



## Whose Religious Liberty? Which Intellectual Horizon?

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*In the face of the new and radically different type of public order that seems to be emerging on the contemporary scene, Catholics (and social conservatives, more generally) have sought to secure the legal and social space necessary for themselves and their institutions to live in accordance with their beliefs (and to profess those beliefs publicly) by appealing to America's historic commitment to religious freedom. The difficulty we confront is that the vision of man and society animating this order, a vision that emerges from Enlightenment Liberalism issues in an impoverished understanding of religious freedom that fails to secure this legal and social space.*

Confronted with the “new intolerance” which has emerged in recent decades,<sup>1</sup> practicing Catholics and other religious believers have tried to secure the legal and social space necessary for themselves and their institutions to live in accordance with their beliefs (and to profess those beliefs publicly) by appealing to America's historic commitment to religious freedom. The obvious question that suggests itself, however, is whether this strategy will succeed. That, in turn, will depend on two things—the endurance of our long-standing commitment to the ideal of religious liberty and how we understand this liberty.

The fact is that in America today, religious liberty—or at least, religious liberty as Americans have traditionally understood it—is under assault and its adversaries seem to have the momentum. This is truly an astonishing development. After all, even if we have not always been completely faithful to it in practice, the idea of religious liberty has long been central to America's self-understanding. And, this cultural collapse has happened so quickly: Only a quarter century ago, the Religious Freedom Restoration Act passed both houses of Congress virtually unanimously.

Before exploring the reasons for this sudden collapse, it is necessary to be clear on two preliminary points. To begin with, as Robert P. George has explained, religious liberty can be defended

on various grounds. Some argue for religious freedom on the basis of the controversial religious view that all religions are “equally” true or untrue; or the equally controversial view that religious truth is purely

a subjective matter; or the pragmatic political ground that religious freedom is a necessary means of maintaining social peace in the face of religious diversity; or the political-moral view that religious liberty is part of the right to personal autonomy; or the religious-political view ‘religion,’ if a value at all, is a value with which government lacks the jurisdiction or competence to deal. There are other arguments as well.<sup>2</sup>

Our understanding of religious liberty’s intellectual foundations, in turn, have profound implications for our understanding of its nature and scope. There are, in fact, different theories of religious liberty with very different practical implications deriving from different understandings of the nature of man, the human good, the proper structure of human social relations, the proper role of the state in the overall economy of human social life, the nature and epistemological status of religious truth, the proper organization of man’s spiritual life, etc. Religious liberty, in short, is by no means a univocal concept.

Secondly, religious liberty is of its very nature limited in its scope. Not every action or utterance done in the name of religion can be permitted. No one today, for example, argues that the right to religious liberty includes the right to engage in human sacrifice. What these limits are will stem from a society’s understanding of religious liberty and the background assumptions that inform it. The real issue we face, therefore, is not whether there should be limits to religious liberty, but what intellectual horizon should guide our thinking about these limits.

### **AMERICAN RELIGIOUS LIBERTY: TWO TRIBUTARIES**

How then can this cultural collapse be explained? The answer, I would suggest, is to be found in an ambiguity that has characterized the American idea of religious liberty from the earliest days of the republic. For, as Yuval Levin reminds us, the principles of American religious liberty “are themselves not perfectly coherent.”<sup>3</sup>

Leaving aside pragmatic considerations (the necessity of securing civil peace in an environment of far-reaching religious pluralism), at the risk of oversimplifying, one might say that the American idea of religious liberty had two intellectual tributaries. The first of these tributaries was the revolution in human self-understanding wrought by Christianity. To begin with, there was the Christian distinction between the sacred and the secular and its dyarchical understanding of society. In the Christian understanding, as Hugh of St. Victor wrote in the twelfth century,

there are two lives, one earthly, the other heavenly, one corporeal, the other spiritual. . . . Each has its own good. . . . Therefore, in each . . . life, powers were established. . . . The one power is therefore called

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secular, the other spiritual. . . . The earthly power has at its head the king. The spiritual power has as its head the supreme pontiff. All things that are earthly and made for the earthly life belong to the power of the king. All things that are spiritual and attributed to the spiritual life belong to the power of the supreme pontiff.<sup>4</sup>

In sharp contrast to the monistic understanding of the structure of social life that prevailed in classical antiquity in which the polis (or empire) was simultaneously state, society and church without distinction or differentiation, as John Courtney Murray points out, the Christian revolution issues in a radically different vision of society in which “the family of mankind . . . is to be organized in two societies, under two laws emanating from two authorities.”<sup>5</sup>

Under the impact of this revolution, the claims of the state were limited, relativized and secularized. The “polis” or “empire” become the “state,” and was forced to share the stage with a new social actor, the Church, an actor that claimed both a greater dignity than it and a God-given freedom vis-à-vis it. Now, in the formulation of *Gaudium et Spes*, “the political community and the Church” must be understood “as autonomous and independent of each other in their own fields.”<sup>6</sup> Indeed, deriving from the “divine mandate” conferred on the Church by Christ Himself—and pertaining to the Church both “in her character as a spiritual authority, established by the Christ the Lord” and “in her character as a society of men” seeking “to live in society in accordance with the precepts of the Christian faith”—“the freedom of the Church,” as *Dignitatis Humanae* affirms, is nothing less than “the fundamental principle” governing “the relations between the Church and governments and the whole civil order.”<sup>7</sup>

By stripping the state of its age-old religious aura, restricting its jurisdiction to temporal matters, and compelling it to respect the independence and autonomy of the church, Christianity helped lay the groundwork for the idea of religious liberty.

But Christianity changes more than our understanding of the ontological structure of social life: It changes our understanding of man and of the individual’s relationship to society. The Christian affirmation of the dignity and transcendent destiny of the human person broke, as Fustel de Coulanges pointed out in his classic study, the “absolute empire” of the city over the individual.<sup>8</sup> Individuals could no longer be viewed as mere instruments to be used for civic purposes. Indeed, by virtue of his trans-temporal destiny, the human person now transcends the body politic.

Furthermore, insofar as human beings were now understood as persons—beings who possess intelligence and free will and who bear responsibility—it followed that a rightly ordered society could not treat human

beings merely as passive elements in the ordering of social life, but must respect the subjectivity and thus the freedom of the human person, “the fact that,” in Francis Canavan’s words, “the person is a subject who acts, and this by his own free choice, rather than an object who is acted upon.”<sup>9</sup>

As Robert Louis Wilken has recently reminded us, this new understanding of the person has profound implications in the sphere of religion. Religion could no longer be seen as “simply an affair of ancient rituals and ceremonies; it has do with an inner disposition.” As Lactantius noted in the early fourth century, “the worship of God . . . requires full commitment and faith.” Thus, “it cannot be coerced. It is a matter to be dealt with by words not by blows. For it has to do with the will.”<sup>10</sup>

By stripping the state of its age-old religious aura, restricting its jurisdiction to temporal matters, compelling it to respect the independence and autonomy of the church and insisting on the dignity of the human person and the essential freedom of the act of faith, Christianity helped lay the groundwork for the idea of religious liberty.

Before moving to our second tributary, it’s essential to underscore three other aspects of this intellectual horizon. The first is its insistence on taking religion seriously. Man, in this view, is *homo religious*, and, as Peter Berger remarks, it would require “something close to a mutation of the species to extinguish” the “religious impulse for good.”<sup>11</sup> Likewise, it insists there is such a thing as religious truth, that this truth is of the utmost importance, and that the duties it imposes bind us unconditionally and take precedence over all other duties and commitments. (“We must obey God rather than men” (Acts 5:29).

The second is what might be called its theological character, its roots being in the Christian vision of reality. Its understanding of human dignity, for example, is rooted in its vision of man as a being created in the image of God, united to God through the Incarnation and called to eternal participation in the life of the persons of the Holy Trinity. Similarly, its distinction between the sacred and secular (and Church and state) is rooted in Christ’s injunction to render unto God what is God’s and unto Caesar what is Caesar’s and His establishment of the Church. As Charles Taylor notes, the concept of the “[s]ecular itself a Christian term, that is, a word that finds its original meaning . . . in a Christian context,” in the context of a vision of a divinely created, ordered, and governed universe.<sup>12</sup> For Christians, as Nomi Stolzenberg observes, the secular world is “a specialized area of God’s domain,” and both the spiritual and secular realms are ultimately part of single reality created and governed by God.<sup>13</sup>

The third is what might be called the social character of its understanding of religion. Even for Protestants with their thinner ecclesiology

in which, as Stephen D. Smith notes, “the position and functions” of “the church came to be transferred to the individual and his or her conscience” and in which the freedom of the Church consequently tended to morph into the freedom of the believer’s conscience,<sup>14</sup> the church nevertheless remains a central and critically important religious and social institution, and religion is understood to have an essential social and communal dimension. From this perspective, not only is religion an ineradicable feature of the human social landscape, but inasmuch as religion has a social character, it follows that religious freedom necessarily encompasses the right to the public expression of religious beliefs and to establish religiously-inspired institutions.

The second tributary is Enlightenment Liberalism. Enlightenment Liberalism in the sense I am employing the term here is more than just a political doctrine about the right ordering of human social life, but a “metaphysical system.” If the core premises constitutive of Enlightenment Liberalism—in particular, its rationalism and nominalism—as a distinctive intellectual tradition, do not entail a single position on the whole range of issues addressed by political theory, the number of positions these premises allow for is limited—they preclude certain options and push thought in certain directions.<sup>15</sup>

The intellectual horizon against which Enlightenment Liberalism’s thinking on religious liberty unfolded differed in fundamental respects from that against which Christian thinking on the subject unfolded. Not surprisingly, therefore, the result was theories of religious liberty that differed in important respects. From the outset, for example, the former theories were far more individualistic in their focus than the latter.

These differences have been amplified over time by the trajectory in which the implications of Enlightenment Liberalism’s core premises have pushed its thinking. For our present purposes, I will limit myself to mentioning three of these directions. To begin with, these premises push Enlightenment Liberalism toward a progressively more thoroughgoing, more radical individualism. Indeed, the history of Enlightenment liberal thought is largely the story of the triumph of will: the triumph of liberalism’s commitment to the autonomy of the individual over those elements in liberal thought that had originally restrained it.<sup>16</sup> This trajectory finds signal expression in the ascendancy of what might be called the liberalism of the sovereign self. From the perspective of this liberalism, as Michael Sandel writes, human beings are viewed as “unencumbered selves,” “free and independent” selves who are unbound by “ends we have not chosen—ends given by nature or God, for example, or by identities as members

of families, peoples, cultures, or traditions.” The self is thus “installed as sovereign, cast as the author of the only obligations that constrain.”<sup>17</sup>

A human being, in this view, is simply a sovereign will, an arbitrary center of volition, free to make of himself (or herself) and the world, whatever he (or she) chooses. Elevating choice to the status of the human good, this liberalism finds expression in a political morality that, in Taylor’s words, affords “absolutely central importance to the freedom to choose one’s own mode of life.”<sup>18</sup>

At the same time, its rationalist conception of reason pushes Enlightenment Liberalism toward a thoroughgoing naturalism. As Murray notes, this conception leads through “an ineluctable logical process” to a naturalism that “denies to man, his nature or its law all transcendental reference.”<sup>19</sup> In this view, if anything exists beyond the astrophysical universe, we are incapable of knowing it.

Simultaneously, its rationalism pushes Enlightenment Liberalism toward an ever deeper moral scepticism. Even though many of its early proponents were moral cognitivists, Enlightenment Liberalism’s nominalism drives it toward what Thomas A. Spragens, Jr., describes as value non-cognitivism and what Alasdair MacIntyre describes as moral emotivism.<sup>20</sup> They push it inexorably toward the conclusion that moral judgments express nothing more than individual preferences. In this view, as Canavan notes, “truth is simply what the individual thinks is true,” and the “good is only what the individual personally prefers.”<sup>21</sup>

In sharp contrast to the Christian understanding of religious liberty, theories of religious liberty emerging from the intellectual horizon of Enlightenment Liberalism tend to be informed by a deep suspicion of religion as such, seeing it as a source of superstition and oppression. Rejecting religious truth claims and thus relegating religious beliefs to what is sometimes called the sandbox of subjectivity, they tend to be particularly hostile to what Smith calls “strong religion”—namely, the type of religion that insists that “some people’s deeply held beliefs are true while others are false,” that “some people are saved and others are not,” and that “some ways of living are acceptable to God while others are abhorrent.”<sup>22</sup>

They also tend to display a profound distrust of religious institutions, and a blindness to the social and communal dimensions of religious belief. Such theories tend to view religion as an essentially individual, private and interior avocation—“a sort of essence . . . or ambient aura that may help to warm the hidden heart of solitary man,” in Murray’s formulation.<sup>23</sup> Under the auspices of what I am calling Enlightenment Liberalism, as Levin observes, religious liberty tends to be reduced to the right of individuals to believe “what they wish.”<sup>24</sup>

## **THE TRIUMPH OF ENLIGHTENMENT LIBERALISM AND THE TRUNCATION OF RELIGIOUS LIBERTY**

Against this backdrop, we can understand the contemporary crisis of American religious liberty. As George Marsden has recently reminded us, the American republic was launched by an alliance between “the secular heirs of the enlightenment and the religious heirs of frontier revivalism,”<sup>25</sup> But these were not the only parties to the alliance. Insofar as it was also shaped by the English heritage, it was shaped by a constitutional tradition whose roots lay deep in the Catholic Middle Ages.<sup>26</sup> What made this alliance possible was the conservative form that the Enlightenment took in the English speaking world (as evidenced by the embrace by even deists in the founding era of both moral cognitivism and a secularized version of Christian morality). The American understanding of religious liberty, in turn, took shape against the background of this alliance and was rooted in an amalgam of Christian and Enlightenment principles. Hence, the ambiguity to which I referred earlier.

In the course of American history, however, two things have happened. The first is the far-reaching secularization of American culture. As Marsden notes, even during the religious revival of the 1950s, American culture was “strikingly secular,” “the underlying beliefs of most Americans, even though they might be expressed in Christian terms,” had become “essentially secular,” and the “privatization [of religion] was already far advanced.”<sup>27</sup>

Today, we have witnessed the cultural collapse of American Christianity. While Christianity may be a force in the lives of many Americans, it no longer decisively moulds our public culture. Thus, culturally speaking, we live in a largely post-Christian society. As Wilken wrote in 2004, “if one uses any measure other than individual adherence (what people say if asked) or even church attendance, it is undeniable that the influence of Christianity on the life and mores of our society is on the wane.” Indeed, in our lifetime, we have witnessed nothing less than “the collapse of Christian civilization,” and “if at first the process of disintegration was slow” it has now “moved into overdrive.”<sup>28</sup>

As two sociologists of religion have recently pointed out, survey data establishes that, while “levels of religious involvement in the United States remain high by world standards,” religiosity has in fact “been declining in the United States for decades, albeit slowly and from high levels” and “religious commitment” has been “weakening from one generation to the next.” Indeed, these trends are now so pronounced that America can “no

longer be considered” a “decisive counter-example to the secularization thesis.”<sup>29</sup>

The second development consists in something discussed earlier, namely, the radicalization of the Enlightenment tradition. The inner dynamism of ideas constitutive of Enlightenment Liberalism as a distinct intellectual tradition have driven it progressively further away from the Judeo-Christian ethic and progressively toward an ethic of human autonomy, a thorough-going anthropocentrism.

What we have witnessed over the past half-century, in short, is not merely the triumph of the Enlightenment strain in American culture over the Christian strain, but the triumph of the Enlightenment strain in a thoroughly radical form, in the form of today’s ideology of the sovereign self.

Our thinking about religious liberty—or, at least, the thinking of our cultural elites about religious liberty—thus unfolds against the backdrop of the intellectual horizon of the radical Enlightenment. The dominant theories thus tend to reflect a religious scepticism, subjectivism, and indifference that make it hard to take religion and the religious commitments of believers seriously. In Sandel’s apt formulation, they understand such commitments as matters of choice rather than of conscience.<sup>30</sup> Religion is reduced to the status of a mere lifestyle option, a mere hobby analogous to the fondness for tennis or stamp collecting.

At the same time, they tend to conceptualize religion and the right to religious liberty in a highly individualistic manner—one can’t help but think here of William James’ definition of religion as “the feelings, acts and experiences of individual men in their solitude, so far as they apprehend themselves to stand in relation to whatever they may consider the divine”<sup>31</sup>—that give short-shrift to the social and communal dimensions of religious belief and practice, and thus to religious liberty’s social and communal dimensions. Religion, in its view, is a purely private matter concerning the conscience and feelings of the individual alone.

Since religion is understood in this manner, it follows that religious liberty consists in freedom of worship and belief. It does not extend to institutions other than those which exist simply to worship or express religious belief. Levin notes how this “highly individualistic understanding of the right of conscience and of the protection of religious practice” informs the Obama Administration’s HHS mandate. Under these rules, an institution could qualify for a religious exemption only “if ‘the inculcation of religious values is the purpose of the organization,’ if it ‘primarily employs people who share the religious tenets of the organization,’ and if it ‘serves primarily persons who share the religious tenets of the organization.’” Under these rules, “only houses of worship, or institutions that

otherwise serve the direct expression . . . of articles of faith” would qualify for an exemption. Religious liberty would not extend to religious charities, schools, hospitals, and adoption agencies much less “private institutions run by religious people in the service of their convictions.”<sup>32</sup>

Not surprisingly, given this understanding of religion, these theories culminate in the demand for what is sometimes called “the privatization of religion,” in the prohibition of governmental policies that aid or endorse religion, and in the systematic exclusion of religion (and religiously informed moral belief) from public life.<sup>33</sup> They culminate, in other words, in the establishment of what Richard John Neuhaus memorably termed “the naked public square”—the establishment of a public square hermetically sealed to “particularist religious and moral belief.”<sup>34</sup>

Since religion, in this view, is a wholly private matter, it has no place in the affairs of the city. While some individuals may feel an emotional or psychological need for the comfort and certainty provided by religious faith and should be free to embrace whatever religion they choose, religious beliefs must be checked at the door of the public square, confined to what Justice Rutledge once called “the kingdom of the individual man and his God”<sup>35</sup> or, at most, to the hushed confines of the sacristy. Public religion—religion that, in Jose Casanova’s words, “has, assumes, or tries to assume a public character, function, or role”<sup>36</sup>—is incompatible with the nature of authentic religion, the demands of justice, and the personal autonomy of others.

While theories of religious liberty informed by Enlightenment Liberalism may speak the language of diversity, toleration, inclusion, equal concern and respect, etc., and hold the very idea of an orthodoxy to be anathema, as Robert P. Hunt points out, these theories ultimately represent “not an alternative to orthodoxy but an alternative orthodoxy.”<sup>37</sup> In a public order informed by these theories, namely, the ideology of the sovereign self, it occupies a privileged—a quasi-established—position: It alone orders the community’s common life; it alone directs the making of law and public policy; and it alone supplies both the idiom and conceptual framework informing the community’s public argument.

As Smith notes, furthermore, insisting that people are “harmed not just by discriminatory *actions*, or even by *words*, but by *beliefs*,” this ideology “is not content to regulate outward conduct but instead seeks to penetrate into hearts and minds.”<sup>38</sup> Thus, what is demanded here is not an ethos of live and let live, but an ethic of affirmation in which the choices, values, and life-styles of individuals are affirmed and celebrated.

While those who reject the ethos of the sovereign self may be free to hold their views and discuss them in the privacy of their homes, such

views, much less actions predicated on these views, are not welcome in the public square, and through a mix of legal and social sanctions systematically must be excluded from public life. To be admitted to the public square, religions must embrace the intellectual horizon of the sovereign self and undergo the reformation it prescribes.

As Ryan Barilleaux has noted, this new public order is one in which Catholics are going to “have difficulty finding a comfortable place.”<sup>39</sup> Whether it acknowledges it or not, this order is, in fact, a confessional state, and one profoundly hostile to Catholicism.<sup>40</sup> Not only is it rooted in a vision of man, society, the world, etc. incompatible with Catholicism, its impoverished understanding of religious liberty can secure neither the freedom of the Church nor the freedom of believers to live in accordance with the faith.

## CONCLUSION

The conclusion toward which this analysis points is simple: In the long haul, it is unlikely that our current strategy of appealing to religious liberty will succeed. As Lincoln famously remarked, in a system like ours, public opinion “is everything”; and, as *The Federalist* points out, the efficacy of mere “parchment barriers” is limited.

While Americans may celebrate the idea of religious freedom, the really decisive question is how religious liberty is to be understood and what it is thought to encompass. The simple fact is that religious liberty is not self-defining, and of its very nature is limited in its scope; it cannot extend to everything that might be done in the name of religion. How it is understood and what these limits will consist in, in turn, will depend upon the background assumptions about the constitution of being, human nature, the nature of religion and the epistemological status of religious truth, the character of the human good, the proper organization of man’s spiritual life, the role of the state, etc. that inform our thinking.<sup>41</sup> To paraphrase MacIntyre, the politically decisive questions confronting us are “whose religious freedom?” and “which intellectual horizon?”<sup>42</sup>

This new ethos that is in the process of colonizing our public life propels us toward the desiccated vision of religious liberty outlined earlier—an understanding that tends to reduce religious freedom to a mere freedom of individual belief and to exclude from its scope institutions that exist to do more than worship or to express shared beliefs; which is deeply suspicious of religious institutions, and hostile to what we have called strong religion; which fails to take religion and its place in the overall scheme of human life seriously; and which seeks to exclude religious beliefs and institutions from public life. Such a desiccated understanding of religious

freedom not only differs in important respects from the understanding that has historically informed the American polity, but is incapable of safeguarding either the freedom of the Church or the freedom of Catholics (and other believers) to live in accordance with their faith. Thus, if this ethos comes to be embraced by the overwhelming majority of Americans, appeals to religious freedom will not suffice to stave off the new intolerance.

I would suggest, therefore, that defeating the new intolerance and securing Catholics the freedom we need to live out the faith will necessarily involve something more than appeals to freedom, toleration, diversity, etc. It will require laying bare the impoverished character of the vision of man, society, and the world that animates this new ethos, and, most importantly of all, rallying public opinion around a better and richer vision.

### Notes

1. Mary Eberstadt, *It's Dangerous to Believe: Religious Freedom and Its Enemies* (New York: Harper, 2016).

2. Robert P. George, *Making Men Moral: Civil Liberties and Public Morality* (Oxford: Clarendon Press, 1993), 219–20.

3. Yuval Levin, “The Perils of Religious Liberty,” *First Things* (February 2016): 31.

4. Hugh of St. Victor, “De Sacramentis Christianae Fidei,” in *The Crisis of Church and State 1050–1300*, ed. Brian Tierney (Toronto: University of Toronto Press, 1988), 94–95.

5. John Courtney Murray, “On the Structure of the Church-State Problem,” in *The Catholic Church in World Affairs*, ed. Waldemar Gurian and M. A. Fitzsimmons (Notre Dame, Ind.: University of Notre Dame Press 1954), 12.

6. *Gaudium et Spes*, in *Vatican II: Conciliar and Post-Conciliar Documents*, New Revised Edition, ed. Austin Flannery, O.P. (Northport, N.Y.: Costello Publishing Company, 1998), p. 984, section 76.

7. *Dignitatis Humanae*, in *Vatican II: The Conciliar and Post-Conciliar Documents* p. 809, section 13.

8. Fustel de Coulanges, *The Ancient City* (Garden City, N.Y.: Doubleday Anchor Books, n.d.), 394.

9. Francis Canavan, “The Image of Man in Catholic Thought,” in *Catholicism, Liberalism and Communitarianism*, ed. Kenneth L. Grasso, Gerard V. Bradley, and Robert P. Hunt (Lanham, Md.: Rowman & Littlefield, 1995), 19.

10. Robert Louis Wilken, *The Christian Roots of Religious Freedom* (Milwaukee, Wis.: Marquette University Press, 2014), 15.

11. Peter L. Berger, “The Desecularization of the World: A Global Overview,” in *The Desecularization of the World: Resurgent Religion and World Politics*, ed. Peter L. Berger (Washington, D.C.: Ethics and Public Policy Center, 1999), 13.

12. Charles Taylor, “Modes of Secularism,” in *Secularism and Its Critics* (New York: Oxford University Press, 2005), 32.

13. Nomi Stolzenberg, “The Profanity of the Sacred,” in *Law and the Sacred*, ed. Austin Sarat, Lawrence Douglas, and Martha Merrill Umphrey (Stanford, Calif.: Stanford University Press, 2007), 51.

14. Stephen D. Smith, *The Disenchantment of Secular Discourse* (Cambridge, Mass.: Harvard University Press, 2010), 123.

15. For the ways in which Enlightenment Liberalism’s metaphysical commitments have shaped its political theory, see Roberto Mangabeira Unger, *Knowledge and Politics* (New York: Free Press, 1975); and Francis Canavan, *The Pluralist Game: Pluralism, Liberalism and the Moral Conscience* (Lanham, Md.: Rowman & Littlefield, 1995), 115–23.

16. See Kenneth L. Grasso, “The Triumph of Will: Rights Mania, the Culture of Death, and the Crisis of Enlightenment Liberalism,” in *A Moral Enterprise: Essays in Honor of Francis Canavan*, ed. Kenneth L. Grasso and Robert P. Hunt (Wilmington, Del.: ISI Books, 2002), 221–43.

17. Michael J. Sandel, *Democracy’s Discontent: America in Search of a Public Philosophy* (Cambridge, Mass.: The Belknap Press of Harvard University Press, 1996), 12.

18. Charles Taylor, “Atomism,” in *Philosophy and the Human Sciences* (Cambridge: Cambridge University Press, 1985), 196.

19. John Courtney Murray, *We Hold These Truths: Catholic Reflections on the American Proposition* (Lanham, Md.: Rowman & Littlefield, 2005), 323.

20. See Thomas A. Spragens, Jr., *The Irony of Liberal Reason* (Chicago: University of Chicago Press, 1981); and Alasdair MacIntyre, *After Virtue*, 2nd ed. (Notre Dame: University of Notre Dame Press, 1984).

21. Canavan, *The Pluralist Game*, 133.

22. Stephen D. Smith, *The Rise and Decline of American Religious Freedom* (Cambridge, Mass.: Harvard University Press, 2014), 153.

23. Murray, *We Hold These Truths*, 21.

24. Levin, “The Perils of Religious Liberty,” 32.

25. George Marsden, *The Twilight of the American Enlightenment* (New York: Basic Books, 2014), 121.

26. On the premodern influences on the American founding, see Ellis Sandoz, *A Government of Laws: Political Theory, Religion and the American Founding* (Columbus: University of Missouri Press, 2001).

27. Marsden, *The Twilight of the American Enlightenment*, 106, 111–12.

28. Robert Louis Wilken, “The Church as Culture,” *First Things* (April 2004): 32, 31.

29. David Voas and Mark Chaves, “Is the United States a Counterexample to the Secularization Thesis,” *American Journal of Sociology* 121(5) (March 2017): 1548.

30. Michael J. Sandel, “Freedom of Conscience or Freedom of Choice?,” in *Articles of Faith, Articles of Peace: The Religious Liberty Clauses and the Ameri-*

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*can Public Philosophy*, ed. James Davison Hunter and Os Guinness (Washington, D.C.: The Brookings Institution, 1990).

31. William James, *The Varieties of Religious Experience* (Harmondsworth: Penguin, 1882), 31. One also thinks in this context of Whitehead's famous definition of religion as "what the individual does with his solitariness." Alfred North Whitehead, *Religion in the Making* (New York: Fordham University Press, 1996), 16.

32. Levin, "The Perils of Religious Liberty," 31, 32.

33. Gerard V. Bradley, "Dogmatomachy: A Privatization Theory of the Religion Cases," *St. Louis Law Journal* 30 (1986): 275–330.

34. Richard John Neuhaus, *The Naked Public Square: Religion and American Democracy* (Grand Rapids, Mich.: William B. Eerdmans Publishing Co., 1984), 89.

35. *Everson v. Board of Education*, 330 U.S. 1, 57–58 (1947).

36. Jose Casanova, "What Is Public Religion?," in *Religion Returns to the Public Square*, ed. Hugh Heclo and Wilfred McClay (Washington, D.C.: Woodrow Wilson Center Press, 2003), 32.

37. Robert P. Hunt, "Moral Orthodoxy and the Procedural Republic," in *John Courtney Murray and the American Civil Conversation*, ed. Robert P. Hunt and Kenneth L. Grasso (Grand Rapids, Mich.: William B. Eerdmans Publishing Co., 1992), 270.

38. Smith, *The Rise and Decline of American Religious Freedom*, 154–55.

39. Ryan Barilleaux, "Put Not Your Trust in Princes: Catholics in the American Administrative State," *Catholic Social Science Review* 22 (2017): 109–21, 119.

40. On this point, see J. Budziszewski, "The Strange Second Life of Confessional States," in *Reason, Revelation, and the Civic Order*, ed. Paul R. DeHart and Carson Holloway (DeKalb: Northern Illinois University Press, 2014), 79–98.

41. To suggest that there are competing theories of religious freedom is not to suggest that there is no such thing as a true account. It's simply to acknowledge that, from the point of view of the future of the Church in contemporary America, the politically decisive question is which understanding of religious liberty is going to be operative in our public life.

42. Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame, Ind.: University of Notre Dame Press, 1989).