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Reclaiming The First Amendment: How the Forces that Changed Our Interpretation of The First Amendment Changed the Character of Our Nation

Grace S. Hong

I. INTRODUCTION

In a relatively short period of time, the meaning of the First Amendment of the United States' Constitution has changed drastically to the detriment of the first two clauses—the foundational clauses—of this amendment.¹ To be fair, disagreement as to the proper application of the religion clauses can be traced back to the amendment's inception.² Nonetheless, that the modern interpretation of the First Amendment is enshrined mainly along the lines of the Speech Clause with a general absence of religion in the principal discourse of First Amendment values, suggests something entirely different from the issues that concerned our Founding Fathers.

Early American history more than indicates that its people understood religion as something beyond a matter of private faith and morality, but rather a matter of “collective responsibility and collective identity” as well.³ For example, education in the late 1700s and well into the 19th century had a strong religious purpose and character. While much educating took place in the home, churches or clergymen were almost always in charge of education provided outside the home.⁴ In states that provided a public education, the most dominant church of the state played the role of primary educator.⁵ And even after government sponsored education became the norm, education was still thought to be fundamentally religious. Horace Mann, the father of educational reform, firmly believed

¹See *infra* Part II.

²See “A Bill for Establishing Religious Freedom” (1779); as quoted in Thomas Jefferson’s letter to the Baptists of Danbury, Connecticut, January 1, 1802. *Writings*, 347 (1985).

³See generally Harold J. Berman, *Religious Freedom and the Challenge of the Modern State*, in ARTICLES OF FAITH, ARTICLES OF PEACE, 42 (James D. Hunter & Os Guinness eds., 1990).

⁴*Id.* at 45.

⁵*Id.*

in the religious role of education, and made explicit his belief that public education was the key to a Christian social consciousness and morality in the population as a whole.⁶

In a complete turn of events, we now live at a time when religion is constantly trivialized.⁷ To return to education as an example, today, religion is treated as the most inferior ground for objection from parents, teachers, and students alike. For instance, teachers are forbidden from bringing a Bible into their classroom and reading it where children can see—even though they may read other secular books when not directly supervising.⁸ Similarly, the importance—or even relevance—of religion has also been removed from general public discourse, as exemplified by the public outrage experienced when Hilary Rodham Clinton was seen wearing a cross necklace during Bill Clinton’s presidency,⁹ or in a judge’s command that a prosecutor arguing a case on Ash Wednesday remove the ashes from his forehead before presenting, lest the jury be improperly influenced.¹⁰

It may be argued that the diminishing role of religion is the mark of an evolving society, or at least the result of the positive influence of knowledge-driven, rational, decision-making—affirmative signs of progress and genuine diversity. But there is reason to be wary of these fast-paced changes, especially as American citizens, who ought to uphold genuine freedom and protect the First Amendment.

⁶ *Id.* at 45; see also Horace Mann, *Lectures on Education*, Lecture V, “An Historical View of Education; Showing its Dignity and its Degradation.” (1841).

⁷ See generally STEPHEN L. CARTER, *THE CULTURE OF DISBELIEF: HOW AMERICAN LAW AND POLITICS TRIVIALIZE RELIGIOUS DEVOTION* (1993)(explaining how preserving a special role for religious communities strengthens democracy over all).

⁸ *Roberts v. Madigan*, 921 F.2d 1047 (1990).

⁹ CARTER, *supra* note 7, at 6.

¹⁰ *Id.* at 12.

Today, contemporary First Amendment theory has come to see self-realization and self-actualization as the foremost goals of the amendment.¹¹ Yet many constitutional scholars agree that the First Amendment does not to tell people how to live their individual lives; rather, its aim was and is to delineate the boundaries of the government's power and its governing processes.¹² As constitutional scholar and social commentator Marci Hamilton points out,

“Instead of reading the Speech Clause in the context of other clauses, scholars have turned it into the context for all First Amendment values. Expression is at the core of the self, they reason, so it follows that First Amendment provides a plan for the self. One serious problem encountered by each of these theories is that there is no principled line to be drawn between any human activity and speech, as they define it.”¹³

Thus, while the First Amendment exists to preserve the right of citizens to rule themselves in the face of blatant government authority, many people continue to see the First Amendment as the vehicle by which self-actualization is *allowed* to take place. The difference is crucial, as the latter view is detrimental to religious liberty, whereas the former view properly interprets the Amendment as a limitation on the government's ability to interfere with “the efforts of individuals and communities to structure their own lives in the ways they see fit.”¹⁴ This understanding of the First Amendment is preferable because “the individual needs an uninhibited flow of information and opinion to aid him or her in making life-affecting decisions in governing his or her life....The concept of

¹¹ Marci A. Hamilton, *The First Amendment's Challenge Function and the Confusion in the Supreme Court's Contemporary Free Exercise Jurisprudence*, 29 Ga. L. Rev. 81, 81. (1994).

¹² See *infra* Part II. See also CARTER *supra* note 7; Michael J. Sandel, LIBERALISM AND THE LIMITS OF JUSTICE (1982); Charles Fried, *The New First Amendment Jurisprudence: A Threat to Liberty*, 59 U. Chi. L. Rev. 225, 234 (1992); David Schoenbrod, *Power Without Responsibility: How Congress Abuses the People Through Delegation*, 118 (1993); Bruce J. Winick, *On Autonomy: Legal and Psychological Perspectives*, 37 Vill. L. Rev. 1705, 1769 (1992).

¹³ Hamilton, *supra* note 11, at 81.

¹⁴ *Id.* at 93.

self-realization by its very nature does not permit external forces to determine what is a wise decision for the individual to make.”¹⁵ Thus, the importance of the religion clauses are not in their protection of religion as a form of self-expression, but rather in their protection of religion as independent source of power and authority in its relationship with the individual, society, and the government.

As American society continues to become more pluralistic and secular, and as the focus continues to be on rights as they pertain to certain specific individual liberties only, the sustained support of a self-oriented view of the First Amendment may all but wipe away the protection against democratic totalitarianism that has been otherwise built into the foundational doctrines of the constitutional amendment. This is not to suggest that there is anything wrong with pluralism *per se*, or that individual liberties are not important, but simply that the context in which we understand them is crucial to their ultimate survival, as it is crucial to the survival of religious liberty. As will be shown in the pages that follow, genuine religious liberty is key to thwarting extremist forces, including both fundamentalism (either secular or religious) and totalitarianism—both of which can result when the understanding of religious liberty in American society is only as a form of protected self-expression.¹⁶ As contemporary social critic and author Os Guinness points out, “In a century clouded by state repression and sectarian violence, no part of the American experiment stands out more clearly yet is less appreciated or copied as a key to modern troubles than the religious liberty clauses of the First Amendment.”¹⁷

¹⁵ MARTIN H. REDISH, FREEDOM OF EXPRESSION: A CRITICAL ANALYSIS, 47(1984).

¹⁶ *See generally*, Peter L. Berger, *Afterward*, in ARTICLES OF FAITH, ARTICLES OF PEACE, 114 (James D. Hunter & Os Guinness eds., 1990)(explaining how the polity that recognizes the centrality of religious liberty recognizes the limits and dangers of power as wielded by governments).

¹⁷ Os Guinness, *Introduction*, in ARTICLES OF FAITH, ARTICLES OF PEACE, 1, 1 (James D. Hunter & Os Guinness eds., 1990).

Yet, it is not hard to understand why some may view the religious liberty clauses, and none of the other clauses, as less important or less worthy of complete protection when one is faced with the possibility of theocratic government, were religion to run amuck. In our rational attempt to keep religion from controlling government, we have created a political and legal culture that presses the religiously faithful to put their beliefs to the side when entering the public arena.¹⁸ The fear of religious domination of our public institutions is also rooted in our American political ideology, which has always contained a sacred respect for freedom of conscience for all, including the growing minority of nonbelievers.¹⁹ Ironically, what our Founding Fathers specifically feared was harm to freedom of conscience for *believers* by improper governmental influence, not harm to the *government* by the power of religion.²⁰

Moreover, according to legal scholar Stephen L. Carter, the pervasiveness of religious rhetoric in political conversation has had the unfortunate effect of trivializing religious beliefs. Often, religion is invoked in mainstream culture solely to win political arguments, or as meaningless benedictions and incantations.²¹ Because such uses of religion lessens its actual import in the lives of millions of Americans, the view of religion has slowly changed from being something fundamental to our lives, to simply a strange choice for intelligent individuals to make.

This paper will proceed in the following manner. Part II will outline a partial history of the religion clauses in First Amendment since its inception, highlighting its changing interpretation over time. Part III will engage in an analysis of the modern forces

¹⁸ CARTER, *supra* note 7, at 8.

¹⁹ *Nones' on the Rise*, THE PEW FORUM ON RELIGION & PUBLIC LIFE, <http://www.pewforum.org/Unaffiliated/nones-on-the-rise.aspx> (Apr. 25, 2013).

²⁰ See *infra* Part II.

²¹ CARTER, *supra* note 7, at 45.

that continue to threaten religious liberty in this country. It will further highlight how the Supreme Court has played a significant role in abridging the religious liberty that the First Amendment had intended to protect. Part IV will consider the specific social consequence of a changed American philosophy that has followed from the changed view of the First Amendment at the individual level, namely, the growing narcissism epidemic and culture of depression. Finally, Part V concludes by suggesting where we stand today and how to best understand the role of religion in the United States in light of our departure from the original meaning of the religious liberty clauses of the First Amendment.

II. THE BACKGROUND AND HISTORY OF INTERPRETATION OF THE FIRST AMENDMENT

The United States got lucky. It was fortunate enough to be born at a time immediately following The Enlightenment, but after the fall of many great nations, empires, and governments, all of which the Founders could look to, consider, and learn from. Our founders deliberated, argued, and wrote copious amounts to each other before they ultimately settled on the new nation's form of government.²² Yet it is interesting to note that the Founders, despite having been able to agree upon their government, did not exalt a single person as their ultimate ruler. Perhaps this is not particularly surprising to those familiar with American history since fear of tyranny seemed to characterize the overall mood of Americans during most of the eighteenth century.²³ Early Americans feared all forms of tyranny, and their desire to be free from governmental and religious

²² William L. Miller, *Moral Projects of the American Founders*, in ARTICLES OF FAITH, ARTICLES OF PEACE, 17, 18 (James D. Hunter & Os Guinness eds., 1990).

²³ Hamilton, *supra* note 11, at 85.

tyranny was what had brought many of them to America. But the specific importance of religious liberty was integral to their notion of a free society.²⁴

It is a remarkable and perhaps even unique aspect of the founding of America that the Framers could remain so objective in their vision of a new nation. No one person's or community's particular desire would overbear the will of others in the name of freedom and liberty to the extent that opponents had to be sent to the guillotines or destroyed en masse like they would be in the French Revolution. The Founders undeniably had a moral aspect to their thinking and action, visible in their words ("self-evident," "sacred and undeniable," "conceived in liberty and dedicated to the proposition that all men are created equal," in talking about the Declaration of Independence, for example), though this is not to suggest that their views were bound solely by religion.²⁵ Nonetheless, the Founders did have a shared vision of a government that could withstand the tests of time and all forms of tyranny.²⁶ This is discernible specifically in our three-branch system of government, where no branch can reign supreme.²⁷ Thus, the focus of much of the Founding Fathers' writings and debates was on enumerating and limiting government power.²⁸

The Founders felt their Constitution was clear—the only powers available to the government would be those specifically enumerated: all others would belong to the people.²⁹ But early Americans were not so trusting of such an invisible power and

²⁴ Edwin S. Gaustad, *A RELIGIOUS HISTORY OF AMERICA*, 115 (New Rev. Ed. 1990).

²⁵ *See generally* Miller, *supra* note 21, at 35 (explaining how early 19th century triumph of Protestantism played a role in recreating the beginnings of our founding as specifically religious which distorts the narrative power of American foundation that is to be shared all Americans).

²⁶ Hamilton, *supra* note 11, at 85.

²⁷ THE FEDERALIST NO. 47 (James Madison).

²⁸ *Id.*

²⁹ LEONARD W. LEVY, *LEGACY OF SUPPRESSION: FREEDOM OF SPEECH AND PRESS IN EARLY AMERICAN HISTORY*, 225 (1960).

demanded that a bill of rights be included, enumerating the individual liberties that belonged to them.³⁰ The American people were convinced that without a written enumeration of their rights, those in power (in this case, the Founders) would never actually protect the liberties that they felt inherently belonged to them.³¹ Thus the First Amendment was born.³² As Marci Hamilton rightly emphasizes, the addition of the First Amendment was “not grounded in a celebration of either diversity or self-fulfillment, but rather in a belief that government has a capacity and a tendency to abuse its power to the detriment of the people.”³³

In realizing the need to safeguard the rights of the people to challenge governmental power over the individual, there was an extended debate as to the specific rights that would be protected by the text of the amendment. With the exception of New Hampshire, all the states requested that the Constitution use the phrase “free exercise of religion,” as had been used in the Virginia Bill of Rights.³⁴ However, both New Hampshire and James Madison felt that the term “rights of conscience” might be more appropriate.³⁵ This minority belief did not prevail. Even though the Senate first voted to protect “rights of conscience,” “free exercise of religion” was the limited right the early legislature decided to protect.³⁶

The difference in the use of the term “free exercise of religion” versus “rights of conscience” is critical. First, the term “free exercise” demands that conduct be protected

³⁰ GEOFFREY SEED, *JAMES WILSON*, 102 (1978).

³¹ *Id.* at 100.

³² Hamilton, *supra* note 11, at 89.

³³ Hamilton, *supra* note 11 at 90.

³⁴ See Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1488 (1990)(recounting the historical evidence documenting the incorporation of the free exercise language in the First Amendment).

³⁵ *Id.*

³⁶ *Id.*

as well as beliefs. According to historian and Constitutional Law scholar Michael W. McConnell, the dictionaries available at that time all reveal “exercise” to mean some form of action, and there is no reason to assume that the Founders were not purposeful in their word choice.³⁷ Secondly, McConnell further points out that “conscience” and “religion” are different in that

“‘conscience’ emphasizes individual judgment while religion also encompasses the corporate or institutional aspects of religious beliefs. The most widely accepted derivation of the word “religion” is from the Latin “religare”—to bind. Religion binds believers together; conscience refers to the inner faculty of judgment. Thus the “free exercise of religion” suggests that the government may not interfere with the activities of religious bodies, even when the interference has no direct relation to a claim of conscience.”³⁸

Thus, the aim of the religion clauses was to specifically protect religious beliefs above all other independent judgments made by individuals.³⁹ At the time of its inception, the outlook of every member of early American society was such that the singularity of religion was unquestionable. That there was a serious difference between “religious faith and other forms of human judgment”⁴⁰ was undisputed, for it was not until much later in the nineteenth century that the idea that individual opinions could have superiority over the “decisions of civil society” even surfaced.⁴¹

The Supreme Court would not get the opportunity to weigh in on their interpretation of the Religion Clauses until 1879, though they would not do so correctly.⁴²

³⁷ *Id.* at 1490.

³⁸ McConnell, *supra* note 23 at 1490.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 1496.

⁴² See *Reynolds v. United States*, 98 U.S. 145 (1879).

In that highly Pro-Protestant period,⁴³ the Supreme Court was not so protective of the “exercise” element of the free exercise clause or even the “disestablishment” aspect of the First Amendment that they would protect a Mormon man’s claimed right to exercise polygamy. This claim *would* have been protected if the Court recognized religious liberty as freedom from governmental interference, as was the intent of our Founding Fathers.⁴⁴ As Stephen L. Carter explains, it is wrong for the state to pressure minority religions to change their positions because “the integrity of religious freedom should be inviolate.”⁴⁵ This has no bearing on whether religious positions are necessarily correct in a secular moral analysis because the principal purpose of disestablishment was from the beginning an effort to protect religion from governmental interference as to what their theology mandates.⁴⁶ Carter continues:

“If the religions are to retain the autonomy that they are guaranteed both by the Constitution and by the liberal virtue of respect for individual conscience, then they must remain free to reject [an] argument on theological grounds—just as they must be free to reject capitalism or communism, racial equality or racial segregation, or any other state policy. A religion, in this picture is not simply a means for understanding one’s self, or even contemplating the nature of the universe, or existence, or of anything else. A religion is, at its heart, a way of denying the authority of the rest of the world; it is a way of saying to fellow human beings and to the state those fellow humans have erected, “No I will *not* accede to your will.”⁴⁷

⁴³ James D. Hunter, *Religious Freedom and the Challenge of Modern Pluralism*, in ARTICLES OF FAITH, ARTICLES OF PEACE, 54, (James D. Hunter & Os Guinness, eds., 1990). See also *Davis v. Beacon*, 133 U.S. 333, 341 (1890)(stating that “the term ‘religion’ has reference to one’s view of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will.”)

⁴⁴ CARTER, *supra* note 7, at 115-118; see also James Madison, *Memorial and Remonstrance against Religious Assessments, 1785* in WRITINGS OF JAMES MADISON, vol. 2 (Gaillard Hunt, ed., 1901).

⁴⁵ CARTER, *supra* note 7, at 39.

⁴⁶ *Id.*

⁴⁷ *Id.* at 41.

While the Supreme Court may have missed this point in their interpretation of Reynolds's right to polygamy as a Mormon, the Supreme Court did, however, properly clarify the definition of "religion" as limited to an actual belief in a God.⁴⁸

But just as they failed to interpret the First Amendment Disestablishment Clause properly, the Supreme Court improperly defined "free exercise." The Court instead, relied on Thomas Jefferson's writings to explain that what was protected were beliefs, not actions⁴⁹ despite other evidence proving that this was not the intent of the Founders, as recounted above. Why did they do this? As will be shown, how the Supreme Court defines what is protected under the religion clauses of the First Amendment has much more to do with the cultural and societal atmosphere and influences at the time than it does with any other particular factor, including the intent of the Founding Fathers.⁵⁰ To that end, the Supreme Court has not been consistent in their interpretations of the Disestablishment Clause, and more often than not, has followed the cultural tide, protecting the mainstream culture from religious involvement.⁵¹

As for the "free exercise of religion," until well into the twentieth century, the Supreme Court defined it strictly in terms of a belief in a theistic system. Starting in the 1940's with *United States v. Kauten*, the Second Circuit court of appeals became the first to expand the definition of religion to include a functional aspect—according to sociologist James Davison Hunter, a direct result of the new cultural challenges posed by World War II.⁵² In *Kauten*, the Court determined that conscientious objector Mathias

⁴⁸ See generally, *Reynolds* 98 U.S. 145.

⁴⁹ *Reynolds*, 98 U.S. at 163-165.

⁵⁰ See generally JAMES DAVISON HUNTER, *CULTURE WARS: THE STRUGGLE TO CONTROL THE FAMILY, ART, EDUCATION, LAW, AND POLITICS IN AMERICA* (1992)(explaining how American culture is defined by differing moral systems that create cultural conflicts that impact our laws and freedoms).

⁵¹ CARTER, *supra* note 7, at 120-123.

⁵² Hunter, *supra* note 42, at 60.

Kauten could rightly object to military service based on his “religious conscience” and not on any specific belief in a god. The Court explained that “conscientious objection may justly be regarded as a response of the individual to an inward mentor, call it conscience or God, that is for many persons at the present time the equivalent of what has always been thought a religious impulse.”⁵³

The functional definition of religion was affirmed soon thereafter by the Supreme Court in *United States v. Ballard* when the Court stated that courts could only consider the sincerity with which a person adhered to their belief system and not whether there was any truth to the beliefs, or whether it was based in a belief in god.⁵⁴ This position was affirmed yet again in *Torcaso v. Watkins* twenty years later, when the Supreme Court struck down a Maryland statute stating that “neither a State nor the Federal Government can constitutionally aid all religions as against all non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.”⁵⁵

The main import of this line of cases is that they expand the constitutional definition of religion in a way that does not reflect the intentions of our Founding Fathers, but rather the cultural backdrop of an expanding pluralism of belief systems in the United States. The Founders could not have anticipated this kind of cultural sea change, one that is perhaps easy for us to understand today given the diversity of the American population. But the expansion of the definition of religion has led to one particular result both

⁵³ *United States v. Kauten*, 133 F.2d 703, 708 (2d Cir. 1943).

⁵⁴ *See generally* *United States v. Ballard*, 322 U.S. 78 (1944).

⁵⁵ *Torcaso v. Watkins*, 367 U.S. 488, 495 (1961).

unanticipated by the Framers and questionable at best—the promotion of secular ideologies through the vehicle of the religion clauses of the First Amendment.⁵⁶

III. THE FORCE OF SECULARIZATION: PRIVATIZATION, NEUTRALITY, AND PLURALIZATION

Unlike today's postmodern society, the time of our founding was one of strong public philosophy and vision for a common good. As Os Guinness points out eloquently:

“One of America's defining characteristics is that from the beginning, it has been a nation by intention and by ideas.... One of America's greatest achievements and special needs has been to create, out of the mosaic of religious and cultural differences, a common vision for the common good—in the sense of a widely shared, almost universal agreement on what accords with the common ideals and interests of America and Americans.”⁵⁷

This notion of a common philosophy, or common good, is essential. It has played an important role in controlling the tendency to act arbitrarily, a tendency typical of centralized power.⁵⁸ It is undeniable, however, that the understanding of a common good itself at the time of the Founders, arose from their understanding of what exactly religion was in their lives.

As previously stated, for early Americans, religion was not just something that they reflected in their personal morals, their worship centers, or in the privacy of their homes. Rather, religion as they understood it, *was* the common good that shaped their shared responsibilities and identities as Americans.⁵⁹ When the Constitutional text of the First Amendment was adopted, the Founders did not imagine anything but an active role

⁵⁶ Hunter, *supra* note 42. *See also* McConnell, *supra* note 23; Hamilton *supra* note 11.

⁵⁷ Guinness, *supra* note 17, at 9.

⁵⁸ *Id.* *See also* Berger *supra* note 16; Gaustad *supra* note 23; Hunter, *supra* note 42.

⁵⁹ Berman, *supra* note 3 at 40.

for religion in social life, to which the government would take the proverbial “backseat.”⁶⁰ Americans collectively understood that free exercise of religion meant that religion would play a role in the raising of their families, education of their children, provision of health services and social welfare, and any other aspect of life that had any moral dimension, including criminal matters.⁶¹

Esteemed sociologist and political thinker Alexis de Tocqueville marveled at the balance between government, its people, and religion in the United States. Tocqueville believed that the religions were vital in the creation of the moral character necessary for a democracy to function effectively.⁶² Tocqueville emphasized this point by noting that in many other countries where religious institutions or other private associations had no role, the people relied on government intervention to solve problems and concurrently lost portions of their liberty.⁶³ In the U.S., however, early Americans were able to construct numerous private associations that replaced what were aristocracies in other nations, both of which stand as obstacles to governmental tyranny.

In the same vein, Stephen L. Carter points out that religion can serve two main functions in a democracy: as a source of independent moral authority, they can stop majoritarian systems from becoming tyrannies, and as intermediaries between the citizen and state, they can provide an alternative to governmental sources of knowledge and perspective.⁶⁴ Intermediate institutions like religion promote freedom and reduce the likelihood of democratic tyranny by dividing the loyalty of citizens and providing them

⁶⁰ James Madison, *Memorial and Remonstrance against Religious Assessments, 1785* in WRITINGS OF JAMES MADISON, vol. 2 (Gaillard Hunt, ed., 1901).

⁶¹ Berman, *supra*, note 3 at 42.

⁶² See generally Alexis de Tocqueville, *DEMOCRACY IN AMERICA* (George Lawrence trans., Anchor Books 12th Ed. 1969) (1848).

⁶³ *Id.* at 513, 515-16.

⁶⁴ CARTER, *supra* note 7 at 36.

with worldviews that are often radically different from the predilections of the state,⁶⁵

Today, however, many of these intermediate institutions have weakened, with different arms of the government filling the space previously occupied by private associations.

Carter cites theologian David Tracy, who has observed that,

“Despite their own sin and ignorance, the religions, at their best, always bear extraordinary powers of resistance. When not domesticated as sacred canopies for the status quo nor wasted by their own self-contradictory grasps at power, the religions live by resisting.”⁶⁶

It is unquestionably true today that there has been a role reversal in the way government and religion is thought to function in every-day life. Instead of having active religious communities controlling much of social life and the government simply being a more passive background authority, today, religion is almost absolutely privatized, and any public or social function of religion is provided for by the secular state.⁶⁷ Instead of having churches govern marriages, divorces, welfare, and education, as was the case in the beginning of American history, the state now controls those domains.

Privatization and bureaucratization has rendered religion or even talks of religion unpalatable outside of the individual level, especially in more secular areas. And to some degree, it is arguable that with privatization and removal of spirituality in the conversation of daily life, there has been a weakening of the ethos that has been so central to building the character of the nation. Legal historian Harold J. Berman states, “Privatization has, in many ways, inhibited the articulation of a public philosophy

⁶⁵ *Id.*

⁶⁶ DAVID TRACY, PLURALITY AND AMBIGUTY: HERMENEUTICS, RELIGION, HOPE, 83 (1987).

⁶⁷ Berman, *supra* note 3, at 44.

grounded in our fundamental beliefs concerning human nature, human destiny, and the sources and limits of human knowledge.”⁶⁸

It is worth emphasizing at this point that regardless of where the authority lies, be it in churches or states or elsewhere, the people, by way of agreement, are acceding to “give up” certain of their individual rights to a greater authority. For many today, the idea that religion should be involved in any way in dictating the ways of society is something to be feared and hated.⁶⁹ However, religion is not the cause of evil in societies; rather, it is the *union* of governmental authority and religious authority that has often led to destructive tendencies throughout history.⁷⁰ The genius of the First Amendment is its recognition of this tendency and its dictate that such authorities be balanced and respected properly.

As mentioned briefly early on, the fear of religion and religious people is in part a reaction to the possibility that the religious may dominate our politics and construct a theocracy within government. It also stems from knowledge of the historical evils committed in the name of religion throughout the world.⁷¹ These fears have been further fueled by right-wing domination of religious appeals in recent decades, though it bears reminding that the left has also used religion as a source of inspiration and justification to appeal to humanitarian and progressive causes earlier in American history.⁷² It is also worth noting that evil has been wrought in the name of many non-religious causes,

⁶⁸ Berman, *supra* note 3, at 52.

⁶⁹ Stephen L. Carter, *The Resurrection of Religious Freedom?*, 107 Harv. L. Rev. 118,131 (1993)(“There is nothing in our constitutional tradition to suggest that religion itself is an evil.”)

⁷⁰ CARTER, *supra* note 7, at 85.

⁷¹ *Id.*

⁷² *Id.* at 19.

including equality, liberty, socialism, and communism.⁷³ Moreover, when one understands the greater religious pluralism in modern America and realizes that faith communities may also change their positions over time, the fear of religious groups ought to be placated.⁷⁴

But another aspect of religion that causes discomfort is the sense that those who are religious will not surrender their principles through appeals of reason and rationality.⁷⁵ Harvard Law Professor and constitutional scholar Mark Tushnet explains that religion “poses a threat to the intellectual world of liberal tradition because it is a form of social life that mobilizes the deepest passions of believers in the course of creating institutions that stand between individuals and the state.”⁷⁶ But to devalue religion simply because it appeals to passion is to misunderstand its role in the lives of millions of Americans and furthermore, would transform it into something else, something perhaps more akin to reason—“honored when it reaches right result, despised when it reaches wrong ones.”⁷⁷

In light of this atmosphere of distrust towards religion and the religious, secularization seems all but an inevitable turn for Americans. It also seems to explain the expansion of the term “religion” to include the psychological manifestations of a belief system, and not just a belief in god. But these changes have led to a situation in which secularist notions are now favored by the state, whereas previously they had no place in

⁷³ Alister McGrath, *Challenges from Atheism*, in BEYOND Opinion, 32, (Ravi Zacharias & Danielle Durant, eds. 2007).

⁷⁴ CARTER, *supra* note 7, at 120.

⁷⁵ *Id.* at 42.

⁷⁶ *Id.* see also MARK V. TUSHNET, RED, WHITE, AND BLUE: A CRITICAL ANALYSIS OF CONSTITUTIONAL LAW, 248 (1988).

⁷⁷ CARTER, *supra* note 7, at 43.

the state.⁷⁸ While secularism, defined loosely as the belief that religion has no role to play in public parts of society,⁷⁹ is not formally understood to be an ideological system comparable to other religions, to the extent that it is the philosophy that dictates education, the media, and government's explanations, it is certainly a moral ideology that influences our society heavily.⁸⁰

To be fair, the rise of secularism has its roots in the Enlightenment and has been a force for positive change in many different circumstances (as evinced by its ability to do away with a lot of the nonsense surrounding feudal forms of authority).⁸¹ But as the focus becomes solely what is rational, scientific, or provable with evidence, secularism has a tendency to consider itself the sole authority on what is valuable.⁸² This is a direct threat to religious liberty, since religions and the secular world will often disagree as to what is or is not valuable to society. Nor should they—were the two in complete agreement, it would mean that religion has been subsumed by a majoritarian democracy and freedom of conscience is no more.

Further, it is important to note that currently, secularist beliefs are particularly prevalent in the intellectual classes, or where the livelihood of the members depends on knowledge as protected by access to the knowledge.⁸³ This is a significant point, as those with access to knowledge and control of such information often wield the most influence over those who do not. It is even more worthy of consideration since the roles of professionals are seen to be inapposite with religious thoughts and beliefs in the

⁷⁸ See *supra* Part II.

⁷⁹ "Secularism." Merriam-Webster Online Dictionary. 2013. <http://www.merriam-webster.com> (20 Apr. 20013).

⁸⁰ Hunter, *supra* note 42, at 66.

⁸¹ *Id.* at 67.

⁸² CARTER, *supra* note 7 at 112, 174.

⁸³ *Id.*

postmodern world.⁸⁴ To wit, secularism is unofficially endorsed in all public schools under the veil of neutrality. This is considered reasonable since it emphasizes certain principles that seem objectively positive, such as tolerance and respect.⁸⁵

Neutrality may seem necessarily the proper position for the state to endorse to the extent that secular forces perceive neutrality as genuinely achievable in the fight between competing ideal systems, and to the extent that religion can be trivialized for its failure to be of value in a secular world. However, as political philosopher and Harvard Professor Michael J. Sandel points out, this view is entirely premised on the notion that all individual rights are more important than any notion of the general good, and that religion is merely a form of self expression.⁸⁶ Framed this way, neutrality in governing forces is persuasive, especially if all people are viewed as “choosing” selves and if we are to believe that a person is objectively deserving of respect regardless of their roles or life choices. But there is reason to believe that this neutrality framework is not workable, especially if one of the aims of a working government is nationalism and genuine diversity, and even more so if the people of a state intend to keep themselves free from tyranny.

For there to be true religious freedom in the United States, religions must be allowed to act outside the bounds of what society deems proper or correct. Granting that the state has the right to send certain value messages, the government cannot be given the

⁸⁴ Hunter, *supra* note 42, at 69; *see also* Ravi Zacharias, *An Ancient Message, Through Modern Means, to a Postmodern Mind* (Sept. 1, 1998, 10:06AM), <http://www.rzim.org/just-thinking/an-ancient-message-through-modern-means-to-a-postmodern-mind/>.

⁸⁵ *See generally* Hunter, *supra* note 42; *see also* JOHN RAWLS, *A THEORY OF JUSTICE* (1971); Ronald Dworkin, *Liberalism*, in *PUBLIC AND PRIVATE MORALITY* (Stuart Hampshire, eds., 1978); BRUCE ACKERMAN, *SOCIAL JUSTICE IN THE LIBERAL STATE* (1980).

⁸⁶ Michael J. Sandel, *Freedom of Conscience or Freedom of Choice*, in *ARTICLES OF FAITH, ARTICLES OF PEACE*, 74, 76 (James D. Hunter & Os Guinness, eds., 1990).

power to conscript private organizations, least of all religions, to aid them.⁸⁷ Often, we speak of religion solely in terms of freedom of individuals to worship or believe. But this is not the same as the freedom of religions, of groups of people, to worship and believe as they see fit. Yet this is what makes religion so unique, and worthy of the special protection within the First Amendment—because it reflects the reality created by the melding individuals within an independent group of worshipers.⁸⁸ Carter makes the point:

“Religions are in effect independent centers of power, with bona fide claims on the allegiance of their members, claims that exist alongside, are not identical to, and will sometimes trump the claims to obedience that the state makes. A religion speaks to its members in a voice different from that of the state, and when the voice moves the faithful to action, a religion may at as a counterweight to the authority of the state... Democracy needs its nose-thumpers, and to speak of the religions as intermediaries is to insist that they play important roles in the proper function of the republic.”⁸⁹

Thus, when the neutrality framework is utilized within the courts and elsewhere with the presupposition that all people are free to choose their beliefs at all times, it denies the existence of selves who see themselves as “encumbered” by other forces, such as membership in a community bound by moral ties antecedent to choice.⁹⁰ The secular, liberal viewpoint only views obligations as arising in one of two ways: either as a “natural” duty owed to one another as humans, or an obligation that we voluntarily accept by consent.⁹¹ But these viewpoints do not account for another way in which people operate, which is by loyalty to a variety of moral and political ties whereby the principle

⁸⁷ CARTER, *supra* note 7 at 32.

⁸⁸ *Id.* at 35.

⁸⁹ *Id.*

⁹⁰ Sandel *supra* note 85, at 76.

⁹¹ *Id.* at 77.

becomes inseparable from the person.⁹² This is exemplified by obligations we feel we owe to our family members, how soldiers must view their obligations to the military, how citizens view their duty to a nation, and how religious adherents view their obligations to their god. These types of ties go beyond any obligation that one can say is “voluntarily” accepted and certainly go beyond any “natural” duty we owe to one another as human beings.

Despite these real limitations of neutrality as espoused by the secular world view, the Supreme Court, perhaps in part fettered to the individual cases in front of them, or perhaps because it too is an arm of government, has failed to realize how limiting the neutrality framework truly is. Beginning with the end of World War II, the Supreme Court assumed its primary role as purveyor of neutrality, increasingly defining individual rights within a neutral framework and defending neutrality as essential to the proper respect owed to free and independent selves.⁹³ The Supreme Court declared in *Abington Township School District v. Schemp*: “In the relationship between man and religion, the State is firmly committed to a position of neutrality.”⁹⁴ This position is affirmed again a few years later in *Epperson v. Arkansas*: “Government in our democracy, state and nation, must be neutral in matters of religious theory doctrine and practice.... The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.”⁹⁵ By 1985 the position had not changed, and in fact seemed to have gained strength. Since “the breach of neutrality that is today a trickling

⁹² *Id.* at 78.

⁹³ *Id.*; see also Hamilton, *supra* note 11.

⁹⁴ 374 U.S. 203, 266 (1963).

⁹⁵ 393 U.S. 97, 104. (1978).

stream may all too soon become a raging torrent,” the “wall between church and state must be kept high and impregnable.”⁹⁶

To the postmodern thinker, maintaining neutrality through a robust wall of separation offers the only way by which the government can prevent a theocracy from taking over. However, it bears repeating that this neutrality framework did not even appear until the late 1940’s and moreover, reflects none of the concerns and desires of the Framers. Moreover, if, as intended by the Framers, the First Amendment is an enumeration of the rights of the people against a government whose natural tendency is to become tyrannical or totalitarian, privileging secular theories over religious ones and calling it neutrality provides no such limiting force to governmental tyranny, and in fact creates a limitation on liberty for all. Hamilton makes the point:

“Vital religion...can pose a potent threat to the hegemony of the government and therefore contribute to undermining the likelihood of civil tyranny that reveals itself in unresponsive and calcified institutions.... By restraining government’s natural tendency to restrict unorthodox practice, the Free Exercise Clause should clear the way for the growth in power of the nation’s various religious identities within individuals and among communities.”⁹⁷

Thus, it is through the mistaken lens of neutrality that power is taken from the people and placed into the hands of the “state.”

Underlying the neutrality argument is the view that it is fair for both religion and nonreligion since respect for the person to choose is left unfettered.⁹⁸ Consequently, the matter becomes one of right of one person between other persons, instead of a matter of the broader struggle between the right to be free from having to choose between following the laws of man over the laws of transcendental belief systems rooted in a god.

⁹⁶ *McCullum v. Board of Education*, 333 U.S. 203, 225 (1985).

⁹⁷ Hamilton, *supra* note 11, at 93-94.

⁹⁸ Sandel, *supra* note 85, at 85.

In the case of religion, this framework ill equips the Court from securing religious liberty for those who do not feel as though believing in God and following His laws are a choice. The Framers understood this, and knew that to protect religious liberty meant to protect the right to exercise religious duties according to the dictates of the conscience, not the right to choose religious beliefs.⁹⁹ As Madison argued,

“The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable, because the opinions of men, depending only on the evidence contemplated by their own minds cannot follow the dictates of other men: it is unalienable also, because what is here a right towards men, is a duty towards the Creator.”¹⁰⁰

A good example of just how the secularly derived neutrality framework distorts the liberty that the First Amendment aims to protect is found in *Estate of Thorton v. Caldor*. There, the Supreme Court held that a Connecticut Sunday closing law stating that no employee could be required to work on his/her chosen day of worship was unconstitutional.¹⁰¹ The Court reasoned that the law had the effect of advancing the particular religious practice of Sabbath observance and gave supremacy to religious observances of citizens over the secular interests of the work place. While at first blush the decision may not seem problematic, the decision resulted in a state that cannot give any credence to religious motivations and will not acknowledge a Sabbath observer’s right to rest on the Sabbath. This is not in fact neutrality, this is refusing the right to free exercise and calling it disestablishment simply because the purpose is not secular. It further ignores the fact that no religion was being established by the State at all. The

⁹⁹ *Id.* at 88.

¹⁰⁰ James Madison, *Memorial and Remonstrance against Religious Assessments*, 1785, in *THE MIND OF THE FOUNDER*, 7 (Marvin Meyer ed., 1981).

¹⁰¹ 472 U.S. 703 (1985).

Court confuses the right to exercise a duty with the right to make a choice. To the extent that this framework fails to secure the liberty for the religious as it promises, it fails to take religion seriously and does not espouse the tolerance that it claims.

Behind all of these changes lies advancing pluralism in every aspect of life. When our nation first came into existence, society was composed of a plurality of varying Protestant beliefs, and it was comparably easier to balance everyone's beliefs under the law.¹⁰² The challenge arose with the first wave of immigrating Catholics, whose different beliefs caused for outward strife.¹⁰³ The rest is history: as more and more various immigrant groups with their divergent beliefs and cultures arrived in the United States, the American system was tested by these "others" and their differing ways of life. Luckily, the First Amendment had prepared for this challenge by allowing each the freedom to believe as he or she would.¹⁰⁴

Nonetheless, increasing pluralism leads to engrained tensions. As a general rule, people respond to differences in one of two ways: either their beliefs are weakened by social pressure, or strengthened by conviction, sometimes, to the point of hatred towards new challengers.¹⁰⁵ Regardless, the more choice and change, the harder it is to commit to any one idea, and the harder it is to maintain continuity. Thus, for better or for worse, the force of pluralization is "both the child of, and challenger to, religious liberty—whether because of its presence, its permanence, or its premise."¹⁰⁶ The question then becomes, how can we continue to balance our freedoms?

IV. TEARS IN THE SOCIAL FABRIC OF POST-MODERN SECULARISM

¹⁰² Hunter, *supra* note 42, at 55-57.

¹⁰³ *Id.*

¹⁰⁴ *See supra* Part II.

¹⁰⁵ Guinness, *supra* note 17, at 8.

¹⁰⁶ Guinness, *supra* note 17, at 5.

Society tends to have good intentions. As was shown in the prior section, none of the principles it espouses actively aims to do away with religion or destroy “freedom” in this country. However, following from the specific focus on autonomy and neutrality, society has lost sight of other aspects of freedom and liberty that are equally important in maintaining our democracy and balancing the powers of government against the powers of the people. Specifically, as a result of the modern emphasis on individual choice, any notion of common good or a common philosophy has become difficult to agree upon and to incorporate into the narrative of American life. Our understanding of freedom has come to be limited to freedom from interference of others, including from the State or Religion. The contrasting idea of a freedom to govern as a cohesive society has all but disappeared.¹⁰⁷ Western Philosopher Charles Taylor calls this freedom “civic freedom” and in order to be maintained, argues that the people must be cohesive.¹⁰⁸

In every form of government, the people have to pay into the system in some way (taxes, military service, etc.). Depending on the type of government, the burden on the people may be greater or lesser than desirable. However, there must be a force that compels the people to do so. In tyrannies and totalitarian governments the compelling agent is often coercion or fear. The people understand that the consequences of not paying are worth avoiding. In the United States, historically, the notion of a common good has served as the driving agent to balance freedoms and rights amongst the people and with the government. However, since the adoption of a neutrality framework within a background of secularism, privatization, and pluralization, the only types of freedom

¹⁰⁷ Charles Taylor, *Religion in a Free Society*, in ARTICLES OF FAITH, ARTICLES OF PEACE, 93 (James D. Hunter & Os Guinness, eds., 1990).

¹⁰⁸ *Id.* at 97.

protected by the Supreme Court and demanded by the citizens have been freedom of choice and freedom from interference.¹⁰⁹

The singular focus on individual autonomy and individual freedom of choice has so fundamentally weakened the concept of civic freedom that one may question whether it is still alive and well today. As Taylor explains, when the chief goal of each citizen is to live his life following his own private plan, the notion of a common good becomes less important, or not important at all. The idea of living with a plan that incorporates the common good can be relegated as just another matter of choice, especially when the individual feels completely detached from politics and the public realm. To these individuals, as long as they are allowed to live as they please and do not hurt others in the process, “the needs of democracy seem to be met.”¹¹⁰

In this atmosphere, it is no wonder that more and more studies are released indicating that Americans are becoming cripplingly self-centered. In a 2007 study on undergraduates, researchers showed that students have steadily scored higher on an evaluation called the Narcissistic Personality Inventory.¹¹¹ The evaluation asked for responses to statements like, “I can live my life any way I want,” and “I think I am a special person.”¹¹² In one of the largest studies conducted on the subject, researchers noted that by 2006, two-thirds of the students had above-average scores on the NPI, a 30 percent jump from scores in 1982, when the study first began.¹¹³ In the same vein, studies conducted by teams of psychologists on three decades of songs, found a statistically

¹⁰⁹ See *supra* Part II, III.

¹¹⁰ Taylor, *supra* note 106, at 98.

¹¹¹ Associated Press, *College Students Think They're So Special* (Feb. 27, 2007, 7:43PM), http://www.msnbc.msn.com/id/17349066/ns/health-mental_health/t/college-students-think-theyre-so-special/.

¹¹² *Id.*

¹¹³ The researchers describe their study as the largest ever of its type and say students' NPI scores have risen steadily since the current test was introduced in 1982.

significant trend toward narcissism in popular music.¹¹⁴ The music industry has seen a decline in collective words like “us,” “we,” and words that expressed positive emotion. Instead, music has become increasingly centered around the words “I” and “me,” alongside expression of negative emotions. This trend was captured even when studies controlled for the genre of music.¹¹⁵

But the true implication of self-centered thinking is captured in a study released by Gallup Poll in March of 2011. Americans were asked about their personal level of concern on a range of environmental issues that plague our planet, which included problems like air and water quality.¹¹⁶ At the bottom of each list, perhaps unsurprisingly, were any problems that were not directly related to daily life, like global warming, loss of tropical rain forests, and urban sprawl.¹¹⁷ Even worse, Americans’ concern for these issues had dropped all around since the poll had first been asked in 2001 by an average of 10% percent.

Similarly, professor of psychiatry Elias Aboujaoude has noted that with the increasing ability to tailor our every experience to our desires, Americans are growing “more needy and more entitled. In other words, more narcissistic.”¹¹⁸ The growth of the Internet has played a central role in worsening our self-obsession,¹¹⁹ though psychologists

¹¹⁴ John Tierney, *A Generation’s Vanity, Heard through its Lyrics* (Apr. 25, 2011, 8:56PM), <http://www.nytimes.com/2011/04/26/science/26tier.html>

¹¹⁵ *Id.*

¹¹⁶ Lydia Saad, *Water Issues Worry Americans Most, Global Warming Least*, (Mar. 28, 2011, 11:36AM), http://www.gallup.com/poll/146810/Water-Issues-Worry-Americans-Global-Warming-Least.aspx?utm_source=tagrss&utm_medium=rss&utm_campaign=syndication&utm_term=Environment

¹¹⁷ *Id.*

¹¹⁸ Elias Aboujaoude, *Rise of the Online Narcissist: The Internet is more I-centric than Ever and All about You*, (Feb. 16, 2011, 7:40PM), <http://www.psychologytoday.com/blog/compulsive-acts/201102/rise-the-online-narcissist>

¹¹⁹ *Id.*

have been seeing this trend develop seriously since the 1960s.¹²⁰ According to assistant professor at the University of Michigan’s Research Center for Group Dynamics, Sarah Konrath, almost all of the controls in society are pushing people towards narcissism.¹²¹ Economist and writer Daniel Altman expands on this concept and states, “these levers go beyond Twitter feeds and Facebook pages, which offer endless opportunities for self-admiration. They also include advertising that tells consumers ‘You’re Worth It’ and reality TV shows that turn regular people against each other in a battle for celebrity.”¹²²

Alongside this growth in narcissism epidemic is a second disturbing trend, which is a growth in the number of people suffering from depression. According to studies conducted by Mental Health America, depression currently affects more than 21 million American children and adults and is also the main cause of disability in the United States for individuals aged 15-44.¹²³ Other statistics suggest the number is more like 17% percent of the U.S. population—around 53 million Americans.¹²⁴ According to researchers at the University of Washington and the University of Wisconsin-Madison, over 30% of the posts made on Facebook fit the American Psychiatric Association’s criteria for symptoms of depression.¹²⁵ These people are reporting “feelings of

¹²⁰ JEAN M. TWENGE & W. KEITH CAMPBELL, *THE NARCISSISM EPIDEMIC*, 4 (2010).

¹²¹ Daniel Altman, *United States of Narcissism*, NEWSWEEK MAGAZINE, (Jul. 17, 2011, 10:00AM), <http://www.thedailybeast.com/newsweek/2011/07/17/narcissism-is-on-the-rise-in-america.html>

¹²² *Id.*

¹²³ *Ranking America’s Mental Health*, MENTAL HEALTH AMERICA, http://www.mentalhealthamerica.net/files/Ranking_Americas_Mental_Health.pdf (Mar. 18, 2013); *Ranking America’s Mental Health*, MENTAL HEALTH AMERICA, <http://www.mentalhealthamerica.net/go/state-ranking> (Mar. 18, 2013).

¹²⁴ Karyn Lu, *Depression Most Prevalent Mental Disorder in America*, THE TECH, Feb. 8, 2000, Vol. 120, Iss. 3, <http://tech.mit.edu/V120/N3/dep1.3n.html>

¹²⁵ Megan A. Moreno, M.D., et al., *Feeling Bad on Facebook: Depression Disclosures by College Students on a Social Networking Site*, 28 *Depression and Anxiety* 447(2011).

worthlessness or hopelessness, insomnia or sleeping too much, and difficulty concentrating.”¹²⁶

Doctors Jean Twenge and Keith Campbell describe the onset of the self-obsession culture as one partially rooted in the American ideals of individual freedom and equality.¹²⁷ However, they also suggest that it was not until the growth of the human potential movement of the late 1960’s¹²⁸ and the introduction of psychologist Abraham Maslow’s hierarchy of needs that things took an abrupt turn.¹²⁹ During a time when faith in the power of collective action and the power of government were waning, self-expression and self-admiration became the steady focus of the American people and has remained so ever since.¹³⁰

At the same time, there has been a serious decline in religion in the United States.¹³¹ Given the rise of secularism and the general trend towards trivializing anything even remotely religious, there is reason to believe the two trends are correlated. According to a Pew Research Center poll released in October of 2012, one in five adults now have no religious affiliation.¹³² It is worth considering that perhaps the loss of intermediary associations, or independent sources of authority and community does impact the concerns of an individual. Considering the importance of religious institutions as noted by Tocqueville and Carter, it seems that the departure from civic engagement, whether it is participating in local churches, unions, or volunteering organizations, is important to the maintenance of a democracy. That all of these forms of civic engagement are on the

¹²⁶ *Id.* at 448.

¹²⁷ TWENGE, *supra* note 114 at 58.

¹²⁸ *Id.* at 62

¹²⁹ *Id.* at 64.

¹³⁰ *Id.* at 69.

¹³¹ “Nones” on the Rise, THE PEW FORUM ON RELIGION & PUBLIC LIFE, <http://www.pewforum.org/Unaffiliated/nones-on-the-rise.aspx> (Apr. 25, 2013).

¹³² *Id.*

decline is a worrisome trend.¹³³ Religious associations have been the most common associational group in the United States,¹³⁴ and with their decline, and the continuing decline in churchgoing, there is bound to be a gap where such associations previously existed.

The ultimate effect of a changed America has led to the absence public philosophy and a notion of a common good that has left many searching for meaning. The emphasis on autonomy and individual choice suggests people are disconnected from their greater society and that secularization has denigrated the importance of finding mean in one's life by emphasizing the sole importance of facts as dictated by scientific evidence.¹³⁵ As theologian Clarke Pinnock points out, "the basic function of religion in culture is to supply people with truth and meaning."¹³⁶ This concept remains true today, as exemplified by the call on religious leaders whenever our nation suffers from great tragedy. To the extent that government has allowed religion to be evicted from public affairs and continues to espouse the notion that there is no room for religious beliefs in a secular world, I firmly believe that the epidemics of narcissism and depression will continue to grow in this country.

V. CONCLUSION

If the United States wants to reclaim dominance as a world power, and ease the sufferings of its people, it is high time that we reevaluate the place of religion in this society and religion in the First Amendment. Tolerance for religious beliefs or even beliefs not adopted by the majority has become a farce, a game in which people are given

¹³³ Robert D. Putnam, *Bowling Alone: America's Declining Social Capital*, 6 *Journal of Democracy* 65, 68 (1995).

¹³⁴ *Id.*

¹³⁵ *See supra* Part III.

¹³⁶ CLARKE PINNOCK, *FOUR VIEWS OF SALVATION IN A PLURALISTIC WORLD*, 115 (1996).

the idea that they have a choice. Social scientist and public opinion analyst Daniel Yankelovich's observations resulting from his case studies seem all the more relevant:

“The stakes are high –if you feel it is imperative to fill all your needs, and if these needs are contradictory or in conflict with those of others, or simply unfillable, then frustration inevitably follows. To Abby and to Mark as well, self-fulfillment means having a career and marriage and children and sexual freedom and autonomy and being liberal and having money and choosing non-conformity and insisting social justice and enjoying city life and country living and simplicity and graciousness and reading and good friends and on and on. The individual is not truly fulfilled by becoming ever more autonomous. Indeed, to move too far in this direction is to risk psychosis, the ultimate form of autonomy. The injunction that to find one's self, one must lose one's self, contains the truth any seeker of self-fulfillment needs to grasp.”¹³⁷

On the individual level, the deprivation of true religious freedom shows itself in a culture of self-centered meaninglessness. On the cultural and societal level, the curtailment of religious freedom has otherwise signaled a weakening of democracy into a more totalitarian power that seeks only to add to its own power. Thus, the true genius of the First Amendment once again reveals itself as having already understood and anticipated the danger of a democracy without religious freedom. Just as our Founding Fathers believed, we too must believe that religious liberty, or freedom of conscience, is a fundamental and inalienable right of all people. Moreover, we must be convinced of the value of religion even within a secular society, at the very least as a bulwark against the totalitarian tendencies of government.

In the same vein, we must not assume that what is to be feared are those that believe deeply in their religion. Instead of requiring the religious to speak or act in a way that is acceptable to our modern society, we must accept them as they are and take

¹³⁷ Daniel Yankelovich, fan mail, *New Rules in American Life: Searching for Self-Fulfillment in a World Turned Upside Down*, PSYCHOLOGY TODAY (Apr. 1981).

diverse forms of expression as a sign of a healthy democracy. As Stephen L. Carter explains,

“Epistemic diversity, like diversity of other kinds, should be cherished, not ignored, and certainly not abolished. What is needed then, is a willingness to *listen*, not because the speaker has *the right voice* but because the speaker has *the right to speak*. Moreover, the willingness to listen must hold out the possibility that the speaker is saying something worth listening to...”¹³⁸

Thus, civility must be the goal. Civility towards our differing beliefs is not simply about being kind or acknowledging that some groups or individuals have already come to agreement with to the rest of society. Civility is the discourse that is shaped by a disciplined respect for all persons and their truths.¹³⁹

¹³⁸ CARTER, *supra* note 7, at 231.

¹³⁹ GUINNESS, *supra* note 17, at 10.