

IF LIBERALS KNEW THEMSELVES BETTER,
CONSERVATIVES MIGHT LIKE THEM BETTER

by
*Andrew Koppelman**

The standard liberal positions on free speech, religious neutrality, and atheism all reflect their religious origins. Because American secular liberalism and American religious conservatism have a common ancestor, it is possible for liberals to describe aspirations that have more in common with the religious, and thus more rhetorical power, than the arguments that they now tend to offer.

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INTRODUCTION

“I don’t know half of you half as well as I should like; and I like less than half of you half as well as you deserve.”¹

Each side in the culture wars regards as polluted and unclean what the other holds sacred. (Same-sex marriage is the most obvious instance.) This is a recipe for mutual incomprehension and hatred. If you want less agita, each side should appeal to values that it holds in common with the other.

Liberals, however, have felt obligated, as a matter of principle, to pretend that important areas of common ground don’t exist. In recent decades, they have been captivated by the notion that the state ought to

^{*} John Paul Stevens Professor of Law and Professor (by courtesy) of Political Science, Department of Philosophy Affiliated Faculty, Northwestern University. Portions of this Essay previously appeared in ANDREW KOPPELMAN, *DEFENDING AMERICAN RELIGIOUS NEUTRALITY* (2013); Andrew Koppelman, *Veil of Ignorance: Tunnel Constructivism in Free Speech Theory*, 107 Nw. U. L. REV. 647 (2013); and Andrew Koppelman, *Corruption of Religion and the Establishment Clause*, 50 WM. & MARY L. REV. 1831 (2009).

¹ J.R.R. TOLKIEN, *THE LORD OF THE RINGS: THE FELLOWSHIP OF THE RING* 29 (Houghton Mifflin 1994) (1954).

be neutral with respect to contestable ideals and conceptions of the good.² This is nonsense, and it also disables them from talking about the ideals that they share with their opponents.

I am a liberal myself. For years, I have been arguing for rights to abortion³ and same-sex marriage,⁴ for liberalized drug laws,⁵ against restrictions on pornography,⁶ and for a specific kind of religious neutrality in which the state takes no position on controversial theological ideas.⁷ I would like to be able to reach across the gulf and persuade my opponents that I am right. I fear that my allies, because they are in the grip of a bad political theory, are needlessly neglecting rhetorical resources that could help us.

² See, e.g., BRUCE A. ACKERMAN, *SOCIAL JUSTICE IN THE LIBERAL STATE* 11 (1980); RONALD DWORKIN, *A MATTER OF PRINCIPLE* 191 (1985); CHARLES E. LARMORE, *PATTERNS OF MORAL COMPLEXITY* 44 (1987). Sonu Bedi takes the principle as axiomatic and builds an ambitious argument upon it. SONU BEDI, *BEYOND RACE, SEX, AND SEXUAL ORIENTATION: LEGAL EQUALITY WITHOUT IDENTITY* (2013), reviewed by me in Andrew Koppelman, Book Review, 13 *PERSP. ON POL.* 174 (2015).

³ See Andrew Koppelman, *Forced Labor: A Thirteenth Amendment Defense of Abortion*, 84 *Nw. U. L. REV.* 480 (1990).

⁴ See, e.g., ANDREW KOPPELMAN, *ANTIDISCRIMINATION LAW AND SOCIAL EQUALITY* 146–76 (1996); Andrew Koppelman, *Defending the Sex Discrimination Argument for Lesbian and Gay Rights: A Reply to Edward Stein*, 49 *UCLA L. REV.* 519 (2001), reprinted in 1 *THE DUKEMINIER AWARDS: BEST SEXUAL ORIENTATION LAW REVIEW ARTICLES OF 2001*, 49 (2001); Andrew Koppelman, *DOMA, Romer, and Rationality*, 58 *DRAKE L. REV.* 923 (2010); Andrew Koppelman, *Dumb and DOMA: Why the Defense of Marriage Act Is Unconstitutional*, 83 *IOWA L. REV.* 1 (1997); Andrew Koppelman, *Is Marriage Inherently Heterosexual?*, 42 *AM. J. JURIS.* 51 (1997); Andrew Koppelman, *Judging the Case Against Same-Sex Marriage*, 2014 *U. ILL. L. REV.* 431 (2014); Andrew Koppelman, *Sexual Discrimination*, 100 *GEO. L.J.* 1083 (2012); Andrew Koppelman, *Why Discrimination Against Lesbians and Gay Men Is Sex Discrimination*, 69 *N.Y.U. L. REV.* 197 (1994); Andrew Koppelman, *Why Scalia Should Have Voted to Overturn DOMA*, 108 *Nw. U. L. REV. COLLOQUY* 131 (2013); Andrew Koppelman, Note, *The Miscegenation Analogy: Sodomy Law as Sex Discrimination*, 98 *YALE L.J.* 145 (1988). I also coauthored amicus briefs in *Lawrence v. Texas*, the Supreme Court case that invalidated laws against homosexual sex, and *Hollingsworth v. Perry* and *Obergefell v. Hodges*, both of which considered a right to same-sex marriage. See Brief Amicus Curiae of Legal Scholars Stephen Clark et al., *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (Nos. 14-556, 14-562, 14-571 and 14-574); Brief of Amici Curiae William N. Eskridge Jr. et al. in Support of Respondents, 133 S. Ct. 2652 (2013) (No.12-144); Brief of Amici Curiae Constitutional Law Professors Bruce A. Ackerman et al. in Support of Petitioners, *Lawrence v. Texas*, 539 U.S. 558 (2003) (No. 02-102).

⁵ See, e.g., Andrew Koppelman, *Drug Policy and the Liberal Self*, 100 *Nw. U. L. REV.* 279 (2006).

⁶ See, e.g., Andrew Koppelman, *Does Obscenity Cause Moral Harm?*, 105 *COLUM. L. REV.* 1635 (2005).

⁷ See, e.g., ANDREW KOPPELMAN, *DEFENDING AMERICAN RELIGIOUS NEUTRALITY* (2013) [hereinafter KOPPELMAN, *RELIGIOUS NEUTRALITY*]; Andrew Koppelman, *Secular Purpose*, 88 *VA. L. REV.* 87 (2002).

Rhetoric has always been attacked as a kind of dishonest manipulation. But in fact it is best understood as the enterprise of understanding one's audience and tailoring one's message in order to help them to perceive what is in fact true and right.⁸ It thus has a moral dimension. The practice of rhetoric forces one to try to understand the deepest concerns of one's fellow citizens, and to respond to those concerns. If liberals are going to win the fights I just described—I hope they do—they need to understand the sources of resistance. Doing that, I will argue here, reveals unnoticed sources of liberal strength.

Modern secular liberalism originates in certain tendencies in Christian thought. Locke's political philosophy, for example, is inseparable from his dissenting Protestantism.⁹ Liberal theorists have worked very hard to obscure these origins, and to construct an account of their beliefs that is entirely independent of any such general view. A prominent exemplar is John Rawls, the preeminent modern liberal theorist, who argued that political liberalism "can be presented without saying, or knowing, or hazarding a conjecture about, what [comprehensive] doctrines it may belong to, or be supported by."¹⁰ "[T]he political conception of justice is worked out first as a freestanding view that can be justified *pro tanto* without looking to, or trying to fit, or even knowing what are, the existing comprehensive doctrines."¹¹

This approach does not entail,¹² but is broadly consistent with, the idea that exercises of state power should be neutral toward all contested conceptions of the good. Any notion of what ideals are worth pursuing, what we should want out of our lives, would then be disqualified as an argument for any particular set of political arrangements. Certainly many followers of Rawls have made the connection.¹³

⁸ The distinction between the two understandings of rhetoric is already clear in Plato, *Phaedrus* (c. 370 B.C.).

⁹ See generally JEREMY WALDRON, *GOD, LOCKE, AND EQUALITY: CHRISTIAN FOUNDATIONS OF JOHN LOCKE'S POLITICAL THOUGHT* (2002).

¹⁰ JOHN RAWLS, *POLITICAL LIBERALISM* 12–13 (1996 ed.).

¹¹ John Rawls, *Reply to Habermas*, 92 *J. PHIL.* 132, 145 (1995). For similar formulations, see JOHN RAWLS, *The Idea of Public Reason Revisited*, in JOHN RAWLS: *COLLECTED PAPERS* 573, 585 (Samuel Freeman ed., 1999) [hereinafter RAWLS, *Public Reason Revisited*]; JOHN RAWLS, *JUSTICE AS FAIRNESS: A RESTATEMENT* 37, 188–89 (Erin Kelly ed., 2001); RAWLS, *supra* note 10, at xlvi.

¹² See ANDREW KOPPELMAN, *A Rawlsian Defense of Special Treatment for Religion*, in *RELIGION IN LIBERAL POLITICAL PHILOSOPHY* (Cécile Laborde & Aurelia Bardon eds., forthcoming 2017).

¹³ A prominent recent example is JONATHAN QUONG, *LIBERALISM WITHOUT PERFECTION* (2011). Micah Schwartzman's case against special treatment of religion draws on Rawls's idea of public reason at many points in the argument. See Micah Schwartzman, *What If Religion Is Not Special?*, 79 *U. CHI. L. REV.* 1351 (2012). For my critical responses to neutralist liberalism see, for example, Andrew Koppelman, *Does Respect Require Antiperfectionism? Gaus on Liberal Neutrality*, 22 *HARV. REV. PHIL.* 53

Rawls also thought, however, that it was entirely legitimate, and indeed helpful, for proponents of reasonable comprehensive views to try to explain how they are consistent with, or even require, liberal political arrangements. “All those who affirm the political conception start from within their own comprehensive view and draw on the religious, philosophical, and moral grounds it provides.”¹⁴ Thus, for example, a Protestant doctrine of free faith and the secular liberalisms of Kant and Mill could all converge on a liberal regime for their own reasons.¹⁵ He also thought that there is a legitimate role for “reasoning by conjecture,” trying to show that others’ comprehensive views, which we do not share, can provide a basis for liberalism.¹⁶

American secular liberals typically rely inarticulately on ideals that are historically and culturally contingent. When they defend those ideals, however, they tend to deny this contingency, and to claim that liberalism’s attractiveness can be established with Cartesian certainty. This makes it hard to articulate the ideals themselves, and constrains liberal discourse in a more demanding way than Rawls himself thought appropriate.

Those ideals are no longer Christian, but they have certain family resemblances to Christianity, in the same way that Christianity has family resemblances to Judaism. When these ideals are stated forthrightly, with acknowledgement of their Protestant roots, then it becomes easier to see their common ancestry with the ideals of the religious right. Common ancestry is, of course, what explains family resemblances.

One of the most toxic political tendencies—a tendency that has always been part of American politics—is the temptation to regard one’s political opponents as unintelligibly malign demons who threaten all that one cherishes.¹⁷ Attention to common aspirations can ameliorate that.

Here I will focus on the religious roots of three secular ideals: freedom of speech, freedom of religion, and atheism.

(2015); Andrew Koppelman, *The Fluidity of Neutrality*, 66 REV. POL. 633 (2004); Andrew Koppelman, *The Limits of Constructivism: Can Rawls Condemn Female Genital Mutilation?*, 71 REV. POL. 459 (2009); Andrew Koppelman, *Religion’s Specialized Specialness: A Response to Micah Schwartzman*, What If Religion Is Not Special?, 79 U. CHI. L. REV. DIALOGUE 71 (2013), <http://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/Dialogue/Koppelman%20Online.pdf>.

¹⁴ RAWLS, *supra* note 10, at 147.

¹⁵ *See id.* at 145.

¹⁶ RAWLS, *Public Reason Revisited*, *supra* note 11, at 594.

¹⁷ “Savage Indians, satanic witches, Irish priests, Mormon polygamists, slave traders, saloon keepers, smut peddlers, drug pushers, Internet providers, and generations of black men would all take their turn as a menace to the nation’s innocent white women or children.” JAMES A. MORONE, *HELLFIRE NATION: THE POLITICS OF SIN IN AMERICAN HISTORY 2* (2003).

I. FREE SPEECH IDEALS

The easy availability of pornography is a persistent grievance on the right. As this is being written, the Republican party platform has just declared: “Pornography, with its harmful effects, especially on children, has become a public health crisis that is destroying the life [sic] of millions. We encourage states to continue to fight this public menace and pledge our commitment to children’s safety and wellbeing.”¹⁸ Republican administrations have done what they could to suppress it.¹⁹

The standard justifications for free speech are familiar. Democracy: “The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it.”²⁰ Knowledge: “It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail”²¹ Liberty: “The right to speak and the right to refrain from speaking are complementary components of the broader concept of ‘individual freedom of mind.’”²²

These justifications are remarkably tone-deaf when addressing the question of pornography.²³ Here liberal ideals with Christian roots can help to explain to conservatives the value of liberal prescriptions.

Pornography is now a pervasive part of life for most Americans from an early age.²⁴ A lot of it is not very nice: graphic sexual fantasies involving rape, torture, degradation, bestiality, excrement, vomit, cannibalism, and necrophilia.²⁵ More and more viewers find themselves compulsively drawn toward internet pornography, in self-destructive patterns that look and feel a lot like addiction.²⁶ Pornography is also a terrible source of misinformation about sex.

Restrictions on pornography have always relied on the fear that it will damage the character of young people—in the classic formulation,

¹⁸ Tal Kopan, *GOP Platform Draft Declares Pornography ‘Public Health Crisis,’* CNN (July 11, 2016), <http://www.cnn.com/2016/07/11/politics/gop-platform-republican-convention-internet-pornography/>.

¹⁹ See Andrew Koppelman, *Reading Lolita at Guantanamo: Or, This Page Cannot Be Displayed*, *DISSENT*, Spring 2006, at 64, 64, 70.

²⁰ *Citizens United v. FEC*, 558 U.S. 310, 339 (2010).

²¹ *Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 390 (1969).

²² *Wooley v. Maynard*, 430 U.S. 705, 714 (1977) (quoting *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943)).

²³ They also bespeak deeper problems in free speech theory, which I explore in Andrew Koppelman, *Veil of Ignorance: Tunnel Constructivism in Free Speech Theory*, 107 *Nw. U. L. REV.* 647 (2013).

²⁴ See Koppelman, *supra* note 6, at 1652–54.

²⁵ *Id.* at 1658.

²⁶ Andrew Koppelman, *Why Phyllis Schlafly Is Right (But Wrong) About Pornography*, 31 *HARV. J.L. & PUB. POL’Y* 105, 107 & n.9 (2008).

“deprave and corrupt those whose minds are open to such immoral influences.”²⁷ The harm is not offense to unwilling viewers. It is not incitement to violence against women. It is not promotion of sexism. It is *moral* harm.²⁸ If one wanted a litmus test for morally bad pornography, it would be this: *the text persuades its readers to regard people as mere objects of sexual interest, whose feelings and desires do not matter.* This is a bad thing to be persuaded of.

Liberalism should confront that fear. Doing so strengthens the case against censorship.

The appropriate liberal response is this: if the aim is to prevent people from being corrupted by what they read, then law is the wrong tool for the job. Law is not competent to discern bad ideas, and even if it could do that, the sources of bad ideas are too numerous to be censorable.

Freedom of speech is not indifferent to character. It depends on a character ideal of its own: a person who acts well, not because she is ignorant of the charms of wrongdoing, but because she is *awake*, fully cognizant of what is at stake in her actions. Moral harm is real. A free society is one whose members can confront that danger and overcome it. A free person does not need to be censored or governed. She governs herself. She reads with the eye of a censor, alert to the possibility that the offered libation is poisoned.

This ideal breaks down the familiar lines between liberal and conservative. One can subscribe to the ideal of rational self-direction while adhering to very traditional sexual values.

The idea of a right to free speech *began* with a Christian character ideal. That ideal has not been explicit in modern theorizing, but it has always been such an important part of the appeal of freedom of speech that it is surprising that theorists haven't paid it more attention.²⁹

The earliest argument for a right to free speech is John Milton's 1644 pamphlet, *Areopagitica*. Milton proposed to abandon all legal restrictions on printing. English citizens, he argued, should be entrusted with the task of exploring all manner of ideas, good and evil alike, so that they can resist temptation, work toward the salvation of their souls, and

²⁷ Regina v. Hicklin [1868] 3 LRQB 360 at 371 (Eng.).

²⁸ See Andrew Koppelman, *Eros, Civilization, and Harry Clor*, 31 N.Y.U. REV. L. & SOC. CHANGE 855 (2007); see also Koppelman, *supra* note 6, at 1636.

²⁹ See generally JOHN DURHAM PETERS, *COURTING THE ABYSS: FREE SPEECH AND THE LIBERAL TRADITION* (2005). Important exceptions are Vincent Blasi, *Free Speech and Good Character: From Milton to Brandeis to the Present*, in *ETERNALLY VIGILANT: FREE SPEECH IN THE MODERN ERA* (Lee Bollinger & Geoffrey Stone eds., 2002), and LEE C. BOLLINGER, *THE TOLERANT SOCIETY: FREEDOM OF SPEECH AND EXTREMIST SPEECH IN AMERICA* (1986).

advance the Reformation.³⁰ Much about Milton is alien to us now, but he has unnoticed relevance.

At the core of Milton's account was a Christian ideal of individual perfection. This ideal rested on a distinct conception of virtue as the ability to face and overcome temptation.³¹ It demanded that each person grasp religious truth inwardly, not just by outward show.³² The truth that was to be pursued also had distinctive characteristics: it was permanently elusive and would emerge over time, as a consequence of the collision of opposing ideas in a regime of unfettered discourse.³³

Milton's theology is key to understanding his claims about free speech. He radicalized the Protestant insistence on the unmediated communion between man and God. Even correct religious doctrine would not bring about salvation if it was the consequence of blind conformity rather than active engagement with religious questions. "A man may be a heretic in the truth; and if he believe things only because his pastor says so, or the assembly so determines, without knowing other reason, though his belief be true, yet the very truth he holds becomes his heresy."³⁴

Religious salvation is to be achieved only by struggle against temptation. "Assuredly we bring not innocence into the world, we bring impurity much rather: that which purifies us is trial, and trial is by what is contrary."³⁵ Traditionally, the crucifixion was the central event in Christian history, but for Milton, the great moment was Christ's rejection, in the desert, of Satan's temptations.³⁶ (It matters that what Jesus encountered was not a second deputy assistant demon.) It follows that "all opinions, yea errors, known, read, and collated, are of main service and assistance toward the speedy attainment of what is truest."³⁷

³⁰ JOHN MILTON, *AREOPAGITICA* (1644), *reprinted in* JOHN MILTON: COMPLETE POEMS AND MAJOR PROSE 716, 728 (Merritt Y. Hughes ed., The Odyssey Press 1957).

³¹ *See id.* at 727.

³² *See id.* at 742.

³³ *See id.* at 731.

³⁴ *Id.* at 739.

³⁵ *Id.* at 728.

³⁶ That episode is the subject of JOHN MILTON, *PARADISE REGAINED* (1644), *reprinted in* JOHN MILTON: COMPLETE POEMS AND MAJOR PROSE, *supra* note 30, at 470.

³⁷ MILTON, *supra* note 30, at 727. The importance of a free choice between good and evil is likewise emphasized in JOHN MILTON, *PARADISE LOST* (1644), *reprinted in* JOHN MILTON: COMPLETE POEMS AND MAJOR PROSE, *supra* note 30, at 207, 260. The speaker here is God the Father, explaining why it was right to allow the rebel angels and, later, Adam to transgress:

Freely they stood who stood, and fell who fell.
Not free, what proof could they have giv'n sincere
Of true allegiance, constant Faith or Love,
Where only what they needs must do, appear'd,
Not what they would? what praise could they receive?

The censor's attempt to insulate the citizenry from evil thoughts is "vain and impossible," like "the exploit of that gallant man who thought to pound up the crows by shutting his park gate."³⁸ Such thoughts will come. "He that can apprehend and consider vice with all her baits and seeming pleasures, and yet abstain, and yet distinguish, and yet prefer that which is truly better, he is the true warfaring Christian."³⁹ The way to be virtuous is "to ordain wisely as in this world of evil, in the midst whereof God hath placed us unavoidably."⁴⁰

The argument as a whole depends, not just on Protestantism, but on Milton's peculiarly latitudinarian Protestantism. Milton's theology rests on a radical quasi-Arminianism,⁴¹ in which salvation is available to all men who believe, and is in no way dependent on the formal ceremonies of Catholicism or of the Anglican Church.⁴² In sacraments as Milton understands them, "it is the attitude of the recipient that matters, not the ceremony."⁴³ This radical individualism is connected with a range of heretical religious views, many of them idiosyncratic to Milton.⁴⁴

Prominent among these is the priesthood of all believers: anyone with a gift for making the Word of God known should be free to disseminate it.⁴⁵ Milton's defense of free speech is not easily disentangled from his religious ideas.⁴⁶

Yet Milton still can speak to us. The concern about the explosion of pornography on the internet is precisely directed at the world of evil in which we unavoidably find ourselves. One need not be a radical Protestant to think that life offers us better and worse choices, and that we are often exposed to ideas that tempt us to choose the worse. If that is our situation, then we must learn to cope with it. Whether or not God (if She exists) was right to place us in this world, here we are. The only hope is a citizenry who "can apprehend and consider vice with all her baits and

What pleasure I from such obedience paid,
When Will and Reason (Reason also is choice)
Useless and vain, of freedom both despoil'd,
Made passive both, had serv'd necessity,
Not mee.

³⁸ MILTON, *supra* note 30, at 730.

³⁹ *Id.* at 728.

⁴⁰ *Id.* at 733.

⁴¹ Milton had theological disagreements with Arminius on matters unrelated to predestination. See JOHN T. SHAWCROSS, JOHN MILTON: THE SELF AND THE WORLD 138–40 (2015).

⁴² See CHRISTOPHER HILL, MILTON AND THE ENGLISH REVOLUTION 268–78 (1977).

⁴³ *Id.* at 306.

⁴⁴ See *id.* at 233–37.

⁴⁵ See WILLIAM HALLER, LIBERTY AND REFORMATION IN THE PURITAN REVOLUTION 63–64 (1955).

⁴⁶ See generally Vincent Blasi, *Milton's Areopagitica and the Modern First Amendment*, 14 COMM. LAW., Winter 1996, at 1.

seeming pleasures, and yet abstain, and yet distinguish, and yet prefer that which is truly better.”⁴⁷

Liberalism contemplates a society that accommodates diversity but in which people with radically different aspirations need not be wholly opaque to one another. Freedom of speech provides the opportunity to narrow the “gulf that separates class from class and soul from soul,”⁴⁸ as Shaw’s Henry Higgins put it. Public discourse creates a field of mutual transparency in which people can participate in the creation of the culture that constitutes their lives.

This project is demanding. In a free society we will inevitably encounter ideals we judge to be evil. Some of them will in fact be evil, and will nonetheless appeal to us in ways we ought to resist. The capacity to cope with that—to understand the sheer variety of human ideals, their origins, and how to engage with them critically and sympathetically—is a necessary virtue of citizens in a diverse society. The imperative to cultivate that capacity should be familiar to conservative Christians.

II. DISESTABLISHMENT IDEALS

For many years, conservatives have argued that, when the law interpreting the First Amendment’s religion clauses prohibits state endorsement of religious ideas, it is unjustifiably hostile to religion.⁴⁹ Liberals typically respond with neutrality talk, which they (mistakenly) take to be a generalization from the Establishment Clause.⁵⁰ But that clause, too, is deeply rooted in Protestant ideas. Both the original clause and the modern doctrine interpreting it rely on the idea that religion can be debased and corrupted by state support.⁵¹ That idea is associated with the most prominent early proponents of toleration and disestablishment, including Milton, Roger Williams, Locke, Pufendorf, Elisha Williams, Backus, Jefferson, Paine, Leland, and Madison.⁵²

Here I can only focus on the most important of the founders: Madison, the principal author of the First Amendment. The radical Protestantism of Backus and Leland and the deism of Jefferson and Paine were brilliantly synthesized by Madison in the *Memorial and Remonstrance Against Religious Assessments*, the classic description of the pathologies that

⁴⁷ MILTON, *supra* note 30, at 728.

⁴⁸ GEORGE BERNARD SHAW, *PYGMALION* (1913), *reprinted in* 1 BERNARD SHAW: COMPLETE PLAYS WITH PREFACES 189, 248 (Dodd, Mead & Co. 1963).

⁴⁹ *See, e.g.*, RICHARD JOHN NEUHAUS, *THE NAKED PUBLIC SQUARE: RELIGION AND DEMOCRACY IN AMERICA* 147–48 (2d ed. 1986).

⁵⁰ *See* Andrew Koppelman, *Neutrality and the Religion Analogy*, in *RELIGIOUS EXEMPTIONS* (Kevin Vallier, ed., forthcoming 2017).

⁵¹ KOPPELMAN, *RELIGIOUS NEUTRALITY*, *supra* note 7, at 46–77.

⁵² Andrew Koppelman, *Corruption of Religion and the Establishment Clause*, 50 WM. & MARY L. REV. 1831, 1842 (2009).

the founding generation associated with establishment. Madison, of course, is the one who actually led the movement for disestablishment, first leading the fight in Virginia, then as principal author of the First Amendment.⁵³

“Madison’s argument reaches well beyond coercion because it was offered against a bill that attempted to provide nonpreferential aid to religion.”⁵⁴ The bill in question would have allowed all Christian churches to receive tax money, and would have permitted each taxpayer to designate the church to receive his tax. If the taxpayer refused to designate a church, the funds would go to schools.⁵⁵ Even this nonpreferential aid, Madison thought, tended to corrupt religion.

Madison was a rationalist Deist. He deplored the fact that “accidental differences in political, religious, and other opinions” were the cause of factional disputes.⁵⁶ “However erroneous or ridiculous these grounds of dissention and faction may appear to the enlightened Statesman, or the benevolent philosopher, the bulk of mankind who are neither Statesmen nor Philosophers, will continue to view them in a different light.”⁵⁷ The coalition he led, however, consisted predominantly of Baptists and Presbyterians.⁵⁸ All supported freedom of conscience, thought that religion was essentially voluntary, and regarded man’s allegiance to God as prior to state authority.⁵⁹ But the rationalists emphasized natural rights and the use of reason in the pursuit of religious truth, while the religious dissenters wanted to free man to respond to God’s call and the scriptural teachings of Christ.⁶⁰ Each side drew on the other’s rhetoric, but they had fundamentally different goals.⁶¹ Madison’s task was to bring them together into a political coalition that could disestablish Anglicanism in Virginia.

The *Memorial and Remonstrance* begins with a theological claim: “It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him. This duty is precedent both

⁵³ CONSTITUTIONAL DEBATES ON FREEDOM OF RELIGION 208 (John J. Patrick & Gerald P. Long eds., 1999).

⁵⁴ KOPPELMAN, RELIGIOUS NEUTRALITY, *supra* note 7, at 62.

⁵⁵ A Bill Establishing a Provision for Teachers of the Christian Religion (Dec. 24, 1784), *reprinted in* Everson v. Bd. of Educ., 330 U.S. 1, 74 (1947) (Rutledge, J., dissenting) (contained in the supplemental appendix).

⁵⁶ Letter from James Madison to Thomas Jefferson (Oct. 24, 1787), *in* 1 THE REPUBLIC OF LETTERS: THE CORRESPONDENCE BETWEEN THOMAS JEFFERSON AND JAMES MADISON, 1776–1826, 495, 501 (James Morton Smith ed., 1995).

⁵⁷ *Id.*

⁵⁸ THOMAS E. BUCKLEY, CHURCH AND STATE IN REVOLUTIONARY VIRGINIA, 1776–1787, 176–77 (1977).

⁵⁹ *Id.* at 179.

⁶⁰ *Id.* at 179–80.

⁶¹ *Id.* at 180.

in order of time and in degree of obligation, to the claims of Civil Society.”⁶² Madison further argued that the idea “that the Civil Magistrate is a competent Judge of Religious truth” is “an arrogant pretension falsified by the contradictory opinions of Rulers in all ages.”⁶³ The idea that religion should be promoted because it conduces to good citizenship—an idea that we often hear even today—Madison denounced as an attempt to “employ Religion as an engine of Civil policy,” which he thought “an unhallowed perversion of the means of salvation.”⁶⁴ Moreover,

experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation. During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy, ignorance and servility in the laity, in both, superstition, bigotry and persecution.⁶⁵

Madison was reticent about his own religious beliefs, which were probably some variant of Deism,⁶⁶ but the *Memorial and Remonstrance* is nonetheless the most useful source of anti-establishment thinking. It was a public document, not a private statement of Madison’s views. It presented a synthesis of the anti-establishment views that prevailed in his time, combining religious arguments designed to appeal to Evangelical Christians and secular arguments designed to appeal to Enlightenment Lockians.⁶⁷ It is unlikely that these groups agreed on anything more than the propositions stated by Madison himself. But they did agree about *them*.

Similar themes appear in the modern Supreme Court. Again, I can only offer one example here. In a decision invalidating a state’s

⁶² JAMES MADISON, MEMORIAL AND REMONSTRANCE AGAINST RELIGIOUS ASSESSMENTS (1785), reprinted in THE MIND OF THE FOUNDER: SOURCES OF THE POLITICAL THOUGHT OF JAMES MADISON 6, 7 (Martin Meyers ed., Brandeis Univ. Press rev. ed. 1981).

⁶³ *Id.* at 9.

⁶⁴ *Id.*

⁶⁵ *Id.* at 9–10.

⁶⁶ See DAVID L. HOLMES, THE FAITHS OF THE FOUNDING FATHERS 91–98 (2006). For some evidence that Madison was, at least early in his life, sincere in holding the religious views stated in the *Memorial*, see JOHN T. NOONAN, JR., THE LUSTRE OF OUR COUNTRY: THE AMERICAN EXPERIENCE OF RELIGIOUS FREEDOM 64–91 (1998). The specific claims about corruption in the *Memorial* are also made in Madison’s private correspondence, both early and late in his life. See THE MIND OF THE FOUNDER: SOURCES OF THE POLITICAL THOUGHT OF JAMES MADISON, *supra* note 62, at 2–5, 341 (Martin Meyers ed., rev. ed. 1981).

⁶⁷ See BUCKLEY, *supra* note 58, at 131–135, 180. On the variety of religious positions to which Madison was appealing, see JOHN WITTE, JR., RELIGION AND THE AMERICAN CONSTITUTIONAL EXPERIMENT 21–35 (2d ed. 2005).

imposition of a nonsectarian, state-composed prayer to be read in public schools, the Court explained:

[The] first and most immediate purpose [of the Establishment Clause] rested on the belief that a union of government and religion tends to destroy government and to degrade religion. The history of governmentally established religion, both in England and in this country, showed that whenever government had allied itself with one particular form of religion, the inevitable result had been that it had incurred the hatred, disrespect and even contempt of those who held contrary beliefs. That same history showed that many people had lost their respect for any religion that had relied upon the support of government to spread its faith. The Establishment Clause thus stands as an expression of principle on the part of the Founders of our Constitution that religion is too personal, too sacred, too holy, to permit its ‘unhallowed perversion’ by a civil magistrate.⁶⁸

The Court makes two arguments here. The first is a contingent sociological claim, that establishment tends to produce negative attitudes toward the “particular form” of religion that is established. The second runs much deeper. In the final sentence, the Court claims that there is something fundamentally impious about establishment. It breaches the “sacred” and the “holy.” It is remarkable to find such prophetic language in the U.S. Reports, but it has appeared there repeatedly,⁶⁹ especially in

⁶⁸ Engel v. Vitale, 370 U.S. 421, 431–32 (1962) (quoting James Madison, MEMORIAL AND REMONSTRANCE AGAINST RELIGIOUS ASSESSMENTS, *supra* note 62, at 6, § 5).

⁶⁹ See, e.g., Lee v. Weisman, 505 U.S. 577, 608 (1992) (Blackmun, J., concurring) (“The favored religion may be compromised as political figures reshape the religion’s beliefs for their own purposes; it may be reformed as government largesse brings government regulation.”); Cty. of Allegheny v. ACLU, 492 U.S. 573, 645 (1989) (Brennan, J., concurring in part and dissenting in part) (“The government-sponsored display of the menorah alongside a Christmas tree also works a distortion of the Jewish religious calendar [T]he city’s erection alongside the Christmas tree of the symbol of a relatively minor Jewish religious holiday . . . has the effect of promoting a Christianized version of Judaism.”); Bowen v. Kendrick, 487 U.S. 589, 640 n.10 (1988) (Blackmun, J., dissenting) (“The First Amendment protects not only the State from being captured by the Church, but also protects the Church from being corrupted by the State and adopted for its purposes.”); Aguilar v. Felton, 473 U.S. 402, 409–10 (1985) (Brennan, J.) (“When the state becomes enmeshed with a given denomination in matters of religious significance . . . the freedom of even the adherents of the denomination is limited by the governmental intrusion into sacred matters.”); Sch. Dist. v. Ball, 473 U.S. 373, 385 (1985) (Brennan, J.) (Favored religions may be “taint[ed] . . . with a corrosive secularism.”); Roemer v. Bd. of Pub. Works, 426 U.S. 736, 775 (1976) (Stevens, J., dissenting) (noting “the pernicious tendency of a state subsidy to tempt religious schools to compromise their religious mission without wholly abandoning it”); Sch. Dist. v. Schempp, 374 U.S. 203, 259 (1963) (Brennan, J., concurring) (“It is not only the nonbeliever who fears the injection of sectarian doctrines and controversies into the civil polity, but in as high

opinions written by Justice Hugo Black, the principal architect of modern Establishment Clause theory.⁷⁰ Similar themes can be found in opinions by Justice David Souter⁷¹ and Justice John Paul Stevens.⁷²

The corruption argument remains relevant today. Consider the modern Christmas display, paid for by tax dollars secured through the influence of the local merchants' association, reminding us that Christ suffered and died on the cross so that we could enjoy great holiday shopping. Could liberals and conservatives unite in finding this revolting?

III. ATHEIST IDEALS

American politics is divided along religious lines. In the 2012 presidential election, 59% of those attending church weekly or more voted for Romney, compared with 34% of those who never attend services.⁷³ That pattern has persisted for years. In 2004, the effect was slightly more pronounced: those attending church more than once a week voted for Bush by a margin of 65% to 35%, while those who never attend church were almost the inverse: 36% to 62%.⁷⁴ Among Orthodox Jews, 69% voted for Bush, while Conservative Jews gave him 23% and Reform Jews 15%. Bush won 40% of the votes of Jews attending synagogue on a weekly basis, compared to 18% of those who rarely or never attend.⁷⁵

The proportion of Americans who report having no religious preference—statisticians call them the “nones”—nearly doubled in the 1990s, from 8.2% in 1990 (which had been its level for almost 20 years) to 14.1% in 2001, to 15.0% in 2008.⁷⁶ Perhaps even more revealingly, 27% of Americans do not expect a religious funeral.⁷⁷ However, 68% of

degree it is the devout believer who fears the secularization of a creed which becomes too deeply involved with and dependent upon the government.”); *Everson v. Bd. of Educ.*, 330 U.S. 1, 59 (1947) (Rutledge, J., dissenting) (“[W]e have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion.”).

⁷⁰ See Koppelman, *supra* note 52, at 1888–93.

⁷¹ *Id.* at 1847–48, 1932–34.

⁷² See Andrew Koppelman, *Justice Stevens, Religious Enthusiast*, 106 Nw. U. L. REV. 567 (2012).

⁷³ *How the Faithful Voted: 2012 Preliminary Analysis*, PEW RESEARCH CTR. (Nov. 7, 2012), <http://www.pewforum.org/2012/11/07/how-the-faithful-voted-2012-preliminary-exit-poll-analysis/>.

⁷⁴ Jay Lefkowitz, *The Election and the Jewish Vote*, COMMENTARY (Feb. 1, 2005), <https://www.commentarymagazine.com/articles/the-election-and-the-jewish-vote/>.

⁷⁵ *Id.*

⁷⁶ BARRY A. KOSMIN & ARIELA KEYSAR, AMERICAN RELIGIOUS IDENTIFICATION SURVEY (ARIS) 2008 SUMMARY REPORT 5 tbl.3 (2009), <https://commons.trincoll.edu/aris/publications/2008-2/aris-2008-summary-report/>.

⁷⁷ *Id.* at 10 tbl.6.

the “nones” believe in God or a universal spirit; 21% pray daily, and 20% more monthly; 18% describe themselves as “religious,” and 37% as “spiritual but not religious.”⁷⁸ As of 2000, more than half believe in life after death, about a third believe in heaven and hell, and 93% sometimes pray.⁷⁹ One study concludes that the newer “nones” are mostly “unchurched believers” who declare no religious preference in an effort to express their distance from the Religious Right.⁸⁰ They are disproportionately represented among the young, including about 25% of those who came of age in the 1990s and 2000s.⁸¹

Overwhelmingly, they vote for Democrats.⁸² The result is growing polarization: the sum of evangelicals plus the unaffiliated was 30% of the American population in 1973, but rose to 41% by 2008.⁸³

Robert Putnam and David Campbell explain how this happened. The liberalization of sexual mores in the 1960s mobilized religious conservatives against the change, and they soon aligned with the Republican Party. From the 1980s on, “conservative politics became the most visible aspect of religion in America.”⁸⁴ This produced a counterbacklash, especially among those who came of age in the 1990s. Those with gay-friendly views “are more than twice as likely to be religious nones as their statistically similar peers who are conservative on homosexuality.”⁸⁵

Here I will focus on the bitterest division along these lines: the mutual contempt that the intensely religious and the atheists have for one another. Each regards the other’s beliefs as the inevitable cause of vicious and oppressive behavior, political and otherwise. Each massively misunderstands the other.

⁷⁸ PEW RESEARCH CTR., “NONES” ON THE RISE: ONE-IN-FIVE ADULTS HAVE NO RELIGIOUS AFFILIATION 22 (2012), <http://www.pewforum.org/files/2012/10/NonesOnTheRise-full.pdf>.

⁷⁹ Michael Hout & Claude S. Fischer, *Why More Americans Have No Religious Preference: Politics and Generations*, 67 AM. SOC. REV. 165, 175 & tbl.2, 176 tbl.3 (2002).

⁸⁰ *Id.* at 178; see also ROBERT D. PUTNAM & DAVID E. CAMPBELL, AMERICAN GRACE 120–32 (2010).

⁸¹ PUTNAM & CAMPBELL, *supra* note 80, at 123 & fig.4.11.

⁸² The pattern seems likely to persist in the next presidential election. See PEW RESEARCH CTR., EVANGELICALS RALLY TO TRUMP, RELIGIOUS ‘NONES’ BACK CLINTON 7 (July 13, 2016), <http://www.pewforum.org/2016/07/13/evangelicals-rally-to-trump-religious-nones-back-clinton/>.

⁸³ PUTNAM & CAMPBELL, *supra* note 80, at 106.

⁸⁴ *Id.* at 81.

⁸⁵ *Id.* at 129, 393. In keeping with this pattern, almost half (48%) of LGBT Americans say they have no religious affiliation. PEW RESEARCH CTR., A SURVEY OF LGBT AMERICANS: ATTITUDES, EXPERIENCES AND VALUES IN CHANGING TIMES 90 (2013), http://www.pewsocialtrends.org/files/2013/06/SDT_LGBT-Americans_06-2013.pdf.

Start with the way in which the religious regard those who frankly disbelieve in God. Atheists are perhaps the most disliked and distrusted group in contemporary America. Half of the public thinks that an atheist can't "be moral and have good values," and wouldn't vote for a political candidate who didn't believe in God even if he had been nominated by their own party.⁸⁶ That is about the number that was willing to vote for a Jew in 1936.⁸⁷ Family court judges have deprived parents of custody over their children because of the parents' atheism.⁸⁸ Unsurprisingly, religious conservatism predicts hostility to atheists: those who attend church regularly and those who are conservative Protestants are less likely to approve of intermarriage with atheists and more likely to say that atheists do not share their vision of American society.⁸⁹

A survey of Americans' attitudes toward atheists found that two stereotypes predominate. Some associate atheism with social threats from the bottom of society's status hierarchy: drug use, prostitution, and similar deviance. Others see atheists as a threat from above: rich cultural elitists who make a lifestyle out of selfish consumption.⁹⁰ Both stereotypes have the same social function, and bear as much resemblance to reality, as the *Protocols of the Elders of Zion*.⁹¹

Self-professed atheists in fact tend to be intensely idealistic and driven by urgent humanitarian concern. "Real sociopaths tend to have little interest, positive or negative, in religious questions."⁹² But atheists tend to be quite passionate. "There are two kinds of atheists," Freeman Dyson observes: "ordinary atheists who do not believe in God and passionate atheists who consider God to be their personal enemy."⁹³ The latter are driven by moral indignation. They think that religion produces humanitarian catastrophes. Steven Weinberg is an example:

I have to admit that, although I really don't believe in a cosmic designer, the reason that I am taking the trouble to argue about it is that I think that on balance the moral influence of religion has

⁸⁶ PEW RESEARCH CTR., WORLDWIDE, MANY SEE BELIEF IN GOD AS ESSENTIAL TO MORALITY 20 (2014), <http://www.pewglobal.org/files/2014/05/Pew-Research-Center-Global-Attitudes-Project-Belief-in-God-Report-REVISED-MAY-27-2014.pdf>; Penny Edgell, Joseph Gerteis & Douglas Hartmann, *Atheists as "Other": Moral Boundaries and Cultural Membership in American Society*, 71 AM. SOC. REV. 211, 215 & fig.1 (2006).

⁸⁷ CLAUDE S. FISCHER & MICHAEL HOUT, CENTURY OF DIFFERENCE: HOW AMERICA CHANGED IN THE LAST ONE HUNDRED YEARS 222 fig.9.3 (2006).

⁸⁸ See Eugene Volokh, *Parent-Child Speech and Child Custody Speech Restrictions*, 81 N.Y.U. L. REV. 631, 633-35 (2006).

⁸⁹ Edgell et al., *supra* note 86, at 218 & tbl.1.

⁹⁰ *Id.* at 225-27.

⁹¹ See WILL EISNER, THE PLOT: THE SECRET STORY OF THE PROTOCOLS OF THE ELDERS OF ZION 1-3 (2005).

⁹² KOPPELMAN, RELIGIOUS NEUTRALITY, *supra* note 7, at 174.

⁹³ FREEMAN DYSON, THE SCIENTIST AS REBEL 341 (2006).

been awful . . . With or without religion, good people can behave well and bad people can do evil; but for good people to do evil—that takes religion.⁹⁴

The recent vogue of militant atheism, in a number of bestselling books,⁹⁵ is driven by a similar passion.

The animus against religion has a political valence. Whatever Weinberg may have in mind, the abandonment of religion in America has been largely animated by its association in the public mind with political conservatism and opposition to gay rights, abortion, and feminism.⁹⁶

Some historical excavation shows that the warring sides, once more, have more common ground than they realize.

At least in the United States, the alignment of religiosity with conservatism only began in the late 1970s.⁹⁷ Before then, religion was a politically cross-cutting category. The Social Gospel movement of the late 19th century fought alcoholism, sweatshops, decaying tenements, business monopolies, and foreign wars.⁹⁸ Organized Catholics helped push the New Deal to the left.⁹⁹ In the 1960s, religious groups swung left on the most pressing issues—the Civil Rights Movement and the Vietnam War.¹⁰⁰ The most important historical effect of politically mobilized religion in American public life, once more, is the abolition of slavery.¹⁰¹ Militant atheism mistakes an historical blip for a permanent feature of the political world.

The religious opponents of atheism are similarly deluded about their opponents. Modern atheism, which for many religious Americans symbolizes the selfish rejection of any basis for moral solidarity (a symbolic status once occupied by Jews and Catholics),¹⁰² in fact has a common ancestry with theism, and many of the same commitments.

Here I'm going to rely heavily on the historical anthropology of Charles Taylor's book, *A Secular Age*. Taylor shows that modern Western secularism has its roots in Christian theology. Secularism and Christianity

⁹⁴ Steven Weinberg, *A Designer Universe?*, N.Y. REV. BOOKS (Oct. 21, 1999), <http://www.nybooks.com/articles/1999/10/21/a-designer-universe>.

⁹⁵ See, e.g., RICHARD DAWKINS, *THE GOD DELUSION* (2006); DANIEL C. DENNETT, *BREAKING THE SPELL: RELIGION AS A NATURAL PHENOMENON* (2006); SAM HARRIS, *THE END OF FAITH: RELIGION, TERROR, AND THE FUTURE OF REASON* (2004); CHRISTOPHER HITCHENS, *GOD IS NOT GREAT: HOW RELIGION POISONS EVERYTHING* (2007).

⁹⁶ KOPPELMAN, *RELIGIOUS NEUTRALITY*, *supra* note 7, at 175–76.

⁹⁷ See *id.* at 175.

⁹⁸ A. JAMES REICHLEY, *RELIGION IN AMERICAN PUBLIC LIFE* 208, 215–17 (1985).

⁹⁹ See *id.* at 222.

¹⁰⁰ See ROBERT WUTHNOW, *THE RESTRUCTURING OF AMERICAN RELIGION* 223–24 (1988).

¹⁰¹ REICHLEY, *supra* note 98, at 207.

¹⁰² *Id.* at 230.

reveal a common ancestry in their shared commitment to human rights (a term I'll use here as shorthand, not just for the right to be free from torture and indefinite detention without trial, but more generally for the claim to decent treatment for all human beings).¹⁰³ That commitment does not follow from atheism. The turn toward concern with the worldly flourishing of human beings had its roots in medieval movements of Church reform. Discontent with the division between the clergy and the laity, which had always been in tension with Christianity's universalizing aspirations, led to a sacralization of everyday life, which became a means of realizing God's benevolent intentions for mankind.¹⁰⁴

This focus on the world, which coincided with growing technological control, eventually made it possible for God to drop out of the picture altogether, or even appear as an enemy of human fulfillment. Moreover, the problem of theodicy becomes more acute in a world in which the purposes of the world are understood to center around human flourishing: "The idea of blaming God gets a clearer sense and becomes much more salient in the modern era where people begin to think they know just what God was purposing in creating the world, and can check the results against the intention."¹⁰⁵ But the militant opposition to religion itself rests on a demand for universal justice, a demand that in no way follows from atheism as such.

What traditional religion and secularism have in common is what Taylor calls "strong evaluation"—discriminations of better and worse that are independent of our desires and offer standards by which those desires are to be judged.¹⁰⁶ For many, Taylor observes, strong evaluation is inseparable from religion: "their highest sense of the good has been developed in a profoundly religious context," and "is inconceivable without God."¹⁰⁷ Their understanding that the world makes sense, that they live significant, morally intelligible lives in a significant, morally intelligible world, is closely tied to their religious beliefs and practices. That is not true of the secularists. But in the secular worldview, strong

¹⁰³ I acknowledge that this commonly used shorthand is the product of a very recent historical moment and bespeaks a truncated and chastened political aspiration. That aspiration is nonetheless utopian, and its power across religious lines is revealing. See SAMUEL MOYN, *THE LAST UTOPIA: HUMAN RIGHTS IN HISTORY* (2010).

¹⁰⁴ See CHARLES TAYLOR, *A SECULAR AGE* 70–71 (2007).

¹⁰⁵ *Id.* at 388. For a similar analysis, with American illustrations, see JAMES TURNER, *WITHOUT GOD, WITHOUT CREED: THE ORIGINS OF UNBELIEF IN AMERICA 204–07* (1985). Turner's history parallels Taylor's to a remarkable extent while drawing on an almost completely different set of primary sources.

¹⁰⁶ CHARLES TAYLOR, *HUMAN AGENCY AND LANGUAGE* 67 (1985).

¹⁰⁷ TAYLOR, *supra* note 104, at 544. The overwhelming majority of Americans believe that right and wrong should be based on God's laws. PUTNAM & CAMPBELL, *supra* note 80, at 495–96.

evaluation persists, and its objects bear a suspicious resemblance to those of the religious.

Taylor's history refutes what he calls the "subtraction view" of the movement toward secularism, according to which the decline of religious belief is simply the result of the falling away of superstition and the growth of knowledge.¹⁰⁸ Rather, modern secularism is a religious worldview, with its own narrative of testing and redemption, and shares the vulnerabilities of such views. The news that secularists also live in glass houses has implications for ongoing stone-throwing operations. But it also shows commonality.

What contemporary atheists are committed to might be called Naked Strong Evaluation: the idea, unsupported by any particular metaphysical claims, that the commitment to decent treatment for all human beings is a nonoptional criterion for judging our own desires and actions. It is difficult for many theists to imagine how such an atheist humanism can be coherent. Yet the nakedness of this commitment does not necessarily weaken it, as a basis for either morality or social solidarity.

Here I can offer some pertinent introspection. I'm a specimen of what Taylor is trying to explain: a modern secularist with a deep commitment to human rights. Since it's my world view that he's anatomizing, I can offer some data as an anthropological informant.

I'm not prepared to claim, as Richard Rorty does, that there is no transcendent basis for my commitment, that it is a purely contingent historical formation.¹⁰⁹ Rorty is mighty sure of himself.¹¹⁰ I just don't know. So there is what appears to be a permanent gap in my belief system. If I were a religious person, I guess I'd be entitled to call it a Mystery. It doesn't trouble me, because every belief system has Mysteries of its own. My agnosticism is the functional equivalent of atheism in many ways; I don't rely at all on a belief in God as the basis for any of my commitments. I don't think I have to. Naked Strong Evaluation works for me. There are a great many people for whom it wouldn't work. But quite a few for whom it does.¹¹¹

The fragmentation of religions is often understood to conceal a deeper unity, as for example in the familiar American injunction to worship in the church of your choice.¹¹² The limits of tolerable diversity have shifted over time: Catholics were originally outside; by the mid-

¹⁰⁸ TAYLOR, *supra* note 104, at 571–72.

¹⁰⁹ RICHARD RORTY, *CONTINGENCY, IRONY, AND SOLIDARITY* 84–85 (1989).

¹¹⁰ Astoundingly sure, given that he understands that his view is itself merely a contingent cultural formation. See J. JUDD OWEN, *RELIGION AND THE DEMISE OF LIBERAL RATIONALISM* 56, 60–61, 65–66 (2001).

¹¹¹ The argument I make here is elaborated in Andrew Koppelman, *Naked Strong Evaluation*, *DISSENT*, Winter 2009, at 105.

¹¹² TAYLOR, *supra* note 104, at 453–54.

twentieth century, Jews and Catholics were included; the circle is widening again to include Muslims.¹¹³ Taylor's analysis of the origins of secularism implies that theists and atheists too have a deeper unity: in some sense, they simply worship the same God in different ways. But what unifies them is not theism. It is something more abstract.

Unlike freedom of speech and freedom of religion, I don't expect religious conservatives to embrace atheism. A better understanding of its historical basis should, however, induce them to stop demonizing it, and may even induce atheists to stop demonizing religion. As long as we agree on what it means to act well, why fight about metaphysics?

CONCLUSION

The standard liberal positions on free speech, religious neutrality, and atheism all reflect their religious origins. Because American secular liberalism and American religious conservatism have a common ancestor, it is possible for liberals to offer arguments that have more in common with the religious than the arguments that are now being made.

Liberalism isn't an abstraction. It is a tradition. Any attempted restatement, especially a parsimonious one of the kind that political theorists tend to like, risks omitting important aspects of that tradition.

A liberal theory that focuses on the culturally specific aspirations of liberalism, aspirations that do not compel the assent of any reasonable person, is an important complement to more abstract versions. One might describe what I'm pointing to as "comprehensive" or "perfectionist" liberalism, but the most prominent example, the philosophy of Joseph Raz, depends on an idea of autonomy that is as abstract as anything in Rawls.¹¹⁴ The ideals that I am describing here are much more specific than that.

If there is to be overlapping consensus, then in order to understand what holds the consensus together in our society, we need an inventory of the overlapping strands that make that possible, especially the ones that cut across familiar partisan lines of division. Liberalism will be more attractive if it admits that, so far from being neutral about the good, it aims directly at some of humanity's deepest aspirations.

¹¹³ *Id.* at 454.

¹¹⁴ JOSEPH RAZ, *THE MORALITY OF FREEDOM* 407–08 (1986).