 26 and accompanying text. The view expressed in the text above is also shared by more moderate theorists. See *infra* notes 22-31 and accompanying text. For arguments that there are objective normative truths or that we should act as if there were, see, e.g., JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* (1991); WILLIAM A. GALSTON, *LIBERAL PURPOSES: GOODS, VIRTUES, AND DIVERSITY IN THE LIBERAL STATE* 158 (1991); Michael S. Moore, *Moral Theory Revisited*, 90 *MICH. L. REV.* 2424 (1992); Ernest J. Weinreb, *Legal Formalism: On the Immanent Rationality of Law*, 97 *YALE L.J.* 949 (1988).

assumes that the fruits of a person's labor and talents belong exclusively to that person and that "forcible transfers" are wrong, then reason can be used to show that a strong conception of private property and minimalist government are just.<sup>8</sup> On the other hand, if one assumes that the products of a person's talents are subject to distribution according to "fair procedures," then reason can be used to show that a far more socialist or welfare-oriented system is just.<sup>9</sup> Yet neither normative assumption about people's talents can be demonstrated to be objectively true.

Since there is no demonstrable "objective normative truth," an individual's selection of basic premises can only be based on that individual's personal view that these selected premises are correct or, at least, are the best available. This limit on selection provides the basis for a "critical" approach that challenges and "deconstructs" any theory of justice as being actually a matter of: (1) Claiming to choose the basic assumptions necessary for the theory on the basis of objective normative truth even though the choice can only be based on personal opinion or preference; (2) avoiding the need to choose between competing values by using a theory that is vague or internally inconsistent; and/or (3) using basic assumptions but mistakenly claiming that there are no such assumptions and that, therefore, the theory is neutral.<sup>10</sup> A person's favorite view may be presented and defended in the form of a theory that utilizes reasoned argument; but such argument can have no special status because logical argument based on personally preferred postulates or assumptions cannot provide "objective normative truth." Instead, these theoretical arguments are simply attempts to present one's favorite views in the guise of objective normative truth.

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8. See, e.g., ROBERT NOZICK, *ANARCHY, STATE AND UTOPIA* (1974).

9. See, e.g., JOHN RAWLS, *A THEORY OF JUSTICE* (1971).

10. In the legal field, this methodology is sometimes referred to as the "critical legal studies" approach. The literature on "critical legal studies" is vast. Anthologies, reviews of the field, and symposiums on the topic include: ANDREW ALTMAN, *CRITICAL LEGAL STUDIES: A LIBERAL CRITIQUE* (1990); RAYMOND A. BELLIOTTI, *JUSTIFYING LAW* 162-89 (1992); JAMES BOYLE, *CRITICAL LEGAL STUDIES* (1994); MARK KELMAN, *A GUIDE TO CRITICAL LEGAL STUDIES* (1987); ROBERTO M. UNGER, *CRITICAL LEGAL STUDIES MOVEMENT* (1986); Peter Gabel & Duncan Kennedy, *Critical Legal Studies Symposium: Roll Over Beethoven*, 36 *STAN. L. REV.* 1 (1984); Duncan Kennedy, *A Symposium of Critical Legal Studies: The Role of Law in Economic Thought: Essays on the Fetishism of Commodities*, 34 *AM. U. L. REV.* 939 (1985); Duncan Kennedy & Karl Klare, *A Bibliography of Critical Legal Studies*, 94 *YALE L.J.* 461 (1984); Mark V. Tushnet, *Perspectives on Critical Legal Studies*, 52 *GEO. WASH. L. REV.* 239 (1984); and Roberto M. Unger, *The Critical Legal Studies Movement*, 96 *HARV. L. REV.* 561 (1983). The critical position also makes other points concerning the limits of logic. Perhaps the most important such point is that, given the vagueness of any single broad normative value or the internal inconsistency of conflicting normative values identified in the second point listed in the text above, values or value based rules will be inadequate to guide decisions and the results in actual controversies will be indeterminate to some extent.

This critique of the limits of reasoning is not necessarily anti-rational or nihilistic.<sup>11</sup> As a matter of customary usage, the terms “just” and “unjust” are *only* applicable to “official” actions—i.e., to actions by agents of the state backed by coercive force.<sup>12</sup> Where private conduct is involved, it is customary to critique the conduct in terms of prudence, morality, or ethics. There are interconnections among the political world of “officials” and the private social and personal dimensions of life. Nevertheless, a position on the issue of whether it is meaningful to refer to an official decision as just or unjust is not *necessarily* linked to a position on whether it is meaningful to refer to one’s personal conduct or another private individual’s conduct as prudent, ethical, or moral.<sup>13</sup> In our private lives we share views, engage in dialogue, make judgments, use logic and rationality, and are willing to act on the basis of shared values, even though we may be skeptical about the propriety of using those values as the basis for arguing that official actions, which potentially involve physical violence as a coercive measure, are just or unjust. Moreover, we may recognize a role for rationality in developing or critiquing a theory of justice even though we also insist that, since rationality can be used only after basic assumptions have been made, the role of rationality is limited.

Nevertheless, it is unsettling to conclude that normative critiques in terms of justice are really nothing more than expressions of personal preference and that, therefore, the state’s monopoly on coercive force is *all* there is to the analysis and critique of law and justice. Consequently, it is not surprising that a number of responses to the limits of revelation, intuition, and reason as grounds for a theory of justice have been developed. A review of the full range of those responses is beyond the scope of this article. The limited concern herein is to consider some of the writers who view the concept of justice as a cultural construct or product and rely on a humanistic faith in *both* reason *and* creativity as the basis for asserting that it is “meaningful” to have a theory of justice and to try to make this socially constructed vision of justice “better.”

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11. For useful analyses of nihilism and the problems of political theory, see, e.g., Joseph Singer, *The Player and the Cards: Nihilism and Legal Theory*, 94 *YALE L.J.* 1 (1984); John Strick, *Can Nihilism be Pragmatic*, 100 *HARV. L. REV.* 332 (1986).

12. It is not necessary to undertake a complete review of the possible usages of the terms “just” and “unjust” because the point in the text above is that control by officials, who can use violence to impose their views, is a social fact that is sufficiently unique that it should have its own test of “propriety.” See *supra* notes 1-3 and accompanying text. The meaningfulness of any such unique test is central to this article; terminological disputes about how to express this test are not.

13. The point about the meaningful role of normative views in personal lives is developed further *infra* notes 17-31, 76-98 and accompanying text.



*B. Justice as a Cultural Construct*

*1. Cultural Views as "Objective Facts"*

From an objective empirical perspective,<sup>14</sup> normative views form a part of the culture of the people living in any state. These views include not only "official" expressions in such forms as judicial decisions and statutes but also private views both about justice and about private concerns like morality, ethics, religion, and the "good life." For example, the Declaration of Independence, John Stuart Mill's *On Liberty*, and Martin Luther King's *Letter from a Birmingham Jail*<sup>15</sup> are all part of the culture of the United States. They are normative and about law, but they are not "law" because they are not decisions by officials. Since these writings are "objectively real," each provides a concrete "ought"—*i.e.*, a vision of a better world—that can be and is used to make arguments about whether, from the perspective of our cultural views about justice, a law is just or unjust. Thus, they can affect official decisions and become incorporated into these decisions. By this process, the "ought" of the cultural view can become the "is" of the law.<sup>16</sup>

The culture of a complex society like the United States will include writings and views that are vague or conflicting. As a result, there will be situations where there is no single cultural measure of justice. The debate about legal restrictions on abortion appears to involve such a situation. As to other issues, the cultural scheme of justice may be relatively precise and consistent. For example, slavery appears to be clearly regarded as unjust by current cultural standards in the United States. So long as there are such clear cases of agreement on conduct or principles, it is meaningful to use culture for determining whether, within the framework of the culture involved, a particular official decision is just or unjust. Even where there is no agreement, the conflicting cultural views will shape the debate about justice within the framework of that culture.

*2. Culture as a Basis for Constructing Normative Views About Justice*

The mere existence of a set of cultural views about justice in the United States cannot provide the basis for arguing that these views are correct in some objective normative sense. However, there is also no basis for arguing that they are incorrect. In order to argue for either correctness or incorrectness, it is necessary to have an objective measure of justice as a basis of comparison. As indicated above in Part A, there is no such measure.

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14. See *supra* note 4 for discussion of "objective empirical facts."

15. THE CRY FOR FREEDOM 354 (Frank W. Hale, Jr. ed., 1969).

16. See, e.g., Robert Cover, *Nomos and Narrative*, 97 HARV. L. REV. 4 (1983). For further discussion of the role of the alternative possibilities for law expressed in "narratives," see *infra* note 76 and accompanying text.

Even though culture cannot serve as an objective normative measure of justice, it can play a role in constructing a theory of justice. The nature and validity of this role are based on three interrelated points.

First, from an individual or *intrapersonal* point of view, each person acts on the basis of a belief that normative issues about right and wrong can be addressed in a meaningful manner and that reason plays a role in this process.<sup>17</sup> An individual might engage in intrapersonal “dialogues,” might be uncertain as to some issues, might engage in conduct that is inconsistent with professed views or conduct in other contexts, and might change positions on issues. Growth and change are possible. However, if an individual were constantly engaged in intrapersonal disagreement, uncertainty, inconsistency, and change concerning the proper course of conduct, no consistent views or actions would be possible. In such an extreme case, we would not view the individual as an integrated self or person.<sup>18</sup> Moreover, natural selection would make it unlikely that such persons would live long enough to pass on any genetic tendency to such an approach to life.<sup>19</sup> Thus, for each individual, in order to survive and *to be* an individual, there must be some personal normative truth at a given time and some parts of this truth must remain relatively stable.

Second, as different individuals share their personal views about normative truth, they sometimes reach agreement among themselves. In this manner, a shared consensus on normative issues, including but not limited to issues about the proper nature and role of the state and law, can be developed among a group of persons. At some point, the consensus is sufficiently widespread that we can refer to it as a “cultural view” even if it is not so predominant that it constitutes *the* cultural view within a particular state.<sup>20</sup> As indicated above, such a shared cultural view, whether simply *a* view within the state or *the* view within the state, is neither correct nor incorrect by any objective measure. The important point at this stage is to stress that there is, at least to some extent, agreement among persons.

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17. See, e.g., ROBERT NOZICK, *THE NATURE OF RATIONALITY* 12-40 (1993).

18. The concept of a “person” is a human construct, but there does seem to be consensus on the view that some minimal level of coherence is necessary to be a “person.” For a review of the types of issues involved in defining “persons,” see GERALD GAUS, *THE MODERN LIBERAL THEORY OF MAN* 32-43 (1983); DEREK PARFIT, *REASONS AND PERSONS* (1986); MICHAEL J. PERRY, *MORALITY, POLITICS, AND LAW: A BICENTENNIAL ESSAY* (1988); SYDNEY SHOEMAKER & RICHARD SWINBURNE, *PERSONAL IDENTITY* (1984); ROBERTO M. UNGER, *PASSION: AN ESSAY ON PERSONALITY* (1984). For a review of the related topic of human good or well-being, see GALSTON, *supra* note 7, 165-90. For a discussion of the concept of “person” in terms of the frameworks of John Rawls and Mary Chapin Carpenter, see *infra* notes 69-98 and accompanying text.

19. NOZICK, *supra* note 17, at 7-132.

20. See, e.g., PERRY, *supra* note 18, at 29-33.

Third, one now has a choice between two beliefs as the basis for action.<sup>21</sup> One option is to act on the belief that this interpersonal agreement can only reflect a shared set of preferences. If one acts on this belief, it is possible to use the shared views as a framework to label a law “just” or “unjust;” but one has to admit that the label means only culturally “preferred” or “not preferred,” nothing more. From this perspective, justice is like flavors of ice cream; and the statement, “Slavery is unjust,” has no more meaning than the statement, “I like (or we like) vanilla ice cream.”

The alternative choice is to act on a faith in human creativity.<sup>22</sup> This “creativist” belief is based on three interconnected assertions: (1) That, given the state’s monopoly on violence, agreement on political theory is more important than agreement on matters like flavors of ice cream; (2) that this agreement is preferable to coercion and, therefore, interpersonal agreement can mean something more than mere preferences; and (3) that the creative aspect of humanity can be used to implement and improve the shared normative perspective. This creative sharing is “necessary” because interpersonal agreement is all we have. Moreover, this agreement is “meaningful” because each of us has important individual preferences that serve to ground our personal lives.<sup>23</sup> Consequently, the

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21. Some theorists appear to assert at times that there is a third alternative: suspend belief on whether to adopt one of the beliefs in the text above and focus only on the critical task of “deconstructing” theories. See, e.g., GARY MINDA, *POSTMODERN LEGAL MOVEMENTS: LAW AND JURISPRUDENCE AT CENTURY’S END* 224-43 (1995) (discussing “ironists” who employ deconstructive and other critical techniques solely to destabilize modes of thought). Such agnosticism is logically possible. However, before concluding that someone has really taken such a position, it would be useful to know whether the critical writer’s decision to engage solely in critical analysis is based totally on agnosticism about values or whether it is based, at least in part, on one of the following views: (1) Deconstruction is useful because it contributes to the construction of “better” theories or at least to the adoption of my preferred view; or (2) deconstruction helps us see that justice is merely a matter of preference and therefore is useful—for example, in liberating us from a basic misconception and thus helping us to be “better” in some way. For a discussion of “deconstruction” and of “critical legal studies,” see *supra* note 10 and accompanying text.

22. It is important to remember that the creativist position is a faith or a belief system. Because of this role as a faith, it is not neutral. From the perspective of this creativist faith, the human creative spirit and its products are “sacred.” See, e.g., RONALD DWORKIN, *LIFE’S DOMINION* 68-101 (1993) [hereinafter *LIFE’S DOMINION*]. The non-neutral character of this faith is clear when it conflicts with more traditional faith systems. Where such conflicts occur, each side feels that its view of the sacred is being threatened. For example, a traditionalist would view certain works of “art” as so obscene and blasphemous that they should be suppressed. A creativist would regard any such suppression as a violation of the sacredness of the human creative spirits. See, e.g., JAMES DAVISON HUNTER, *CULTURE WARS: THE STRUGGLE TO DEFINE AMERICA* 42-51, 247-49, 308-12 (1991).

23. See, e.g., RICHARD RORTY, *CONTINGENCY, IRONY, AND SOLIDARITY* (1989) (stressing the need to realize that one’s convictions are individualistic, subjective, and shaped by cultures, while also being committed to those convictions); John Gray, *Agonistic Liberalism*, 12 *SOC. PHIL. & POL’Y* 111, 135 (1995) (noting that “where the liberal form of life is worthy of allegiance, it is so not because it is the form of life blessed by reason, or the one in which human beings as such best flourish, but simply because it is an element in a choice-worthy tradition or form of life, to which some human beings find themselves constitutively, but at the same time contingently, attached”). For a discussion of individual preferences as “personal normative truth,” see *supra* notes 17-19 and accompanying text.

proper choice is to seek to understand, to share, and to improve our various individual preferences.

A person adopting this creativist perspective concedes that people cannot get outside their culture. However, since cultures evolve and change, the “creativist” believes that it is possible for people to use and shape their culture from within and that this manipulation of culture can be “creative” and “positive” and thus can “improve” culture or society. Shared cultural views are, therefore, meaningful both as a guide to justice today and as the basis for an evolutionary process of creating improved views and of achieving greater justice in the future.

Not surprisingly, the second belief is common, and the creativist position has been adopted by a wide range of political theorists. For example, Ronald Dworkin, a leading “liberal”<sup>24</sup> uses this framework in arguing that judges make just decisions as they fit existing legal rules and decisions not only with one another but also with personally constructed theories of justice in a way that enables the “law”—i.e., the system of official rules and decisions—to achieve integrity and be the best that it can be.<sup>25</sup> In contrast, though persons who adopt the

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24. This term refers to theorists who emphasize individualism and liberty, particularly in areas like freedom of conscience. The term is used somewhat reluctantly because it has different meanings for different people and has been applied to very diverse theorists. However, Dworkin himself uses the term, and it is helpful to make some generalizations about approaches to justice.

25. See, e.g., RONALD DWORKIN, *LAW'S EMPIRE* (1986) [hereinafter *LAW'S EMPIRE*]; RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* 22-28, 105-23 (1978) [hereinafter *TAKING RIGHTS SERIOUSLY*]; cf., e.g., *LIFE'S DOMINION*, *supra* note 22 (analyzing the debate about legal restrictions on abortion and euthanasia from a broad cultural perspective); Ronald Dworkin, *Objectivity and Truth: You'd Better Believe It*, 25 *PHIL. & PUB. AFF.* 87, 118-19, 128-29, 135 (1996) [hereinafter *Objectivity*] (arguing that moral “truth” is based on human capacity to make moral judgements that bring conviction, are durable, are shared by many others, and are amendable to logic and the capacity to combine these judgments in a harmonious intellectual structure). The “liberal” creativist position covers a wide range of conceptions of liberty. Richard Posner, who could be viewed as a “market-oriented liberal,” has recently stressed the lack of a unitary truth “out there” and the resulting limits of logic and argument *vis-a-vis* basic moral beliefs. See, e.g., RICHARD A. POSNER, *THE PROBLEMS OF JURISPRUDENCE* (1990). Explicitly adopting a Rawlsian approach to the role of basic beliefs, Posner recently notes concerning tort law:

[T]here is inconsistency both within and across individuals, and there is nothing that moral theorizing can do about it.

If this is correct, the most constructive philosophical approach to the question whether wealth maximization should guide tort law may be, rather than considering its adequacy or pedigree as a moral theory, to *relate* it to the various moral traditions that might have or imply a position on tort liability. If, as I believe, wealth maximization resonates well with several moral theories and offends none, a tort system founded on wealth maximization may deserve to command the widespread support that it does in fact seem to command in our society. To put this another way, the unreflective public opinion underlying a system of tort law that can be best understood and explained in terms of wealth maximization intersects the principal moral traditions found in our society.

Richard A. Posner, *Wealth Maximization and Tort Law: A Philosophical Inquiry*, in *PHILOSOPHICAL FOUNDATIONS OF TORT LAW* 99, 103 (David G. Owen ed., 1995) (citations omitted).

perspective of “critical legal studies”<sup>26</sup> often criticize Dworkin and other “liberals,”<sup>27</sup> some of them share his faith that human creativity and reason can be used to invent and implement a more just legal system.<sup>28</sup> Common to both such liberal and critical approaches are a rejection of the concept of objective truth “out there,” a faith in human creativity, and a tendency to express this faith in metaphors, like shared story-telling<sup>29</sup> or sewing,<sup>30</sup> in which divergent views or strands of thought are “woven” together.<sup>31</sup>

*C. Criteria for Evaluating Cultural Views: Popularity, Basis for Dialogue and Common Ground, and “Fit” with Political Theory*

Adopting the belief that culture and creativity provide the basis for meaningful critique of the justice of laws has an important consequence: No theory of justice is complete without including some account of the nature and role of cultural views about normative matters. Since such an account can take many forms, it is necessary to develop criteria for evaluating cultural approaches.

Popularity is one criteria for evaluating particular cultural views. Such a populist approach must play at least some role because political stability is more likely if official decisions are guided by a political theory that complements a widely shared cultural view.<sup>32</sup> Though stability is only one of many concerns that a political theory may address, popularity is important enough to require *some* consideration.

Moreover, placing one’s faith in human creativity is inconsistent with arguing that “high” culture is so superior that popular or “low” culture has no role to play.

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26. As with the term “liberals,” this term is also used reluctantly. *See supra* note 24. However, it is useful because it *roughly* identifies a perspective that is in many ways very much opposed to that of a “liberal” like Dworkin. For a discussion of the critical legal perspective, see *supra* notes 10, 21 and accompanying text.

27. *See, e.g.*, ALTMAN, *supra* note 10 (defending liberalism against critical legal studies criticisms); J. M. Balkin, *Taking Ideology Seriously: Ronald Dworkin and the CLS Critique*, 55 UMKCL. REV. 392 (1987); Mark Tushnet, *Following the Rules Laid Down: A Critique of Interpretivism and Neutral Principles*, 96 HARV. L. REV. 781 (1983).

28. *See, e.g.*, ALLAN C. HUTCHINSON, *DWELLING ON THE THRESHOLD* 46, & n.49, 292-93 (1988) (stating that justice results from inventing new possibilities that can be used to “weave” and thus create a new social structure); J.M. Balkin, *The Crystalline Structure of Legal Thought*, 39 RUTGERS L. REV. 1, 77 (1986) (asserting that “contradiction is essential because it reflects the essence of thought, and . . . is a necessary spur to the continuing development of our moral and legal intuitions”). It should be emphasized that not all critical legal writers share Hutchinson’s or Balkin’s views.

29. *See, e.g.*, LAW’S EMPIRE, *supra* note 25, at 228-38 (analogizing judicial decisionmaking to writing a “chain novel”); *cf.* TAKING RIGHTS SERIOUSLY, *supra* note 25, at 22-28, 105-23 (viewing judicial decision-making as a process of creatively combining precedent with a theory of justice); *Objectivity*, *supra* note 25, at 118-19 (proposing that moral “truth” is a part of a constructed harmony among basic convictions forming a whole intellectual structure that stands or falls as a unit).

30. *See, e.g.*, HUTCHINSON, *supra* note 28, at 292-93 (stitching together seams).

31. For a discussion of “constructivism” and distinction between creative or “constructive” approaches and intuition, see JOHN RAWLS, *POLITICAL LIBERALISM* 90-94 (1993) [hereinafter *POLITICAL LIBERALISM*].

32. *See, e.g., id.* at 38-39.

Rationality and aesthetics may lend themselves to expert, elite systems. In contrast, the creative invention of *new* possibilities, of *new* standards, of *new* ways of viewing persons and social institutions, is not so easily systematized. The basic point of creativity, after all, is to invent new systems or new applications of systems, not to apply existing schemes mechanically. There is no reason to think that only high culture can perform this inventive function. Consequently, any assertion that only one type of literature, music, or sculpture is "creative" is inconsistent with the initial position that creativity plays a central role. Thus, not only officials and other elites, but also common citizens, must be viewed as capable of understanding the existing cultural views about concerns like morality and justice, of inventing ways to transform the current world to one which more closely approximates the cultural model, and of creating and appreciating new visions of morality and justice.

An important consequence of the populist approach to culture is that it involves a commitment to popularity as one criterion of usefulness or importance. For example, a view about persons and how they should live their lives that "speaks" to a large number of people and thus both reflects and shapes these people's views is likely to be more important in cultural terms than a view with a much smaller audience. Determining popularity in terms of the number of people who say they have a view presents problems because that view may be vague or may not really shape their behavior. For example, an overwhelming majority of people in the United States say they are Christians.<sup>33</sup> However, even though Christians appear to share some important core beliefs, these beliefs are abstract and there is no detailed agreement about what "being Christian" means.<sup>34</sup> Nor is it clear what percentage of Christians actually use the New Testament to shape their lives, particularly the political aspects of their lives. Nevertheless, the sheer number of people who have read the New Testament and adopt the views of the New Testament (or claim to have read it and adopted its views) provides some measure of its role in shaping cultural views.

A second criterion for considering cultural views, particularly those that focus on private matters like morality, ethics, religion, or personal views of the "good life," is the extent to which a view can be "fitted" to a theory of justice. This concern for "fit" will have a number of dimensions. For example, detail and internal consistency are important because a developed and consistent view will usually be easier to relate to a particular conception of justice. Similarly, a popular view that addresses questions that are somehow relevant to our existing theories of justice will be easier to relate to conceptions of justice than a view that does not.

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33. See, e.g., U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 70, 72 (1994) (stating that in 1991, 81% of adults indicated Christianity as their religious preference and in 1990, 52.7% of the population were members or regular attenders of a Christian church).

34. See, e.g., INFORMATION PLEASE ALMANAC 419-20 (Otto Johnson ed., 1994). For discussion of these beliefs and of the impact of Christianity on cultural views, see *infra* notes 183-88 and accompanying text.

Since a popular cultural view can be internally inconsistent or can conflict with another deeply held view, it is necessary to develop other criteria of selection. The possibility of conflict between the views of different groups suggests one such criterion: the view's content should emphasize, or at least provide openings for, dialogue and the pursuit of common ground with other perspectives. Within a populist perspective, each person's views have weight. Therefore, dialogue and consensus are preferred over the imposition, by force or otherwise, of a particular substantive answer on any basic issue, whether on the grounds of popularity, majority choice, or some other absolute value.<sup>35</sup> This third criterion is consistent with the concern for stability and with the rejection of sole reliance on elite conceptions of creativity discussed above because the concern for stability and the two criteria of popularity and dialogue are all based on a universalist, populist approach in which each person's views count.

These three criteria are limited and arbitrary to some extent. For example, stability based on the overlap between the popular culture of the majority and a particular political view might be achieved by denying persons in the minority the ability to articulate and implement their shared creative vision. Similarly, the emphasis on detail, internal consistency, and relevancy underlying the second criterion should not be used to exclude useful but partial or inconsistent views, or to avoid the task of redefining "relevance" within existing political theories. Nevertheless, these three criteria provide a basis for developing a scheme for relating popular culture to views about justice. The next section of this article will illustrate such a relational undertaking by considering popular culture in terms of the songs of Mary Chapin Carpenter.

## II. MARY CHAPIN CARPENTER

The following discussion applies the three proposed criteria for evaluating cultural views to Mary Chapin Carpenter's perspective concerning persons and interpersonal relationships. Part A discusses both her popularity and her appeal to diverse groups.<sup>36</sup> Part B applies the criterion of "fit" by considering the extent to which Carpenter's scheme complements John Rawls's theory of justice.<sup>37</sup> Part C considers the usefulness of Carpenter's framework in fostering dialogue and the pursuit of common ground by discussing the ways and extent that her scheme provides a basis for dialogue between potentially conflicting feminine and masculine points of view.<sup>38</sup>

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35. See, e.g., *POLITICAL LIBERALISM*, *supra* note 31, at 61. In Rawls's scheme, comprehensive views or doctrines about basic values that claim not only truth for themselves but also truth that can be imposed on those who have a different view, are "unreasonable" and therefore cannot count as a supporting cultural view. For a further discussion of this scheme, see *infra* notes 54-57, 69-75 and accompanying text.

36. See *infra* notes 39-52 and accompanying text.

37. See *infra* notes 53-105 and accompanying text.

38. See *infra* notes 106-75 and accompanying text.

A. Popularity

The popularity of Carpenter's songs, albums, and concerts clearly shows that her views speak to and for millions of people.<sup>39</sup> Carpenter's popular appeal as a singer/songwriter is very much related to her music and to her abilities as a singer and performer. However, the songs' lyrics, which are the focus herein, also play a major role. When these lyrics are considered together, patterns of perspective and imagery become apparent.<sup>40</sup>

The basic perspective of Carpenter's lyrics is humanistic, and the uniqueness of each individual's experience of the common aspects of life is central in her songs.

When I write a song, first of all I'm writing for myself; and I have my own viewpoint, and I am a woman. All those things do tally up. But I don't think of it as being exclusive to me or to my gender. I think of the feelings I'm trying to express and detail as hopefully being things that happen to all of us because that is what I've always really believed.<sup>41</sup>

Although their content is diverse, most of her songs can best be described as deceptively simple "stories" about a person, an experience, or a place. For example, one song is about an old shirt with so many memories for its owner that it cannot possibly be thrown away.<sup>42</sup> The songs persistently capture the details and reality of "living a life" and thus create a sense of intimacy and connectedness with the listener.<sup>43</sup> Since these songs reach a wide range of people, they provide not only a vehicle for conveying and reinforcing Carpenter's

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39. In October 1992, the Country Music Association named Carpenter the female vocalist of the year. She has also received numerous "grammys" for her songs and albums. She has released five albums: (1) STONES IN THE ROAD (Sony 1994) [hereinafter STONES]; (2) COME ON COME ON (Sony 1992) [hereinafter COME ON]; (3) SHOOTING STRAIGHT IN THE DARK (Columbia 1990) [hereinafter SHOOTING]; (4) STATE OF THE HEART (Columbia 1989) [hereinafter STATE]; and (5) HOMETOWN GIRL (Columbia 1987) [hereinafter HOMETOWN GIRL]. COME ON COME ON has sold two million copies. Steve Pond, *Mary Chapin Carpenter's Real World*, Us, Feb. 1995, at 74.

40. For these purposes, a statement or position is treated as reflecting Carpenter's views if it is contained in a song she wrote or a song she has recorded. Statements by Carpenter in interviews are also treated as reflective of her views.

41. *In the Spotlight: Mary Chapin Carpenter Live at Wolf Trap* (PBS television broadcast, July 26, 1995). Though sometimes viewed as an "every woman" because of the women in her songs, Carpenter rejects the role of "feminist songwriter." Carpenter notes that:

I never set out to write songs to appeal to only one kind of person or gender . . . My characters tend to be single women—a lot of the songs I write are about me . . .—but the feelings I feel are feelings I know I share with a lot of men my age too.

*Mary-Chapin Carpenter*, in 6 CONTEMP. MUSICIANS 22, 23 (Michael L. LaBlanc ed., 1992) (quoting from ORLANDO SENTINEL, Nov. 23, 1990) [hereinafter *Mary-Chapin Carpenter*].

42. *This Shirt*, on STATE, *supra* note 39.

43. See, e.g., Paul H. Harris, *Intimate Connections with Listeners: Mary Chapin Carpenter Sings of Life's Passions*, ST. LOUIS DISPATCH, July 18, 1993, at 3C.



humanist perspective but also a basis for different groups to use this shared conception to understand their varying viewpoints.

I've always looked at song writing as a way to express myself, not expose myself, and I think there's a big difference right there. It's cathartic for me. It helps me make sense of my world. I also think that when people relate to your songs, it demonstrates that, in many ways, the more personal something is, the more universal it can be, also. I mean, men and women; young, old; gay, straight; black, white; whatever it is, we all go through so many of the same experiences and emotional struggles. And so, you know, when you write about something that happened to you or something you feel, chances are someone else has felt the same thing.<sup>44</sup>

One dimension of Carpenter's appeal to diverse groups is that, although best experienced as song, her lyrics stand by themselves as poetry, with recurring images that are not limited to any single group. Carpenter expresses the importance of the lyrics as follows: "Language is a magical thing; and whether it's put to music or not, it takes you places."<sup>45</sup> Recurring examples of this use of language are images that capture the deep American fascination with motion, travel, roads, and automobiles. One song is based entirely on this imagery.<sup>46</sup> Another recurring image is the effect of time on people as they grow and age. The use of these images is illustrated by the following selection:

Some people remember the first time  
Some can't forget the last  
Some just select what they want to from  
the past  
It's a song that you danced to in  
high school  
It's a moon you tried to bring down  
On a four in the morning drive through  
the streets of town  
  
It's a photograph taken in Paris at the  
end of the honeymoon  
In 1948, late in the month of June

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44. *Sonya Live* (CNN television broadcast, Apr. 6, 1993).

45. *In the Spotlight: Mary Chapin Carpenter Live at Wolf Trap* (PBS television broadcast, July 26, 1995).

46. *A Road is Just a Road*, on *HOMETOWN GIRL*, *supra* note 39.

Your parents smile for the camera in  
sienna shades of light  
Now you're older than they were then  
that summer night

It's a need you never get used to  
So fierce and so confused  
It's a loss you never get over  
the first time you lose

And tonight I am thinking of someone  
Seventeen years ago  
We rode in his daddy's car down the  
River Road<sup>47</sup>

Carpenter's popular success may be partly due to her choice of "country music" as the marketing outlet for her albums and concerts.<sup>48</sup> Carpenter is sometimes regarded as not properly within this category because her music and lyrics are not traditional country fare, because she does not "look the part," and because she was raised in Princeton, New Jersey, and attended Brown University, an "Ivy League" school.<sup>49</sup> However, this categorization of Carpenter is erroneous because it is based on a failure to consider all of her music. For example, *Slow Country Dance* is a "juke box song," a staple of country music, with a distinctively feminist perspective.<sup>50</sup>

In addition, this critique of Carpenter's music category is based on a misunderstanding of country music and of the commercial marketing of recorded music. Country music, like folk music, is a genre that has traditionally featured "story songs," which emphasize personal relationships and "blue-collar" egalitarianism.<sup>51</sup> The differences between the two are as much a matter of marketing as style. Insofar as commercial recordings are involved, American

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47. *Come On Come On*, on *COME ON*, *supra* note 39.

48. This "choice" was partly a serendipitous matter of which recording company made her the best offer when she was relatively unknown. She almost signed with a smaller "folk music" label. Karen Schoemer, *No Hair Spray, No Spangles*, N.Y. TIMES, Aug. 1, 1993, at 36.

49. See, e.g., Mike Boehm, *Don't Look Now, But Mary Chapin Carpenter is Playing Foot Loose with Country's Grand Traditions*, L.A. TIMES, Oct. 8, 1992, at OC Live 8.

50. *Slow Country Dance*, on *STATE*, *supra* note 39. For selected lyrics to this song, see *infra* note 87 and accompanying text.

51. Carpenter expresses her view of country music as follows: "What I love about country is its tradition, and that's different from being predictable. . . . I love its simplicity, and that's different from being stupid. I love its genuine quality, which is different from being overly sentimental." Schoemer, *supra* note 48, at 36. Carpenter has also said: "Country music is not what you wear or what kind of instruments are on your record. . . . It's a state of mind having to do with substance, not style." *Mary-Chapin Carpenter*, *supra* note 41, at 23.

“music styles” are partly loose marketing coalitions. Unlike folk music, country music has been more assertive and successful in its efforts to sell its product by expanding its market niche in record stores and on radio and television.<sup>52</sup> At times, it appears that the sole criterion for initial acceptance of a new approach in the country music field is whether the music style and the content of the songs will substantially offend the constantly evolving core of country music listeners. (In a more formal field, this might be called “respect for tradition.”) If the answer is “no,” then the approach is tried to see if it has appeal and can perhaps expand country music’s “market share.” The result is typically American: part free enterprise, part music and songs, part values, and, within the sole limit described above, generally accepting of diversity. Thus, country music is a logical home for Carpenter’s humanistic perspective and has provided a broad market for her views.

B. “Fit” with Traditional Political Theory: Carpenter and John Rawls

To the extent that Carpenter’s perspective “fits” with or relates to traditional political or legal theory, it can be said that she has a “jurisprudence.” Her jurisprudence, therefore, consists of those aspects of her work that link up with and shed light on traditional issues of jurisprudence. The fit between Carpenter’s jurisprudence and traditional theory will be analyzed primarily by comparing her work with that of John Rawls.

Rawls’s work was selected for this comparison for several reasons. First, he adopts the creativist approach to the problem of justice discussed above.<sup>53</sup> Second, Rawls’s more recent work stresses the importance of cultural views to

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52. See, e.g., Eric Boehlert, *Country Seminar Dissolves Demographic Myths*, BILLBOARD, June 5, 1993, at 87; Boehm, *supra* note 49, at OC Live 8; Edward Morris & Debbie Holley, *Country’s Class of ‘89 Puts Array of Acts on the Books*, BILLBOARD, Nov. 28, 1992, at 1, 97.

53. See *supra* notes 22-31 and accompanying text; *infra* note 74 and accompanying text. Rawls argues that constructing a political theory involves a search for “reflective equilibrium,” which is the state of affairs in which our principles of justice are consistent with our “considered judgments.” JOHN RAWLS, A THEORY OF JUSTICE 20 (1971) [hereinafter THEORY].

[R]eflective equilibrium . . . is an equilibrium because at last our principles and judgments coincide; and it is reflective since we know to what principles our judgments conform and the premises of their derivation. At the moment everything is in order. But this equilibrium is not necessarily stable. It is liable to be upset by further examination . . . and by particular cases which may lead us to revise our judgments. Yet for the time being we have done what we can to render coherent and to justify our convictions of social justice.

*Id.* at 20-21. This approach is creativist because: (1) It accepts rationality, while also recognizing the limits of rationality; (2) it prefers agreement to coercion; and (3) it relies on a faith in the creative ability of the theorist to fit two conflicting concerns—theoretical principles and individual judgments—together by inventing new approaches to one or the other or both. This creative task is necessary because it is “impossible to develop a substantive theory of justice founded solely on truths of logic and definition.” *Id.* at 51. If a culturally based but creatively constructed theoretical perspective “as a whole seems on reflection to clarify and to order our thoughts, and if it tends to reduce disagreements and to bring divergent convictions more in line, then it has done all that one may reasonably ask.” *Id.* at 53.

political theory.<sup>54</sup> Third, Carpenter's views are compatible with political philosophies like that of Rawls. Finally, Rawls is widely recognized as one of today's leading political philosophers. Given the possible resistance to accepting the work of a country singer-songwriter as "jurisprudential," it is helpful if her "jurisprudence" can be fitted to the work of a widely respected theorist like Rawls.

In *A Theory of Justice*,<sup>55</sup> Rawls argues that justice can be most profitably viewed by considering a hypothetical situation—the "original position"—in which rational individuals, acting as equals, enter into a "social contract," which must be unanimously approved.<sup>56</sup> This contract contains the basic principles which will guide the "construction" of the foundation of society. The knowledge of these persons in the original position is limited by a "veil of ignorance," which filters out "unwarranted" knowledge about their individual selves in the "real" world—for example, knowledge about family, wealth, gender, race, religious views, and stage of social development in which they will live.

Since persons in the original position do not know whether they will have valuable talents, family wealth, or position, each will be concerned about the possibility that she will lack talents, wealth, or position. Rawls argues that because of this concern about those at the bottom of society, these rational persons will adopt a "maximin" decision strategy in selecting the basic principles of society. Under this strategy, one selects the particular choice which will insure that if one loses, then the losing share will be the largest (maximum) losing portion (minimum) in the set of choices (i.e., the *maximum minimum*, or "maximin"). Rawls concludes by arguing that, of the available alternatives, the maximin strategy is satisfied best by a particular view of justice, which consists essentially of the following principles:

*First Principle*

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

*Second Principle*

Social and economic inequalities are to be arranged so that they are both

- (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and
- (b) attached to offices and positions open to all under conditions of fair equality of opportunity.<sup>57</sup>

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54. See *infra* notes 71-74 and accompanying text.

55. THEORY, *supra* note 53.

56. *Id.* at 118-42.

57. *Id.* at 302.

Although each of Carpenter's songs is a discrete story, their content often reflects a "Rawlsian" perspective in two important aspects. First, Rawls's scheme of the original position and the concern for the least-advantaged are captured in the succinct phrase:

Sometimes you're the windshield  
Sometimes you're the bug<sup>58</sup>

The egalitarianism underlying these Rawlsian concepts is also reflected in the line: "[s]o cut the deck right in half, I'll play from either side."<sup>59</sup> The concern for the least advantaged is also reflected in *John Doe No. 24*,<sup>60</sup> a song about a deaf, mute, blind, and mentally retarded man who had been institutionalized since he was found on the streets as a teenager. Part of his plight is reflected in the following:

The years kept passing as they passed me around  
From one state ward to another  
Like I was an orphaned shoe from the lost and found  
Always missing the other<sup>61</sup>

Second, Carpenter's humanist emphasis on time and personal growth parallels Rawls's emphasis on life plans and his view that "a person may be regarded as a human life lived according to a plan."<sup>62</sup> One song captures this sense of constructing a life as follows:

We've got two lives, the one we're given and  
the other one we make<sup>63</sup>

Carpenter appears to differ from Rawls in one important respect because she does not accept the "maximin" rule as a decisional device for approaching the contingency of being the "bug" rather than the "windshield." Carpenter uses a

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58. *The Bug*, on *COME ON*, *supra* note 39 (written by Mark Knopfler).

59. *I Take My Chances*, on *COME ON*, *supra* note 39.

60. *John Doe No. 24*, on *STONES*, *supra* note 39.

61. *Id.*

62. *POLITICAL LIBERALISM*, *supra* note 31, at 18-19, 51; *THEORY*, *supra* note 53, at 408; *see id.* 407-33 (discussing how individuals plan their lives).

63. *The Hard Way*, on *COME ON*, *supra* note 39. Ronald Dworkin points out in his development and adoption of a similar perspective that the Greeks also utilized this approach and distinguished "*zoe*, by which they meant physical or biological life, and *bios*, by which they meant a life as *lived*, as made up of the actions, decisions, motives, and events that compose what we now call a biography." *LIFE'S DOMINION*, *supra* note 22, at 82-83. For a conceptual discussion of a person having at least some stability in normative views, *see supra* notes 17-19 and accompanying text.

more optimistic view of life's possibilities. For example, *I Feel Lucky*<sup>64</sup> sketches a tale of winning eleven million dollars in a lottery. Another song, *I Take My Chances*,<sup>65</sup> indicates a delight in taking chances:

I took a walk in the rain one day on the wrong  
side of the tracks.

I stood on the rail 'til I saw that train  
Just to see how my heart would react  
Now some people say that you shouldn't  
tempt fate

And for them I cannot disagree  
But I never learned nothing from playing  
it safe

I say fate should not tempt me.  
I take my chances, I don't mind working  
without a net  
I take my chances  
I take my chances every chance I get<sup>66</sup>

Arguably, this difference simply shows that Carpenter is writing songs, not political philosophy, and that it is wrong to treat her songs as more than what they are. Popular culture, particularly commercial culture, usually has different goals and standards than those of political theory. However, this limited view of Carpenter's works is wrong because Carpenter has explicitly stated that, as an artist, she has a responsibility to help people appreciate our cultural ideals and heritage.

I do think there is a responsibility that goes along with being an artist to be able to speak out about things that I believe in as opposed to being silent.

When I was writing *Stones in the Road*,<sup>67</sup> I was writing it as a reminder to myself that we grew up in the sixties with certain role models, people like Robert Kennedy and Martin Luther King, who could inspire us; and

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64. *I Feel Lucky*, on COME ON, *supra* note 39.

65. *I Take My Chances*, on COME ON, *supra* note 39.

66. *Id.*

67. *Stones in the Road*, on STONES, *supra* note 39. For discussion of and an extended selection from this song, see *infra* notes 101-02 and accompanying text.

even though they are gone, what they stood for should not be, and we should instill it in our children and remember it for ourselves.<sup>68</sup>

Moreover, Carpenter's views only appear to conflict with Rawls's. This lack of conflict is clear if one considers three points: (1) The complexity of Rawls's scheme; (2) the optimism underlying part of Rawls's scheme; and (3) Carpenter's realism, which serves to counterbalance her optimism.

Because of the complexity of Rawls's scheme, his use of "maximin" and his conception of justice are both abstract and carefully delimited in a number of ways. In Rawls's scheme, "maximin" and "rationality" are meant only to capture our intuitive sense of what is reasonable.<sup>69</sup> Moreover, Rawls's conception of justice, as developed in the original position, is distinct from considerations of justice at the later stages of the constitutional, legislative, adjudicatory, and personal levels.<sup>70</sup> Thus, one must distinguish three conceptions of a "person": (1) A person in the original position (a deliberately *depersonalized* theoretical construct with no knowledge of individual position, traits, or preferences); (2) an abstract citizen in a society that would be regarded as well-ordered in Rawls's theoretical framework; and (3) an actual person in a real political society.<sup>71</sup> Rawls focuses on the first two conceptions of a person, and Carpenter addresses only the third conception. Therefore, her more optimistic approach does not necessarily conflict with Rawls's more abstract, theoretical conceptions.

Instead, it is more accurate to say that Carpenter complements Rawls because she reflects (and shapes) a cultural conception about concrete persons and relationships that is very receptive to his more abstract and detailed political conceptions of persons and political justice. Rawls summarizes his "freestanding" liberal view of justice as follows:

Political liberalism . . . aims for a political conception of justice as a free-standing view. It offers no specific metaphysical or epistemological doctrine beyond what is implied by the political conception itself. As an account of political values, a freestanding political conception does not deny there being other values that apply, say, to the personal, the familial, and the associational; nor does it say that political values are separate from, or discontinuous with, other values. One aim, as I have said, is to specify the political domain and its conception of justice in such a way that its institutions can gain the support of an overlapping consensus. In this case, citizens themselves, within the exercise of their

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68. *In the Spotlight: Mary Chapin Carpenter Live at Wolf Trap* (PBS television broadcast, July 26, 1995).

69. POLITICAL LIBERALISM, *supra* note 31, at 53 n.7.

70. THEORY, *supra* note 53, at 31.

71. POLITICAL LIBERALISM, *supra* note 31, at 38, 75, 104.

liberty of thought and conscience, and looking to their comprehensive doctrines, view the political conception as derived from, or congruent with, or at least not in conflict with, their other values.<sup>72</sup>

As this selection indicates, Rawls views his political theory as one part of each person's broader, comprehensive normative view. This comprehensive view includes not only political theory but also such concerns as religion, morals, and ethics. Under this approach, a political conception of justice is a "module" to be fitted together with other concerns or modules to form a comprehensive view.<sup>73</sup> Part of Rawls's defense of his particular political conception is that his module fits with a wide range of comprehensive views.<sup>74</sup> His module is not so neutral or tolerant that it fits all views. Persons who are willing to use physical coercion to impose their views about, for example, religion on others could not fit Rawls's liberal political scheme into their comprehensive views.<sup>75</sup> Thus, Rawls's defense of his theory involves the following claims: (1) People in our society have comprehensive views that conflict with one another; (2) a substantial number of people are willing to forego imposing their comprehensive views on others; and (3) his political conception "fits" with the comprehensive views of, or at least most of, those persons who will forego imposing their comprehensive views. The first claim is a virtual truism; people in the United States have widely differing views about such concerns as God and the good life. Since the second and third claims are not so obvious, some support for them must be presented. Such support can be provided by showing that a particular cultural view is both popular and consistent with Rawls's political conception.

Carpenter's stories about individuals' lives and relationships provide such support because they provide concrete narratives that complement Rawls's abstract concern with persons and life plans by grounding them in stories about specific individuals.<sup>76</sup> These stories illustrate the basic values that shape personal

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72. *Id.* at 10-11.

73. *Id.* at 12, 144-45.

74. *Id.* at 34-46, 58-66, 100-01, 133-72.

75. Rawls views comprehensive conceptions that claim the right to impose their comprehensive view on others as "unreasonable" and does not contend that his freestanding political model will fit such unreasonable views. *See id.* at 61, 64, 152-53. This rejection of coercion is characteristic of creativists. *See supra* notes 22-23, 53 and accompanying text.

76. *See, e.g.,* Cover, *supra* note 16, at 9-10 (arguing that "[narratives enable us to] relate our [culture's] normative system to our social construction of reality and to our visions of what the world might be . . .").

Our narratives, epics, and stories embody our norms, while locating and giving meaning to our legal institutions, but narratives, especially alternate narratives developed by communities and movements, contest the unity of law. They are the open doors at the other end of the hallway, pointing in their trajectories toward other meanings, other possible worlds.

. . . Once a meaning or narrative is made legally dominant by the state, as in the *Roe* abortion decision, which told the story of fetal life as one among many possible narratives, all other meanings are placed in opposition to both the law and the state. As a result, their proponents risk becoming victims of legal violence if they seek to make their meanings dominant against the will



lives. Since normative political theory is based on agreement about such values,<sup>77</sup> it is important that the perspective that results from the cumulative impact of the stories of distinct lives fits with and affirms Rawls's faith in the values underlying political liberalism—that is, a faith in individual growth and in the need for respect and tolerance for others' views and life plans. Thus, Carpenter affirms not only the value and importance of, but also the realistic possibility of, providing a framework in which each person can be a "free and equal" "cooperating member of society over a complete life" with "a capacity for a sense of justice," "a capacity for a conception of the good," and a concrete "determinate conception of the good" that the person tries to achieve.<sup>78</sup>

Carpenter articulates Rawls's faith in the human creative spirit, or soul, and in the capacity of each human to achieve a "good life" for that person. It is possible to chart a path through that world because:

[Y]ou've a soul for a compass  
and a heart for a pair of wings.  
There's a star on the far horizon  
rising bright in an azure sky.<sup>79</sup>

Such an affirmation of our ability to chart a life course complements Rawls's belief in the ability of people to create and implement individual life plans. Rawls's optimism about constructing a liberal society based on political dialogue rather than violence is also supported by Carpenter's more concrete, personal perspective. Carpenter's commitment to dialogue, as opposed to imposing a viewpoint, is reflected in the following perspective on having the last word: "[Y]ou can have it. I don't want it . . ."<sup>80</sup>

The second reason why Carpenter's optimism fits with Rawls's scheme is that they share the view that life is good in many ways and that some aspects of

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of the state.

Michael Ryan, *Meaning and Alternity*, in *NARRATIVE, VIOLENCE, AND THE LAW: THE ESSAYS OF ROBERT COVER* 271-72 (Martha Minow et al. eds., 1992).

[T]o see one's life, or the life of one's community, as a dramatic narrative is to see it as a process of Nietzschean self-overcoming. The paradigm of such a narrative is the life of the genius who can say of the relevant portion of the past, "Thus I willed it," because she has found a way to describe that past which the past never knew, and thereby found a self to be which her precursors never knew was possible.

RORTY, *supra* note 23, at 29. For a selection of pieces discussing the importance of narratives and "storytelling," see ROBERT L. HAYMAN, JR. & NANCY LEVIT, *JURISPRUDENCE: CONTEMPORARY READINGS, PROBLEMS AND NARRATIVES* 297-324 (1994).

77. See *supra* notes 17-23 and accompanying text.

78. *POLITICAL LIBERALISM*, *supra* note 31, at 18-19.

79. *Why Walk When You Can Fly*, on *STONES*, *supra* note 39.

80. *The Last Word*, on *STONES*, *supra* note 39. For a more complete account of this song, see *infra* note 136 and accompanying text. For a discussion of Carpenter's perspective on the difficulties involved in interpersonal dialogue, see *infra* notes 159-63 and accompanying text.

this goodness are easily available to most people. These aspects range from the fulfillment of meaningful interpersonal relationships to the pleasure received from small things in life. Rawls expresses this view in abstract form:

[T]he familiar values of personal affection and friendship, meaningful work and social cooperation, the pursuit of knowledge and the fashioning and contemplation of beautiful objects, are not only prominent in our rational plans but they can for the most part be advanced in a manner which justice permits.<sup>81</sup>

Carpenter uses more concrete images. For example, the following selection about caring and home indicates the role and importance of relationships, a topic addressed more fully below in Part B.

. . . Your home is right here  
where the people who love you are gathered . . . .  
[T]he people who love you are waiting,  
and they'll wait just as need be.<sup>82</sup>

A rollicking song about the sheer joy of dancing<sup>83</sup> provides an example of the little things that are generally available to anyone. Another song captures this sense in the following account of driving for a holiday at the coast:

Fields of green by the side of the road  
Going down to Mary's land  
Roll down the window; feel the cool  
of a grove  
Hit the palm of your outstretched hand  
Radio's playing a tune from the country  
Fiddle and an old time band  
Race with the moon to the edge of  
the water  
\* \* \*  
Ain't it time and ain't life grand

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81. THEORY, *supra* note 53, at 425.

82. *Jubilee*, on STONES, *supra* note 39.

83. *Down at the Twist and Shout*, on SHOOTING, *supra* note 39.

When you don't need nothing  
But some beer and a bushel  
Down in Mary's land<sup>84</sup>

This celebration of the value of simple pleasures does not detract from the reality of human suffering. Instead, it provides a common ground for us to address that suffering and to build a better community. This emphasis on common values and experience not only helps explain her popularity, but also shows the strength of Carpenter's framework in terms of the criterion that cultural views are better to the extent that they provide a basis for dialogue. Given Rawls's views about the importance of the good things in private lives and his concern for dialogue within society, this aspect of Carpenter's framework complements his theory.

Finally, Carpenter's optimism fits with Rawls's scheme because she balances her optimism with a clear realism. She recognizes that "[i]n that world there's a whole lot of trouble, . . . a whole lot of pain, . . . a whole lot of sorrow, [and] . . . a whole lot of shame."<sup>85</sup> No matter how secure one feels, it is partly an illusion:

On the surface it looked so safe  
but it was perilous underneath  
\* \* \*

When we dream, its of the wind blowing cold and hard  
And when we wake up we still live in a house of cards<sup>86</sup>

Because of this realism, her songs provide a genuine, complete, and balanced view of life. For example, the good times that one has while dancing develop a multidimensional character as they become bittersweet in the following:

Sweethearts in love and others just lonely  
Searching for someone to waltz with tonight  
In a smoky old bar you know that it's only  
A slow country dance on a Saturday night

Down at the bar a woman tells stories  
Batting her eyes to someone not there  
Her glass is half full or maybe half empty  
Like the jokes told about her when they think  
she can't hear

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84. *Down in Mary's Land*, on STATE, *supra* note 39.

85. *Why Walk When You Can Fly*, on STONES, *supra* note 39.

86. *House of Cards*, on STONES, *supra* note 39.

Now the perfume is cheap and the makeup is careless  
And the dress out of fashion for a woman her age  
But she don't give a damn for those who would cherish  
A much lighter step and a much younger face

And love's never easy or ever as true  
When the changing of partners is no longer new  
You lead with your heart, and closing your eyes  
Dance just to dance in three-quarter time<sup>87</sup>

Her balanced realism is also reflected in *John Doe No. 24*.<sup>88</sup> As indicated in the prior selection from this song,<sup>89</sup> people can be impersonal and somewhat callous when they act as “officials” responsible for Doe. As a result, they pass Doe around like an “orphaned shoe” from “one state ward to another.” At the same time, however, these people really do *care* about him as a person. Doe's internal monologue indicates this personal caring:

They gave me a harp last Christmas  
And all the nurses took a dance<sup>90</sup>

When this selection is read with the earlier one, it is clear that Carpenter's optimism about interpersonal caring is balanced by a realistic understanding of the ways in which caring people can treat others like objects.

Carpenter is also realistic about the work, trust, and risk involved in building bridges between individuals and groups. It is hard work to understand another's viewpoint or to translate your own viewpoint into language that another person will understand. It is even harder to go from understanding to trust. Since building bridges is both hard and risky, it requires optimism about life and the possibility of success. It requires the “creativist” faith that opposites can somehow be joined into a whole—that “everyone can be a rock and roll like a river too.”<sup>91</sup> In *The Hard Way*,<sup>92</sup> a song about bridging the gap between a man and a woman, Carpenter expresses this faith:

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87. *Slow Country Dance*, on STATE, *supra* note 39.

88. *John Doe No. 24*, on STONES, *supra* note 39.

89. See *supra* notes 60-61 and accompanying text.

90. *John Doe No. 24*, on STONES, *supra* note 39.

91. *Tender When I Want To Be*, on STONES, *supra* note 39. For a discussion of the “creativist” approach to opposites, see *supra* notes 22-31 and accompanying text.

92. *The Hard Way*, on COME ON, *supra* note 39.

Everything we got, we got the hard way

\* \* \*

You know we got this far darling not by  
luck but by never turning back  
Some will call on destiny, but I just call  
on faith<sup>93</sup>

The feeling expressed in this song is not limited to heterosexual relationships.

*The Hard Way* has been the song that has lent itself to many different situations. I wrote it initially about a relationship that I was involved in but it seems to have transcended that role as a song just about a relationship and rather it is sort of like a call to action and to strength.<sup>94</sup>

Selections like these indicate that Carpenter's optimistic attitude is less a belief that she will be a winner than it is an existential commitment to the view that living necessarily involves choice. Because of this commitment, the taking of chances is both necessary and important. Part of *I Take My Chances*<sup>95</sup> indicates this view:

I've crossed lines of words and wire and  
both have cut me deep  
I've been frozen out and I've been on fire  
and the tears are mine to weep  
Now I can cry until I laugh and laugh  
until I cry  
So cut the deck right in half, I'll play  
from either side  
\* \* \*

I take my chances, I can't cling to remorse  
or regret  
I take my chances, I take my chances  
every chance I get<sup>96</sup>

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93. *Id.*

94. *In the Spotlight: Mary Chapin Carpenter Live at Wolf Trap* (PBS television broadcast, July 26, 1995).

95. *I Take My Chances*, on *COME ON*, *supra* note 39. For another selection from this song, see *supra* note 66 and accompanying text.

96. *I Take My Chances*, on *COME ON*, *supra* note 39.

Since choice is inevitable, some problems are caused by choosing to avoid risk by *not* taking chances. These problems are reflected in a song that presents a picture of the somewhat lonely, limited life of a woman who avoids risks or extremes and seeks the “middle ground, a place between up and down.”<sup>97</sup> A person who avoids the risk involved with commitment to meaningful human relationships, may spend her life “[j]ust standing on the borderlines, outside looking in.”<sup>98</sup>

Carpenter is also realistic about the difficulties of developing institutions that will force (or enable) life’s winners to provide for the least advantaged. The distinction between institutional or official responsibility *vis a vis* responsibility based on an individual, personal relationship is reflected in *John Doe No. 24*.<sup>99</sup> As indicated above,<sup>100</sup> the people responsible for Doe care about him at a personal level. However, at the same time, when they act as officials, they do not always treat Doe as a person. Instead, Doe is like an “orphaned shoe” passed around from “one state ward to another.”

At times Carpenter’s realism approaches a skepticism about the ability of social institutions to achieve “justice” in a world of individuals focused on their private lives. For example, *Stones in the Road*,<sup>101</sup> the title song from her latest album, sketches the perspective of a generation shaped by the sense of being in, yet apart from, a global village created by images of “starving children” and of “cities burning down” as a result of riots. The song contains the following view about contemporary social attitudes and the lack of a sense of social responsibility, as opposed to responsibility based on specific individual relationships:

And now we drink our coffee  
on the run  
And climb that ladder rung by rung  
We are the daughters and the sons  
And here’s the line that’s missing  
The starving children have been replaced  
By souls out on the street  
We give a dollar when we pass  
And hope our eyes don’t meet  
We pencil in  
We cancel out  
We crave the corner suite

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97. *Middle Ground*, on SHOOTING, *supra* note 39.

98. *Outside Looking In*, on STONES, *supra* note 39.

99. *John Doe No. 24*, on STONES, *supra* note 39.

100. See *supra* notes 60-61, 88-90 and accompanying text.

101. *Stones in the Road*, on STONES, *supra* note 39.

We kiss your ass  
We make you hold  
We doctor the receipt

And the stones in the road  
Leave a mark from whence they came  
A thousand points of light or shame  
Baby, I don't know<sup>102</sup>

Carpenter's skepticism about people and institutions also includes religion:

I sat alone in the dark one night  
tuning in by remote  
I found a preacher who spoke of the light  
but there was brimstone in his throat  
He'd show me the way according to him  
in return for my personal check  
I flipped my channel back to CNN and I  
lit another cigarette<sup>103</sup>

This skepticism suggests that perhaps it is Rawls, not Carpenter, who is too optimistic. Rawls's theory is built on the assumption that political "institutions can gain the support of an overlapping consensus."<sup>104</sup> However, it may be that such consensual support is not possible in a culture where people trust their friends, but not institutions. Instead of *support* for political institutions, it may be that *acquiescence* in their activities may be the most that can be achieved in a pluralistic society like the United States.<sup>105</sup>

### *C. Dialogue and Common Ground: Relationships Between Women and Men*

The strengths of Carpenter's jurisprudence in terms of the third criterion—basis for dialogue and consensus—can be illustrated by considering her perspective on relationships between men and women. Though Carpenter's framework is humanistic, her stories are usually told from the female's point of view.<sup>106</sup> The perspective that emerges makes several useful and important contributions to our understanding of gender and sexuality. First, her diverse images of women are concrete, individualized, and real. When considered

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102. *Id.*

103. *I Take My Chances, on COME ON, supra* note 39.

104. POLITICAL LIBERALISM, *supra* note 31, at 10-11.

105. See, e.g., NICHOLAS RESCHER, PLURALISM: AGAINST THE DEMAND FOR CONSENSUS 164-69 (1993).

106. See *supra* note 41 and accompanying text.

together, these images suggest and sketch out the possibility of feminist personae that are both equal to and distinct from male personae.<sup>107</sup> Second, Carpenter's framework suggests ways women and men can build on their common human concerns and traits to bridge the gap between the genders.<sup>108</sup> Third, since her framework complements Rawls's freestanding theory of justice, the perspective of Carpenter's songs helps us to understand and expand Rawls's scheme. Finally, bridging the gap between the genders offers both hope and tactics for bridging other gaps between people as they share political institutions and build a broader social and cultural community.

Central to all four dimensions of Carpenter's contribution is her emphasis on the relationships that each individual has with others. These relationships are central to our lives for two reasons. First, insecurity is a fact of life. As indicated above, Carpenter recognizes that no individual is ever secure; none of us knows what tomorrow will bring.<sup>109</sup> Second, loneliness and isolation are also part of the human condition.

It's the hardest kind of need that never  
knows a reason  
Are we such a lovely breed or just born  
in a lonely season  
\* \* \*

It's where we linger like a sigh  
it's where we long to be pulled in  
It's where we learn to say goodbye  
without saying anything  
Just standing on the borderlines  
outside looking in<sup>110</sup>

Carpenter's response to insecurity is a faith in human caring and support.

I want to prop up this fragile place  
But I can't do it all by myself<sup>111</sup>

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107. For a discussion of the importance of developing such female personae or types, see, e.g., Marie Ashe, *Mind's Opportunity: Birthing a Poststructuralist Feminist Jurisprudence*, in *LEGAL STUDIES AS CULTURAL STUDIES: A READER IN (POST) MODERN CRITICAL THEORY* 85 (Jerry Leonard ed., 1995).

108. See generally DUNCAN KENNEDY, *SEXY DRESSING ETC.* 126-213 (1993) [hereinafter *SEXY DRESSING*] (attempt by male author to bridge the gap).

109. See *supra* note 86 and accompanying text.

110. *Outside Looking In*, on STONES, *supra* note 39. John Jennings, a long-time friend and collaborator of Carpenter's, notes that Carpenter "can decode loneliness like very few people can." *In the Spotlight: Mary Chapin Carpenter Live at Wolf Trap* (PBS television broadcast, July 26, 1995).

111. *House of Cards*, on STONES, *supra* note 39.



Similarly, in order to avoid the alienation and anomie of being on the outside, one must be willing to risk engaging in human relationships. Being inside is “no place you can get to by yourself.”<sup>112</sup> “[T]he less we trust, the more we hurt.”<sup>113</sup> Life “won’t bring you love if you don’t love.”<sup>114</sup> If one lacks the ability to trust and take risks, it is possible to be in the position of a man who

. . . guards the gate but he’s lost the key  
So no one enters but no one leaves<sup>115</sup>

Though her songs often address a woman’s heterosexual relationship with a man,<sup>116</sup> one strength of Carpenter’s feminist perspective is her ability to express the other relationships that shape and define each woman—relationships with parents,<sup>117</sup> children,<sup>118</sup> siblings,<sup>119</sup> other women,<sup>120</sup> and men who are friends.<sup>121</sup> The following illustrates this ability:

For years she’s lived on her own  
In a corner of the city  
Twice a year she gets back home  
Playing catch-up with the family  
She tells her folks what they need to know  
Her mother says she’s much too thin  
Her sisters ask about her beau  
Her dad inquires, how’s business been<sup>122</sup>

In addressing heterosexual relationships, Carpenter utilizes her approach of balancing optimism with realism about life and taking chances. Her realism is reflected by a series of compelling images which show the ways that men can use and manipulate women and the harm that results. Carpenter balances this negative view with positive, optimistic images of women who are strong enough both to shape independent lives and, if they choose, to build bridges with men so that they can share egalitarian relationships.

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112. *Where Time Stands Still*, on STONES, *supra* note 39.

113. *Id.*

114. *It Don’t Bring You*, on STATE, *supra* note 39.

115. *A Keeper For Every Flame*, on STONES, *supra* at 39.

116. Carpenter’s focus on heterosexual relationships is not anti-gay or anti-lesbian. She is simply expressing her personal sense of universal experiences. *See supra* note 44 and accompanying text.

117. *Halley Came to Jackson*, *Middle Ground*, and *Down at the Twist and Shout*, on SHOOTING, *supra* note 39; *Come On*, on COME ON, *supra* note 39; *Family Hands*, on HOMETOWN GIRL, *supra* note 39.

118. *Family Hands*, on HOMETOWN GIRL, *supra* note 39; *Middle Ground*, on SHOOTING, *supra* note 39.

119. *Only a Dream*, on COME ON, *supra* note 39; *Middle Ground*, on SHOOTING, *supra* note 39.

120. *Middle Ground*, on SHOOTING, *supra* note 39.

121. *Id.*; *see infra* note 158 and accompanying text.

122. *Middle Ground*, on SHOOTING, *supra* note 39.

1. Realism: Women Suffer Because Men Can Have Flaws

Carpenter's songs about male-female relationships reflect the realism referred to earlier. In this realistic framework, women often suffer pain from men who are selfish, manipulative, shallow, childish, and insensitive. Although the effect is not as emotionally hammering as that of a polemic like Andrea Dworkin's *Intercourse*,<sup>123</sup> the simple, ordinary, yet unremitting nature of the songs is equally disquieting. Dworkin's work is powerful because it provides concrete images of the ways that male violence has demeaned and violated women. In contrast, Carpenter's songs, because they involve men who are *not* violent, show how non-violent mistreatment limits and shapes women and how unquestioning acceptance of such nonviolent conduct can perpetuate gender inequity.<sup>124</sup>

The following selection indicates the effect of masculine selfishness, manipulation, or deceit:

Back when children played their games  
London Bridge and Jesse James  
She captured flags she bounced the ball  
And every time she beat them all

And now she comes home to a cat  
In a three room walk up flat  
And she plays a game of solitaire  
Well she made a fist last night  
And she broke the hallway light  
And the pieces scattered everywhere

You see he's got a wife back home  
And three kids up and grown  
But these are things that go unsaid

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123. ANDREA DWORKIN, *INTERCOURSE* (1987).

124. Carpenter's lack of songs addressing the role that violence can play in heterosexual relationships is not a serious omission. The country music field has songs addressing domestic abuse. See, e.g., MARTINA MCBRIDE, *Independence Day, on THE WAY THAT I AM* (RCA Records 1994) (written by Gretchen Peters) (song about an abused wife who burns down her home with herself and her alcoholic husband inside, leaving their child an orphan). Consequently, Carpenter can assume that her audience is aware of the problem though they may not be aware of the extent of the problem. Moreover, violent abuse of women is so obviously wrong that she does not need to address the point. The issue is not whether violence is wrong, but how to address this violence. Such a specific question requires the type of detailed analysis that is best left for traditional legal analysis. For a useful review of current views on social responses to aggression and violence between genders, see Jo Dixon, *The Nexus of Sex, Spousal Violence, and the State*, 29 *LAW & SOC'Y REV.* 359 (1995).

He might call her from the road  
Just in time to say hello  
And goodbye again<sup>125</sup>

The shallow quality of men and the way they shape women to fit their masculine desires are the subject of the following:

Now I knew girls  
when I was sixteen  
could make a smart boy stutter  
turn a nice boy mean  
And the boys made the girls  
into homecoming queens  
and married each other  
instead of their dreams<sup>126</sup>

Childish irresponsibility is reflected in the following:

I think of you with a bottle of wine and lazy eyes  
Playing rock and roll songs on an old guitar  
Getting drunk and sleeping out in my backyard<sup>127</sup>

Selfishness and insensitivity are succinctly captured in the following:

You don't hear what you can't use<sup>128</sup>  
You could show just a little feeling for who I am<sup>129</sup>  
You can do what you want to and never feel sad<sup>130</sup>

Perhaps the most powerful image of masculine insensitivity and exploitation is *He Thinks He'll Keep Her*. This song presents the story of a woman's situation and her response to that situation:

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125. *Goodbye Again*, on STATE, *supra* note 39. Other songs with this message are *The More Things Change*, on SHOOTING, *supra* note 39, and *Never Had It So Good*, on STATE, *supra* note 39.

126. *Hometown Girl*, on HOMETOWN GIRL, *supra* note 39.

127. *Other Streets and Other Towns*, on HOMETOWN GIRL, *supra* note 39.

128. *When She's Gone*, on SHOOTING, *supra* note 39.

129. *You Win Again*, on SHOOTING, *supra* note 39.

130. *Never Had It So Good*, on STATE, *supra* note 39.

She makes his coffee, she makes his bed  
She does the laundry, she keeps him fed  
When she was twenty-one, she wore her mother's lace  
She said forever with a smile upon her face

She does the carpool, she P.T.A.'s  
Doctors and dentists, she drives all day  
When she was twenty-nine she delivered  
    number three  
And every Christmas card showed a  
    perfect family

Everything runs right on time, years of  
    practice and design  
Spit and polish till it shines, he thinks  
    he'll keep her  
Everything is so benign, the safest place  
    you'll ever find  
God forbid you'd change your mind, he  
    thinks he'll keep her

She packs his suitcase, she sits and waits  
With no expression upon her face  
When she was thirty-six, she met him at  
    their door  
She said I'm sorry, I don't love you anymore

For 15 years she had a job and not one  
    raise in pay  
Now she's in the typing pool at  
    minimum wage<sup>131</sup>

The title of this song is from an old Geritol commercial, which featured a husband who was so proud of his wife's health and looks that he thought he would "keep her." Though partly ironic, the commercial also had a patronizing tone. The strength and impact of this song result in part from the fact that the man in the commercial and in the song thinks he is a "good man." As a result, the song is a radical challenge to the often unnoticed sexism in mass culture because it both reveals such sexism and undermines masculine certainty in the rightness of

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131. *He Thinks He'll Keep Her*, on *COME ON*, *supra* note 39 (written by Mary Chapin Carpenter and Don Schlitz). For further discussion of this song, see *infra* notes 147-49 and accompanying text.

the man's point of view as *the* point of view. The song also underscores the economic and social impacts of sexist inequality: After fifteen years of marriage, he still has his successful career while "she's in the typing pool at minimum wage."

2. *Optimism: Meaningful Relationships Are Possible and Worthwhile*

Carpenter's optimism about successful heterosexual relationships has two components. First, many of her songs feature strong, independent women who are capable of choosing and sharing an egalitarian relationship with men. As indicated above, these women have a wide range of relationships; relationships with men are only one aspect of their lives. Second, Carpenter sketches some of the dimensions by which such a relationship should be structured.

a. *Images of Strong Women*

Carpenter's songs present many images of women who lead independent lives and are passionate about more things than romance.<sup>132</sup> They have high standards for their relationships and can declare:

I have a heart that is proud you bet  
I have a mind that won't forget  
And I have arms that are strong and yet  
Tender when they want to be<sup>133</sup>

These women also reject being ignored as persons, particularly by attempts to impose shallow standards of youth and beauty on them.<sup>134</sup> They offer a deep personal concern to those who are willing to commit to them.

If you ever need to hear a voice in the middle of the night  
When it seems so black outside that you can't remember light  
Ever shone on you or the ones you love in this or another  
lifetime  
And the voice you need to hear is the true and the trusted kind  
With a soft, familiar rhythm in these swirling, unsure times

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132. Carpenter made the following comment about the video for *Passionate Kisses*, on *COME ON*, *supra* note 39 (written by Lucinda Williams): "I wanted to show that you can be passionate about more things than romance. I wanted to convey that you can be passionately angry and you can be passionately in love. You can be passionate about art. And you can be passionate about people." Harris, *supra* note 43, at 3C.

133. *Tender When I Want To Be*, on *STONES*, *supra* note 39.

134. See *Slow Country Dance*, on *STATE*, *supra* note 39; *supra* note 87 and accompanying text (quoting *Slow Country Dance*, on *STATE*).

When the waves are lapping in and you're not sure you can  
swim  
Well here's the lifeline  
If you ever need to feel a hand take up your own  
When you least expect but want it more than you've ever known  
Baby here's that hand and baby here's my voice that's calling,  
    this is love, all it ever was and will be  
This is love<sup>135</sup>

This love, however, will not survive without a commitment to an equal, sharing of life plans. For example, if the man insists on having the last word rather than engaging in a shared dialogue, these women will leave.

You can have it, I don't want it and when you've got it I'll be  
    gone  
It won't matter what you're saying when the damage has all  
    been done  
Can't seem to keep the faith  
As if that's all I need to do  
I'd rather walk away  
Than take what belongs to you  
You can have it, I don't want it and when you've got it all I'll be  
    gone  
It won't matter what you're saying when the damage has all  
    been done  
Some words will cut you down  
Like you were only in the way  
Why should I stand this ground  
It won't hurt as much to say  
You can have it, I don't want it and when you've got it I'll be  
    gone  
It won't matter what you're saying when the damage has all  
    been done  
Sometimes we're blinded by  
The very thing we need to see  
I finally realized  
You need it more than you need me

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135. *This Is Love*, on STONES, *supra* note 39.

You can have it, I don't want and when you've got it I'll be gone  
It won't matter what you're saying when the damage has all  
    been done  
The damage has all been done<sup>136</sup>

Similarly, these women also challenge men to show concern and passion,<sup>137</sup> to "show me tender when it's time to say exactly how it ought to be,"<sup>138</sup> and to "shut up and kiss me."<sup>139</sup> So long as the man is trying to meet this challenge, one of these women can take pain and still work to make the relationship work.

. . . I thought this is the kind of pain  
From which we don't recover  
But I'm standing here now with my heart  
    held out to you  
. . . I'm still standing<sup>140</sup>

However, if the relationship is over, they tell the man it's time to admit "it's quittin' time."<sup>141</sup> They can also say:

"Hell I don't care"<sup>142</sup>  
    or  
"I won't forget you, but I'll let you be"<sup>143</sup>  
    or  
"Gonna dream not of things  
That I've left behind  
But those I've found instead  
    "<sup>144</sup>  
. . .

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136. *The Last Word*, on STONES, *supra* note 39.

137. *The Hard Way*, on COME ON, *supra* note 39; *Read My Lips*, on STATE, *supra* note 39; *What You Didn't Say*, on SHOOTING, *supra* note 39; *You Win Again*, on SHOOTING, *supra* note 39.

138. *Tender When I Want To Be*, on STONES, *supra* note 39.

139. *Shut Up and Kiss Me*, on STONES, *supra* note 39.

140. *This is Love*, on STONES, *supra* note 39.

141. *Quittin' Time*, on STATE, *supra* note 39 (written by Robb Rogers and Roger Linn).

142. *A Road is Just a Road*, on HOMETOWN GIRL, *supra* note 39.

143. *Hometown Girl*, on HOMETOWN GIRL, *supra* note 39.

144. *Down in Mary's Land*, on STATE, *supra* note 39.

Finally, they can initiate sexual relationships<sup>145</sup> and do not sit home passively when a relationship fails:

I'm going out tonight to find myself  
a friend  
I need a welcome smile and the grasp  
of a knowing hand  
Gonna sit for hours in a small dark place  
Catch up with a long lost face  
And talk about how long it's really been  
I'm going out tonight with perfume on  
my wrist  
I need to find someone to show me what  
I've missed  
And when I see that someone sitting there  
Gonna tell your memory I don't care  
If he offers something more than just a kiss  
\* \* \*

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145. One song is about a woman trying to pick up a man simply because she likes his accent and looks. *How Do, on STATE*, *supra* note 39. The openly assertive quality of these songs is reflected in the following selection from *Right Now, on SHOOTING*, *supra* note 39 (written by Al Lewis and Sylvester Bradford):

I'm all alone so come on over baby  
Right now right now  
Oh don't make me wait child don't  
you hesitate  
\* \* \*

I want to dance I need romance baby  
Right now right now  
Oh don't let me down child don't you  
mess around  
\* \* \*

Let's think of something to do and let's  
do it  
Let's think of somewhere to go let's go  
And when you put your lovin' arms  
around me  
Oh you know how I love you so  
\* \* \*

I need a thrill; say you will baby

Right now right now

Oh don't let me down child don't you  
mess around



I'm going to tell myself that someone  
I adore  
Is the one I'm with; ain't that what  
friends are for  
'Cause my empty arms are open wide  
I'm long on spite and short on pride  
And the old way isn't working anymore  
I'm going out tonight to find myself  
a friend<sup>146</sup>

Terminating relationships may be hard and may involve risks. For example, the woman in *He Thinks He'll Keep Her*<sup>147</sup> exchanged a secure home for a life on "minimum wage."<sup>148</sup> But such action is necessary if she is to be autonomous and define her own life apart from a man who cannot accept her as a free and equal individual.

I think what resonates from *He Thinks He'll Keep Her* is it's about recognizing that you are somewhere that you really shouldn't be and it's up to you to make the change, and that is empowerment.<sup>149</sup>

These women may have relationships that fail or may suffer because of men; however, they reject the approach of blaming a gender, rather than a person, for injury. Similarly, they reject simplistic dichotomies like "male/female" that ignore the complexities of real persons. Instead, their perspective reflects Carpenter's humanistic individualism and her egalitarian acceptance of the human strengths and weaknesses of all people. Consistent with this egalitarianism, a man can have strengths and a woman can have flaws. This view is reflected in a number of songs addressing the way that women are also insensitive and manipulative. For example, one song addresses the problems resulting from a woman who speaks without a concern for the listener.<sup>150</sup> Another song is written from the perspective of an older, wiser woman who, in her youth, left lovers and friends for no other reason than a desire to keep moving.<sup>151</sup> Other songs involve men who have been

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146. *Going Out Tonight*, on SHOOTING, *supra* note 39.

147. *He Thinks He'll Keep Her*, on COME ON, *supra* note 39. For selected lyrics to this song, see *supra* note 131 and the accompanying text.

148. See *supra* note 131 and accompanying text.

149. *In the Spotlight: Mary Chapin Carpenter Live at Wolf Trap* (PBS television broadcast, July 26, 1995).

150. *Can't Take Love For Granted*, on SHOOTING, *supra* note 39.

151. *The Moon and St. Christopher*, on SHOOTING, *supra* note 39.

“burned” and “scarred” by women.<sup>152</sup> Part of the problem in failed relationships is that women can also be shallow and shortsighted:

He promised wine and roses  
And she thought that was enough<sup>153</sup>

In short, women are sometimes the “bug,” sometimes the “windshield.” In this context, neither gender is always or necessarily the victim of the other.<sup>154</sup>

The perspective of these women also reflects Carpenter’s humanism: Life is good, though sometimes bittersweet; building bridges between people is worthwhile, though the task involves both risk and hard work and may cause pain; but the faith and courage to keep trying is central to human life.

To the extent that this faith in individual effort equates with traditional religion, one song adopts a subtle, but radically feminine approach.

But now I’ve grown and I speak like  
a woman  
And I see with a woman’s eyes  
That an open door is to me now  
Like the saddest of goodbyes  
And it’s too late for turning back  
I pray for the heart and the nerve

And I rely upon the moon  
I rely upon the moon  
I rely upon the moon and St. Christopher

I rely upon the moon  
I rely upon the moon  
I rely upon the moon and St. Christopher  
To be my guide<sup>155</sup>

St. Christopher is entitled to his traditional role as the guardian saint of travelers; but he is far too masculine a version of traditional Christianity to serve as the sole

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152. *Never Had It So Good*, on STATE, *supra* note 39; *Walking Through Fire*, on COME ON, *supra* note 39.

153. *Something of a Dreamer*, on STATE, *supra* note 39.

154. As indicated *supra*, in notes 123-24 and the accompanying text, Carpenter does not address the asymmetry that results from the ability of men to use their superior size and strength to abuse and threaten women. Given this asymmetry, women are usually the “bug” where violence is involved. Nevertheless, as the textual discussion accompanying note 124 indicates, Carpenter’s songs make an important contribution because they address relationships between men and women where violence plays, at most, a background role.

155. *The Moon and St. Christopher*, on SHOOTING, *supra* note 39.

icon for this woman. The moon, with its ties to the Roman and Greek goddesses Diana and Artemis, is also necessary.

These women are also the nurturers who raise the next generation. Carpenter presents this image of women, and the debt owed to them by men, in *Family Hands*.<sup>156</sup> The story is an account of a trip by a man and woman to his boyhood home, where she meets the women who have loved and raised him. The role of these women is summarized in the *Family Hands* chorus:

Raised by the women who  
are stronger than you know  
A patchwork quilt of mem'ry  
only women could have sewn  
The threads were stitched by fam'ly hands  
protected from the moths  
by your mother and her mother  
the weavers of your cloth

*b. The Relationship*

The women sketched in the preceding paragraphs are not limited to only one particular type of relationship. Potentially, a relationship has at least three components—personal, sexual, and emotional. These components are independent of one another, and a woman (or man) is free to accept any one of these as sufficient for a particular relationship or period of time. Neither the personal and emotional aspects nor the sexual dimensions are limited to heterosexual relationships.<sup>157</sup>

The personal component of any healthy human relationship involves a sense of care, concern, and respect for the other person. It may also involve intellectual, artistic, or spiritual human dimensions.<sup>158</sup> Building this relationship takes work, particularly in maintaining a dialogue, because of two conflicting concerns. On the one hand, truth is central<sup>159</sup> and “small talk” should be avoided.<sup>160</sup> On the other hand, candor can be painful:

When I spoke what was on my mind,  
I wasn't thinking of your heart

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156. *Family Hands*, on *HOMETOWN GIRL*, *supra* note 39.

157. See *supra* notes 44, 117-21 and accompanying text.

158. See *Stones in the Road*, on *STONES*, *supra* note 39 (statement expressing appreciation to those who helped in making the recording); *In the Spotlight: Mary Chapin Carpenter Live at Wolf Trap* (PBS television broadcast, July 26, 1995) (discussing relationships with other musicians, singers, and songwriters).

159. *Just Because*, on *HOMETOWN GIRL*, *supra* note 39.

160. *Read My Lips*, on *STATE*, *supra* note 39.

I wasn't thinking when I said those things  
That landed us so far apart  
And now my world is ending  
With a chance remark  
You can't take love for granted

And you look at me with your  
wounded eyes  
And I look back with fear  
There used to be such faith between us  
Now it's just not here  
And the door was slammed hours ago  
But it's still ringing in my ears  
You can't take love for granted  
It was a funny way to show I love you  
A funny way to care  
It's a funny thing to be without you  
As empty as your stare<sup>161</sup>

Given the problems of maintaining a dialogue that is both open and caring, disagreement and hurt feelings are likely. In this context, building relationships must be a common, shared enterprise. Consequently, it will not work if one party insists on having the "last word."<sup>162</sup> Instead, building a bridge between two people requires a sense of commitment and mutual effort of a particular kind:

Now there's a whole lot in life to be unsure of  
But there's one thing I can safely say I know  
That of all the things that finally desert us  
Pride is always the last thing to go

But it won't bring you love if you don't love  
And it won't bring you time if you ain't got time  
And it won't bring you strength, baby, if you ain't strong  
And it won't bring you kindness if you ain't kind<sup>163</sup>

The second component of a relationship is sexual. Carpenter's view of the sexual dimension of a male-female relationship differs from that of some feminists. To some, male dominance through violence (or potential violence) and through control of economic power and cultural images makes the question of

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161. *Can't Take Love for Granted*, on SHOOTING, *supra* note 39.

162. See *supra* notes 80, 136 and accompanying text.

163. *It Don't Bring You*, on STATE, *supra* note 39.

voluntary sex in any relationship impossible or, at best, problematic.<sup>164</sup> In contrast, Carpenter's songs present images of women who are both autonomous and sexual. For them voluntary sex is both possible and desirable.<sup>165</sup> These women want "passionate kisses" as well as material comfort,<sup>166</sup> relationships as well as careers.<sup>167</sup> They challenge a man to "show a little passion,"<sup>168</sup> to "show a little spark,"<sup>169</sup> and to "shut up and kiss me."<sup>170</sup>

The emotional aspect is the third component of the male-female relationship. Like the sexual component, the emotional part also involves passion. However, the emphasis is on the romantic dimension in terms of what is traditionally referred to as "the heart." This feeling is experienced when one sees the romantic partner and "there's this catch in my throat."<sup>171</sup> The following selections from two songs capture the unique quality of this romantic passion:

It's the first time you held my hand  
It's the smell the taste and the fear and the thrill  
It's everything I understand  
And all the things I never will<sup>172</sup>

The night is soft and silent, new moon  
at my door  
There's nothing near as quiet as the  
light I'm looking for  
Last time that it appeared he was lying  
next to me  
Last time I felt this near to  
whispered ecstasy  
\* \* \*

We rose and fell just like the tides  
He filled my heart and soul<sup>173</sup>

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164. See, e.g., SEXY DRESSING, *supra* note 108, at 126-213; Andrea Dworkin, *Against the Male Flood: Censorship, Pornography, and Equality*, in FEMINIST JURISPRUDENCE 449-66 (Patricia Smith ed., 1993).

165. See *supra* notes 124, 154 (discussing Carpenter's lack of discussion of violence).

166. *Passionate Kisses*, on COME ON, *supra* note 39 (written by Lucinda Williams).

167. See Fred Shuster, *Song of "Constant Struggle" Won Williams the Grammy*, THE VANCOUVER SUN, Mar. 16, 1994, at C7 (indicating that this song reflects Carpenter's and Lucinda Williams's (who wrote *Passionate Kisses*) desires for both careers and stable relationships, including a family).

168. *The Hard Way*, on COME ON, *supra* note 39.

169. *Id.*

170. *Shut Up and Kiss Me*, on STONES, *supra* note 39.

171. *This is Love*, on STONES, *supra* note 39.

172. *Where Time Stands Still*, on STONES, *supra* note 39.

173. *The End of My Pirate Days*, on STONES, *supra* note 39.

Though romance and sex are often intertwined, the romantic component is distinct. Sex need not involve romance, and sex is not necessarily involved in the romantic connection between people. The following captures this distinction:

Have you ever loved someone you knew nothing of  
Except you'd seen the light inside their eyes  
Have you ever loved someone just because  
Nothing felt so easy or so right

\* \* \*

And now I see the ones who've lost too much, they swear they're done

\* \* \*

But have you ever touched, and by itself it was enough  
To make you want to reach out once again  
And I'll touch you when I need a friend or just a small reminder  
That I haven't grown too cold to feel you penetrate my armor<sup>174</sup>

Achieving all three aspects in a single relationship is difficult, but Carpenter's optimism provides a basis for the attempt.

To hear you speak my name, to see  
You search my eyes  
To feel you touch my hand, it more  
than satisfies  
If I was not the first, just say I'll  
be the last  
It's too much to expect, but it's not  
too much to ask<sup>175</sup>

### III. SUMMARY AND CONCLUSION

This Article takes the position that normative "truth" is contingent and culture-bound.<sup>176</sup> Having taken this position, law was simply defined as decisions by officials of the state, which is the entity with an effective geographic monopoly on violent force.<sup>177</sup> One approach to developing normative political theory in a contingent context is to view justice as a cultural construct, consisting of shared views about important normative ideals, that can be used to make

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174. *Just Because*, on *HOMETOWN GIRL*, *supra* note 39.

175. *Not Too Much to Ask*, on *COME ON*, *supra* note 39 (written by Mary Chapin Carpenter and Don Schlitz).

176. *See supra* notes 4-13 and accompanying text.

177. *See supra* notes 1-3 and accompanying text.

“meaningful” statements about justice.<sup>178</sup> More specifically, this cultural approach acts on a “creativist” faith or belief in three interconnected tenets: first, given the state’s monopoly on violence, agreement on political theory is uniquely important; second, agreement is preferable to coercion and, therefore, interpersonal agreement means more than mere preference; and third, the creative aspect of humanity can be used, along with rational analysis, to implement and improve the shared normative perspective.

Adopting this “creativist” approach requires criteria for determining how cultural views should be utilized in developing a normative political theory. This Article begins the process of developing such measures by proposing three criteria: (1) Popularity; (2) “fit” with existing political theories; and (3) provision of framework for dialogue and consensus, rather than force, to resolve disagreement over basic values.<sup>179</sup> The use of these criteria was demonstrated by applying them to the songs of Mary Chapin Carpenter.

As indicated above, the creativist approach to constructing political theories involves a commitment to the belief that culture and creativity can provide the basis for a meaningful defense or criticism of a law as just or unjust.<sup>180</sup> This commitment raises two questions. First, is there a particular type of creativist theory that best fits with our culture? Second, is the creativist approach valid?

The first question requires consideration of far more cultural components than the work of one singer/songwriter. However, the discussion of Mary Chapin Carpenter’s songs is intended to serve as a beginning to a broader consideration, not a substitute. Given this limited goal, it is important that Carpenter’s perspective fits well with a liberal, Rawlsian framework and that her perspective does not fit well with other approaches.<sup>181</sup> Because of Carpenter’s popularity, this fit provides some support for Rawls’s claim that his theory fits with the comprehensive view of many people. This support is only limited because this Article was not intended to show that her songs are not only popular, but also somehow typical or characteristic of American culture. Though this lack of a broader showing is a shortcoming, it should be noted that neither Rawls nor any similar theorist has undertaken to make such a showing by even an initial review of any substantial part of our culture.<sup>182</sup> For example, as indicated below, Christianity is a central part of our culture, but political theorists do not usually relate Christian

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178. *See supra* notes 14-21 and accompanying text.

179. *See supra* notes 22-35 and accompanying text.

180. *See supra* notes 14-31, 178 and accompanying text.

181. For example, Carpenter’s concern for the least advantaged would conflict with a scheme like that set forth in NOZICK, *supra* note 8. *See supra* note 8 and accompanying text.

182. At least one commentator has noted that, insofar as popular music is concerned, legal theorists simply “plunder popular songs for references . . . in order to provide a relevant prefatory quotation and the intention signaled is a desire to be seen as aware of popular cultural developments whilst retaining an academic, high culture position from which to write.” STEVE REDHEAD, UNPOPULAR CULTURES: THE BIRTH OF LAW AND POPULAR CULTURE 27 (1995).

views to their frameworks. Thus, the review of Carpenter's jurisprudence herein provides at least a useful beginning in the task of fitting political theory to popular culture.

Although a more complete showing is beyond the scope of this Article, there are two reasons to believe that an individualistic, egalitarian, humanist framework like that of Rawls and Carpenter is characteristic of our culture. These reasons are first, that such a large percentage of people in the United States claim to be Christians,<sup>183</sup> and second, that Christians share a commitment to the Bible as the basis for core beliefs. In addition to views about God, these core beliefs include: (1) A deep concern for the well-being of all humans,<sup>184</sup> even enemies<sup>185</sup> and members of despised subgroups;<sup>186</sup> (2) a respect for the right of, indeed the necessity for, persons to make a voluntary choice concerning such basic parts of their comprehensive views as God and the purpose of life;<sup>187</sup> and (3) a separation of religion and the state into separate, freestanding spheres of life.<sup>188</sup>

The importance of the "fit" among these views should not be overemphasized. Rawls's theory is not the only political theory that fits with Christianity; nor is it the only political theory that fits within Carpenter's framework.<sup>189</sup> Moreover, even though Carpenter's humanism is compatible with Christianity, her view of women and relationships may conflict with that of many Christians. Similarly, Rawls's approach to drawing the line between the state and religion may not be accepted by most Christians. Finally, disagreement among Christians on basic religious and political issues is so common that one should not be unduly optimistic about whether shared core beliefs can provide the basis for consensus or political theory. Part of the basic pluralistic disagreement in the United States stems from disagreement among Christians. Nevertheless, the overlap among Rawls, Carpenter, and Christianity provides some support for Rawls's freestanding political theory.

The question of whether this overlap provides the basis for a meaningful critique of the justice of laws is, as indicated above, a matter of faith.<sup>190</sup> Personally, I believe it does provide a basis, but I cannot prove it and I do not want to force you to accept it. I do, however, insist that you not force me to accept a contrary view. Instead, I think that the images in Carpenter's songs and her approach to the risks of building bridges between people provide a positive

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183. See *supra* note 33 and accompanying text.

184. *Matthew* 22:37-40; *Luke* 10:25-28. Since the Second Commandment is also contained in the Old Testament, it is reasonable to assume that Jews also share this concern. In addition, the account of man being made in God's image in *Genesis* 1:26-27 indicates a commitment to the intrinsic worth of each individual.

185. *Matthew* 5:43-45; *Luke* 6:27-28, 35.

186. *Luke* 10:29-37.

187. See *Luke* 10:25-28.

188. *Matthew* 22:17-21; *Luke* 20:22-25.

189. See *supra* note 105 and accompanying text.

190. See *supra* notes 22-31 and accompanying text.



model not only for male-female relationships but also for bridging the gap between other human groups. More specifically, Carpenter's model provides a useful approach for resolving disagreements among competing faiths about the nature of truth and the proper role of law.

Carpenter's popularity is an encouraging sign that many citizens, in both their personal and political lives, can view life from the point of view of both the "bug" and the "windshield" and can value the importance of providing a context for each person's pursuit of the life "we make." As Carpenter's songs indicate, realism requires that we recognize that even well-intentioned people can be hurtful or indifferent, that thoughtless injuries and injustice will occur, and that our institutions will reflect our flaws. Nevertheless, popular "theories of justice" like hers provide a receptive context for more traditional, scholarly theories like that of Rawls and support an optimism that it is possible to build bridges between diverse views in a pluralistic society. In this way, a realistic level of both political and social community, based on shared values of equality and autonomy and on shared values of caring for and listening to one another, can be achieved. "It's too much to expect, but it's not too much to ask."<sup>191</sup>

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191. *Not Too Much to Ask*, on COME ON, *supra* note 39.