

stand. He believes that the intimate activities of a married couple would not be subjected to the reach of the statute and considers the prospect that a long-term monogamous homosexual relationship might deserve the same protection as a heterosexual marriage if gay marriages were permitted, but he relegates the question to determination after a "public moral debate."

Garvey cites *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537 (1987), as another example of his viewpoint at work. The board had revoked the Duarte charter because the club had admitted women into its membership, in violation of the Rotary's constitution. California enjoined the revocation based on the state's laws against sex discrimination. The U.S. Supreme Court upheld the injunction, declining to rule that it violated Rotary members' freedom of association. What was at stake was simply not fundamental enough to be protected by that right; the activities involved weekly lunches and fellowship, not something more basic to the improvement of the human condition. Garvey asserts that both *Hardwick* and the *Rotary Club* failed because neither advanced the type of associations that the Constitution protects, which are those that are value-laden and inclined to enhance fundamentally good acts, such as building lasting relationships that benefit society, but not those that are promiscuous or superficial. Value-neutrality of choices, which he sees as central to the bilateral or liberal theory, is anathema to his viewpoint and, he argues, often rejected by the Court too.

Garvey's views on religion begin with the same premise: freedom of religion is protected because religion is a good unto itself and advances good ends; it needs no other justification. To the person of faith, the decision is hardly a bilateral one; the believer is called to God, and faith compels that the call be heeded. The argument for prohibiting a state-established religion is equally compelling: "There is in our traditions a religious argument for religious freedom that is peculiarly associated with ritual acts. It is, simply, that

it is futile to coerce people to perform ceremonies (prayer, worship, declaration of belief) they don't believe in. ... Coercion can be worse than futile — it can be counterproductive," compelling hypocrisy, not advancing religion.

Speech enjoys special protection in our Constitution, Garvey asserts, for the same reason that the other basic freedoms do — it is intrinsically good because it promotes the pursuit of knowledge. He points out that some forms of speech do not promote the pursuit of knowledge and so are not guarded as vigorously. Commercial speech, for example, can be regulated by the government more freely because it often lacks that hallmark trait that warrants protection — the advancement of knowledge. Advertising and other forms of commercial speech can be regulated to prevent fraud and discrimination or to promote public safety. Freedom of speech is also protected, Garvey says, because it allows us to monitor (through the press) the actions of elected officials and to criticize them if we disagree with what they are doing to serve our interests.

Having stated his premise, Garvey then examines how well it works for those not capable of acting for themselves, such as children or persons suffering mental or intellectual impairment. He argues that the courts and legislatures are justified in imposing some limitations on the freedoms of those whose capacity to act is impaired, because their actions may be irrational or irresponsible. Here also, Garvey uses Supreme Court decisions to illustrate the relationship between rights and responsibilities. This linkage between freedoms and the ability to exercise them responsibly is a theme Garvey returns to often, and his discourses are both erudite and instructive, though likely to be less controversial than the central premises he postulates earlier in his book.

His discussion also encompasses groups of persons that act as one in the legal sense — corporations, civil rights organizations, unions, and churches. Garvey's view on groups' rights is that they should receive the same protection as the rights of indi-

viduals when asserted for the same reasons. Membership in groups is protected by the right to freedom of association, and in certain circumstances other freedoms may be at stake, too, as when the media asserts its First Amendment right to information from government agencies or seeks protection against government limitations on its freedom to publish information. An example of a group's right that is almost universally accepted is the freedom of religious believers to band together to practice their faith. Garvey reasons that the Supreme Court declines to decide questions of religious belief because the First Amendment expressly protects the rights of the religious to a greater degree than those of the nonreligious. It does this because those who wrote the Bill of Rights valued the role that religion plays in our national life.

Garvey warns against extending our rights so as to turn private persons into state actors capable of suffering sanctions if they are accused of violating the basic freedoms of others. He cites as examples *Marsh v. Alabama*, 326 U.S. 501 (1946), and *Food Employees v. Logan Valley Plaza*, 391 U.S. 308 (1968). In *Marsh*, a Jehovah's Witness who distributed religious tracts on the property of a company-owned town was arrested for trespassing. The arrest was found by the Court to violate her First Amendment rights, because the company's private property was like a publicly operated town in many respects, and thus within the purview of "state action." In *Logan Valley Plaza*, a state court enjoined union members from picketing a grocery store on the property of a privately owned mall. The Supreme Court set aside the ruling, finding that the First Amendment applied to the mall because it was the "functional equivalent" of a business district. Implicit in these rulings, Garvey cautions, is a trend toward extending the reach of the First Amendment to infringe on the property or economic rights of private citizens. Garvey does not believe that the Constitution requires the government to create rights related to property and contracts that are "fixed and irre-