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**SHOULD RELIGION ENJOY SPECIAL PROTECTIONS
IN AMERICAN SOCIETY? FIVE ARGUMENTS
AND A SPECULATION**

The belief in religious freedom used to be one of the unquestioned universals in American culture. But it has lately emerged as one of the fiercest points of contention in the American culture wars. Indeed, during the whole of 2012, the Obama Administration was subjected to strenuous criticism for its perceived hostility, or at best cavalier indifference, to the cause of religious freedom in the United States. First, there was the Supreme Court's unanimous decision against the Administration's position in the *Hosanna-Tabor* case, in which it had sought to deny the applicability of a "ministerial exemption" to the staffing of church-run schools. Then, more famously, came the case of the Department of Health and Human Services mandate that would require all employers, including church-run schools, hospitals, and charities, to provide their employees with health-insurance plans covering contraceptives, abortifacients, and sterilization procedures – a requirement that would necessitate, particularly for the Roman Catholic Church, the violation of some of its core moral teachings.

The opposition to these actions was swift and unequivocal. It produced an unprecedented degree of unity among the often fractious American Catholic bishops, and quickly brought into being a remarkably ecumenical coalition, embracing a broad array of evangelical Protestant leaders, such as the president of Wheaton College, arguably the most eminent evangelical college in the country, as well as eminent figures from across the full spectrum of American religious communi-

ties: Jews, Muslims, Mormons, Sikhs, and so on. Everywhere the rallying cry was directed, not to the support of specific Catholic doctrines, but to the general defense of religious freedom.

Secular supporters of the Obama Administration have been equally vehement in their disagreement, and have seemed both annoyed and mystified by the protests. How, wondered Ed Kilgore, writing in the March 2012 *Washington Monthly*, did “religious freedom” ever come to mean “the right to have one’s particular religious views explicitly reflected in public policy”? What gives Catholic bishops the right to “contend they should be able to operate a wide range of quasi-public services and also enjoy the use of public subsidies, while refusing to comply with laws and regulations that contradict their religious or moral teachings”? Were they not in fact seeking “a sort of unwritten concordat – a broad zone of immunity from laws they choose to regard as offensive”? Were they not seeking “special privileges”?

These are important questions which require a thoughtful and respectful response. Indeed, they go to the heart of the culture war that still rages in American life. Religious believers in America need to prepare themselves to hear such questions asked again and again in the years to come, and contemplate how they will answer them. For beneath the controversy about religious freedom is a deeper controversy, about the nature and status of religion itself in the American legal and political order.

That controversy is nothing new, of course. It runs through much of American history, taking on different guises and embracing different antagonists and issues at different times. But it has achieved a unique importance and potency at this historical moment, when the American legal and political world is more intent than ever upon upholding the principle of neutrality in all things. What is so special about religion, then, that it should receive any such “special privileges”? Why should Americans treat a church or other religious association differently than they treat any other social club or cultural organization, or treat the rights of a religious adherent any differently than they would treat the expressive liberties of any other individual?

Such questions have largely ceased to be asked in Western Europe. But the drive to ask them is a fairly recent development in American history, and perhaps a sign of the growing secularity of so much of its public life. But there is no denying the fact that, in some sense, religion and religious institutions are not treated according to a principle of strict neutrality in the United States. To be sure, the recognition and support of “religion” is something dramatically different from the establishment of a particular religion, a distinction that the First Amendment to the U.S. Constitution sought to codify. The fact remains, though, that something like a generic monotheism enjoys a privileged public status in present-day America, even though religious believers often fail to notice it, or complain that it is being steadily eroded.

Examples abound. One still sees the name of God on the American currency, in the Pledge of Allegiance, in the oaths taken in court, in the concluding words of

presidential speeches, and even, it seems, popping up in** the platforms of both major political parties. Chaplains are still employed by the armed services and the Congress, and the latter still duly commences its sessions with the invocation of a prayer. The tax exemption of religious institutions remains intact and seemingly impregnable, at least for the moment. The most solemn observances, such as the National Day of Prayer and Remembrance in the wake of 9/11, are held in the Washington National Cathedral, and are conducted in a manner that draws heavily on the liturgical and musical heritage of Western Christianity. One could compose a long list of similar examples. The United States is a long way from being officially secular, even if it may be tending in that direction. And however much Americans accept, or claim to accept, a principle of church-state separation, a better description of the way they actually have conducted themselves would be *selective interpenetration*.

Secular critics worry whether privileging religion in any way flies in the face of the principle of separation, and represents an illegitimate coercion of conscience. Some religious believers see merit in these contentions, particularly the second one, in a country where the freedom of the individual is so often taken to be the very sum and essence of religious freedom. Georgetown professor Jacques Berlinerblau's lively and valuable new book *How to Be Secular* is subtitled *A Call to Arms for Religious Freedom*, reflecting a freewheeling understanding of religious freedom that is as jealously protective of atheism and "freedom from" religion as it is of belief.¹

In addition, there are respectable *religious* arguments against religion's being granted a privileged status. Some of them are reminiscent of the views of Roger Williams, the great American dissenter, and recall one of the central arguments against any establishment of religion: that installation of a state religion inevitably leads, in the long run, to perfunctoriness, placeseeking, faithlessness, coercion, co-optation, atrophy, and spiritual death. In other words, the establishment of religion is bad for religion. When one looks at the sad and irrelevant state of the empty established churches of Europe today, one sees the power of the argument. The bride of Christ has all too often ended up a kept woman.

By contrast, as Alexis de Tocqueville was able to see as early as the 1830s, the American style of religious freedom, far from diminishing the hold of religion, kept it vital and energetic, precisely by making it voluntary. Indeed, many Christians, particularly those drawing on the Anabaptist tradition, would contend that when churches are cut loose from entanglement in the polity and its civil religion, committed only to being a people set apart, they are freed to be more radical, more sacrificial, and more faithful, a living sign of contradiction – in short, more genuinely Christian.

¹ J. Berlinerblau, *How to Be Secular: A Call to Arms for Religious Freedom*, New York 2012.

But the example of the HHS mandate shows the limits of this approach, when one is dealing with an act of comprehensive public policy that is designed to be universal in character. One does not have the option of declaring one's independence from such an all-embracing policy, or opting out of it, for there is nowhere to go and no place to hide. Hence the significance of Kilgore's mischaracterization of the Catholic bishops, who in fact are not seeking to use public policy to bar Americans from using and paying for contraceptives, or even to bar Catholics from using them, but instead are opposing the use of government's coercive power to compel Catholic organizations to pay for their use. Making even such a seemingly small accommodation to the long-settled and fundamental religious identity of the Catholic Church – an organization that, ironically, has a long and consistent record in support of the policy of universal health care – was apparently deemed impermissible. The American bishops therefore were not the ones insisting that their religious views should dominate public policy.

They *are*, however, insisting upon being dealt with separately, with respect shown for their particular commitments. They are doing so in a way that presumes religious freedom means not merely do-what-you-want neutrality, but a kind of deference paid to religion *per se*. And that is precisely the point here at issue. What's so special about religion, that it should be granted such deferential attention? Can arguments for that proposition be adduced that will be compelling, or at least plausible, not only to those who need no persuasion, but to those who do?

Let me offer five such arguments in what follows. These surely do not exhaust all the possibilities, but begin to suggest some of the reasons why the discussion about religious freedom needs to be placed in a larger and richer context than the sterile logic of abstract neutrality can allow.

First there is what I will call the *foundational* argument, which points back to our historical roots, and to the animating spirit of the American Founders and the Constitutional order that they devised and instituted. The Founders had diverse views about a variety of matters, very much including their own personal religious convictions, but they were in complete and emphatic agreement about one thing: the inescapable importance of religion, and of the active encouragement of religious belief, for the success of the American experiment. Examples of this view are plentiful. John Adams insisted that "Man is constitutionally, essentially and unchangeably a religious animal. Neither philosophers or politicians can ever govern him any other way." And the universally respected George Washington was a particularly eloquent exponent of the view that religion was essential to the maintenance of public morality, without which a republican government could not survive. The familiar words of his Farewell Address in 1796 – "of all the dispositions and habits which lead to political prosperity, Religion and morality are indispensable

supports” – can be made to stand in for countless others, from John Adams, Benjamin Rush, John Jay, and so on, as an indicative example. That this high regard extended to religious institutions as well as individual religious beliefs is made clear by Washington’s remark, in 1789, that “If I could have entertained the slightest apprehension that the Constitution framed in the Convention, where I had the honor to preside, might possibly endanger the religious rights of any ecclesiastical Society, certainly I would never have placed my signature to it.” If we are looking for a plausible grounding for our deference paid to religion, we can begin with the testimony of the Founders of the American constitutional order itself.

Very well, you may respond, but that was then and this is now. Why should present-day Americans feel bound by the Founders’ beliefs or their eighteenth-century mentalities? None of the Founders could possibly have envisioned the cultural and religious diversity of America in the 21st century. Their vision assumed a degree of cultural uniformity that would be beyond the present’s power to restore, even if it wanted to.

True enough. But the very fact of that diversity itself leads to a second argument for deference to religion, a *pluralistic* argument which would seek to protect religion all the more zealously as a source of moral order and social cohesion.

There is a reason why accounts of the history of American immigration and of the history of American religion so often end up relating the very same history. From the mid-nineteenth century on, every new wave of immigration to America brought peoples for whom a set of distinctive religious beliefs and practices formed the core of their identity. Some of the worst examples of religious prejudice in American history come out of the cultural clashes and anxieties of these years; but so too did the idea of pluralism as a central feature of American life. As Richard John Neuhaus and Peter Berger came to formulate it, “This nation is constituted as an exercise in pluralism, as the *unum* within which myriad *plures* are sustained.” The persistence of regional, religious, ethnic, and other differences, so long as they are not invidious in character or dependent upon unjust or illegal segregation or restriction, is something to be desired, because it means that the moral communities within which consciences are formed – churches, synagogues, mosques, and the like – remain healthy. Hence in America, as Neuhaus and Berger understood it, the national purpose rightly understood ought to seek, not to undermine particular affinities or purposes, but to strengthen them.²

Hence it is essential that religious freedom be understood not only as an individual liberty but also as a *corporate* liberty, a liberty that applies to and inheres in *groups*, and defends the integrity and self-governance of such groups. How could it be otherwise, since a religion, like a language, is an inherently social thing, quintessentially an activity of groups rather than the property of isolated individuals? Religious freedom must be understood in this dual aspect, protecting not only the liber-

² P. L. Berger, R. J. Neuhaus, *To Empower People: From State to Civil Society*, Washington 1996, pp. 202–208.

ty of individuals, but also the liberty of churches and other religious institutions and communities: protecting their freedom to define what they are and what they are not, to control the meaning and terms of their membership, to freely exercise their faith by the way they choose to raise their children and order their community life, seeking to embody their religion's moral self-understanding in lived experience.

There are, of course, limits to this autonomy, as there must be to all liberties and all forms of pluralism. Religious liberty is not a *carte blanche*, or an all-purpose get-out-of-jail-card, and its limits cannot be established once and for all by the invocation of some pristine abstract principle. But its essential place in the healthy life of the *plures* should ensure for it a high degree of respect, and set the bar very high for any government action that would have the effect of burdening religion's free exercise. That respect and that high bar have generally been affirmed by the Federal courts and the Congress.

A third argument for religion's special place might be called an *anthropological* one. Human beings are theotropic by their nature, inclined toward religion, and driven to relate their understanding of the highest things to their lives as lived in the community together, both metaphysically and morally. Whether this characteristic can be attributed to in-built endowment, evolutionary adaptation, or some other source, it would seem to be a good thing for the secular order to affirm our theotropic impulses rather than seek to proscribe them or inhibit their expression. Indeed, the vote of public confidence implied by such affirmation naturally engenders a sense of general loyalty to the polity, and binds religious believers affectionately to the secular political project far more effectively than would an insistence upon a rigorously secularist public square. Indeed, the latter course would present the very real danger of producing alienated subcultures of religious believers whose sectarian disaffection with the mainstream could become so profound as to represent a threat to the very cohesion of the nation. Secularists who worry about religion's taking an outsized role in public life would be better advised to give some strategic ground on that issue, and acknowledge the theotropic dimension in our makeup, even if they believe it to be a weakness or debility.

Such acknowledgement has the added benefit of promoting the development of a healthy civil religion, which is nothing more than an expression of our incorrigible need to relate secular things to ultimate purposes. Civil religion promotes political and social cohesion, while serving as a visible embodiment, of sorts, of the generalized thing we call "religion." But there are better and worse ways of doing this. Civil religion can, of course, be extremely dangerous, a form of playing with fire, and is viewed with understandable suspicion from all quarters. It borrows from the energy of specific faiths, but always carries with it the danger of usurping and displacing them, and underwriting a pernicious idolatry of the state or the nation. Hence it needs to be kept on a short leash.

But properly understood, the American civil religion also draws upon sources of moral authority that transcend the state, and are capable of holding the state

accountable to a standard higher than itself. A civil religion can be, as Yale sociologist Philip Gorski recently argued, “a mediating tradition that allows room for both religious and political values.” And the more that the activity of specific religions is accorded respect in the public sphere, the less likely it is that a civil religion will be successful in displacing them.

A fourth argument might be called the *meliorist* argument, which would acknowledge religion’s special place in American life because of the extensive social good that religious institutions have done, and continue to do, in the world; and because the doing of such good works is an essential part of the free exercise of religion. This argument follows in the footsteps of the Founders’ emphasis on moral formation of citizens, and also embraces the role of religious groups in abolishing slavery, promoting civil rights, running orphanages, caring for the indigent, and the like. But has taken on a weight of its own today, given the vast scale and scope of charitable, medical, and educational activities still undertaken by religious groups today. Let the Catholic church stand as a powerful example of this. The HHS mandate is so consequential because the Catholic church is so heavily involved in precisely these three areas, as the operator of nearly 7,500 primary and secondary schools, enrolling 2.5 million students, and some 600 hospitals (comprising nearly 13% of American hospitals and 15% of hospital beds), 400 health centers, and 1,500 specialized homes, making it the operator of the largest private educational and health-care systems in the country. In addition, Catholic Charities USA is, as of 2011, the seventh-largest charity in the nation (the second largest being the religiously oriented Salvation Army).

And, looking at the matter of religion’s life-improving qualities from another angle, one can point to a growing body of social-scientific evidence, appearing in the work of writers as diverse as Byron Johnson, Arthur Brooks, Jonathan Haidt, and Robert Putnam, indicating that religious belief correlates very reliably with the fostering of generosity, law-abidingness, helpfulness to others, civic engagement, social trust, and many other traits that are essential to a peaceful, productive, and harmonious society. One must, of course, stipulate that there will always be hypocrites, charlatans, fakes and abusers in religious organizations, as in all walks of life. But it would appear that, far from religion being a poison, as the late Christopher Hitchens liked to argue, it has, at least in America, been an antidote. It seems counterproductive to downplay its many benefits.

Last but not least, there is an argument that I will call *metaphysical*. It is often said that religious freedom is the first freedom, since it is grounded in the dignity and integrity of the human person, which requires that each of us be permitted to fulfill our right, and duty, to seek and embrace the truth about our existence, and live out our lives in accordance with our understanding of that truth. This is, or should be, a universal freedom, because the great questions of human existence are not the exclusive province of professors and savants, but belong to us all. Any good society, committed to the flourishing of its members, should recognize and encourage

and support that search. To acknowledge that fact in a public way, with an explicit recognition of the valuable place of religion, is an important declaration about the value a society places on the spiritual and moral life of its members.

But there is far more to the metaphysical argument than that. Indeed, there is a growing recognition that, in a postmodern world dominated by immense bureaucratic governments and sprawling transnational business corporations (entities that increasingly seem to operate in tandem – behemoths that are neither responsive to the tools of democratic governance nor accountable to national law nor answerable to any well-established code of behavior), religion serves as an indispensable counterweight. It is an essential resource for the upholding of human dignity and moral order, for speaking truth to power, for giving support to the concept of human rights, and for insisting that a voice of moral urgency – whether celebrating, exhorting, or rebuking – never becomes banished from the cold logic of instrumental rationality.

It has played this role before in history, and done so heroically. Evangelical religious conviction provided the animating force behind what was arguably the greatest reform movement in American history, the nineteenth-century movement to abolish slavery. The moral leadership of Pope John Paul II played a key role in bringing about the end of Soviet tyranny in Eastern Europe. Such countervailing force will almost certainly be required of it again. As the sociologist Jose Casanova eloquently argued in his 1994 book *Public Religions in the Modern World*, the modern world runs the risk of being “devoured by the inflexible, inhuman logic of its own creations,” unless it restores a “creative dialogue” with the very religious traditions it has eviscerated or abandoned. That dialogue will not be fruitful unless we sustain and protect the special public standing that religion has hitherto enjoyed.

And now, having given my five arguments, let me offer my final speculation. For there is an even deeper question here, the question of whether our concept of freedom itself, and more generally the liberal individualism we have come to embrace in the modern West, is sustainable in the absence of the Judeo-Christian religious assumptions that have hitherto accompanied and upheld it. There are a number of thoughtful atheist writers who, perhaps surprisingly, see great merit in this idea. The Italian writer Marcello Pera, for example, has argued that it is a dangerous illusion to believe that such ideas as the dignity of the human person can be sustained for long without some ultimate grounding in the deep normative orientation of the Christian faith. Ironically, the very possibility of a “secular” realm of politics, which we embrace in the West as a good thing (and which is the necessary basis for any robust understanding of religious freedom), may depend upon the presence of certain specifically Christian distinctives, embodied in culture as much as in doctrine.³

³ M. Pera, *Why We Should Call Ourselves Christians: The Religious Roots of Free Societies*, trans. L. B. Lappin, New York 2008.

This is an assertion that thoughtful secularists ought to find at least plausible. Indeed, Pera's concerns had been precisely anticipated by one of the most religiously heterodox figures of early American history, Thomas Jefferson. On one of the panels decorating the walls of the Jefferson Memorial in Washington appear these searing words: "God who gave us life gave us liberty. Can the liberties of a nation be secure when we have removed a conviction that these liberties are the gift of God? Indeed I tremble for my country when I reflect that God is just, that His justice cannot sleep forever."

Jefferson was speaking in that passage of the moral scourge of slavery, and asking, rhetorically, whether there could be any moral justification for the failure to extend the blessings of liberty to all men. But there is a larger implicit point. Jefferson was saying that the very possibility of human liberty itself, the liberty of every man and woman, was dependent upon our prior willingness to understand liberty as a gift of God, rather than a dispensation of man. The name of God serves as far more than a mere rhetorical device in this context. Even a world-class skeptic like Jefferson understood that erasing the name of God from the foundations of American public life could lead to fearful consequences. Which provides yet another reason why defending the special status of religion in American life is not merely a reasonable and defensible path, but one of fundamental importance.

Czy religia powinna cieszyć się szczególną ochroną w społeczeństwie amerykańskim? Pięć argumentów i hipoteza

Artykuł podejmuje kluczowy dla zrozumienia współczesnych wojen o kulturę temat obecności religii w przestrzeni publicznej w Stanach Zjednoczonych. Pokazuje niezbędny kulturotwórczy charakter doświadczenia religijnego w USA w budowaniu stabilnego porządku politycznego. Autor uważa, że publiczna obecność religii jest warunkiem koniecznym do nadania dyspacie na temat celów wspólnoty amerykańskiej wymiaru pluralistycznego i obywatelskiego.