The preservation of religious freedom in the United States has become one of the central concerns of many religious believers and some civil libertarians during the past year or so. Some of this renewed interest is traceable to actions of the Obama Administration, such as the controversial mandate promulgated by the Department of Health and Human Services (HHS) requiring religious organizations to provide medical-insurance benefits for interventions, such as artificial contraception and the abortifacient morning-after pill, that violate those organizations’ moral teachings. For this and other actions, ranging to the staffing of schools to the rights of homeschooling families, the administration has been subjected to strenuous criticism for a perceived hostility, or at best cavalier indifference, to the cause of religious freedom in the United States.

But beneath the controversy about religious freedom there is an even deeper controversy about the nature and status of religion itself in the American legal and political order. That controversy is nothing new, of course. It runs through much of American history, taking on different guises and embracing different antagonists and issues at different times. But it has achieved a unique importance and potency at this historical moment, when we are more intent than ever upon upholding the principle of neutrality in all things.
Inevitably the question arises: What is so special about religion, that it should receive any such “special privileges”? Why should we treat a church or other religious association differently than we treat any other social club or cultural organization, or treat the rights of a religious adherent any differently that we would treat the expressive liberties of any other individual? Or as law professor Brian Leiter has put it in a recent book, pushing the question to a provocative limit, *Why Tolerate Religion?*

The drive to ask such a question is a fairly recent development in our history, and surely a sign of the growing secularity of so much of our public life. Religious believers, accustomed to a wide range of liberty, will find the question offensive. But they need to take it seriously. There is no denying the fact that, in some sense, religion and religious institutions are not treated according to a principle of strict neutrality. To be sure, the recognition and support of “religion” is something dramatically different from the establishment of a particular religion, a distinction that the First Amendment sought to codify. The fact remains, though, that something like a generic monotheism enjoys a privileged public status in present-day America, even though religious believers often fail to notice it or complain of its thinness and lack of specificity.

Examples abound. One still sees the name of God on the American currency, in the Pledge of Allegiance, in the oaths we take in court, in the concluding words of presidential speeches, and even, it seems, popping up in the 2012 platform of the Democratic party. Chaplains are still employed by the armed services and the Congress, and the latter still duly commences its sessions with the invocation of a prayer. The tax exemption of religious institutions remains intact and seemingly impregnable, at least for the moment. Our most solemn observances, such as the National Day of Prayer and Remembrance in the wake of 9/11, are held in the Washington National Cathedral, and are conducted in a manner that draws heavily on the liturgical and musical heritage of Western Christianity, particularly in its Protestant forms. One could compose a long list of similar examples. We are a long way from being officially secular, even if we may be tending in that direction. And however
much we accept, or claim to accept, a principle of church–state separation, a better description of the way we actually have conducted ourselves would be selective interpenetration.

I

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

In addition, there are respectable religious arguments against religion’s being granted a privileged status. Some of them are reminiscent of the views of Roger Williams, the great American dissenter, and recall one of the central arguments against any establishment of religion: that installation of a state religion inevitably leads, in the long run, to perfunctoriness, placeseeking, faithlessness, coercion, cooptation, atrophy, and spiritual death. In other words, the establishment of religion is bad for religion. When one looks at the sad and irrelevant state of the empty established churches of Europe today, one sees the power of the argument. The bride of Christ has all too often ended up a kept woman. By contrast, as Alexis de Tocqueville was able to see as early as the 1830s, the American style of religious freedom, far from diminishing the hold of religion, kept it vital and energetic, precisely by making it voluntary. Indeed, many Christians, particularly those drawing on the Anabaptist tradition, would contend that when churches are cut loose from entanglement in the polity and its civil religion, committed only to being a people set apart, they are freed to be more radical, more sacrificial, and more faithful, a living sign of contradiction.

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

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

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

First there is what I will call the foundational argument, which points back to our historical roots, and to the animating spirit of the American Founders and the Constitutional order that they devised and instituted. The Founders had diverse views about a variety of matters, very much including their own personal
religious convictions, but they were in complete and emphatic agreement about one thing: the inescapable importance of religion, and of the active encouragement of religious belief, for the success of the American experiment. Examples of this view are plentiful. John Adams insisted that “Man is constitutionally, essentially and unchangeably a religious animal. Neither philosophers or politicians can ever govern him any other way.” And the universally respected George Washington was a particularly eloquent exponent of the view that religion was essential to the maintenance of public morality, without which a republican government could not survive. The familiar words of his Farewell Address in 1796—“of all the dispositions and habits which lead to political prosperity, Religion and morality are indispensable supports”—can be made to stand in for countless others, from John Adams, Benjamin Rush, John Jay, and so on, as an indicative example. That this high regard extended to religious institutions as well as individual religious beliefs is made clear by Washington’s remark, in 1789, that “If I could have entertained the slightest apprehension that the Constitution framed in the Convention, where I had the honor to preside, might possibly endanger the religious rights of any ecclesiastical Society, certainly I would never have placed my signature to it.” If we are looking for a plausible grounding for our deference paid to religion, we can begin with the testimony of the Founders of the American constitutional order itself.

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

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

Hence it is essential that religious freedom be understood not only as an individual liberty but also as a corporate liberty, a liberty that applies to and inheres in groups, and defends the integrity and self-governance of such groups. How could it be otherwise, since a religion, like a language, is an inherently social thing, quintessentially an activity of groups rather than the property of isolated individuals? Religious freedom must be understood in this dual aspect, protecting not only the liberty of individuals, but also the liberty of churches and other religious institutions and communities: protecting their freedom to define what they are and what they are not, to control the meaning and terms of their membership, to freely exercise their faith by the way they choose to raise their children and order their community life, seeking to embody their religion’s moral self-understanding in lived experience.

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

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

A fourth argument might be called the meliorist argument, which would acknowledge religion's special place in American life because of the extensive social good that religious institutions have done, and continue to do, in the world; and because the doing of such good works is an essential part of the free exercise of religion. This argument follows in the footsteps of the Founders, but has taken on a weight of its own, given the vast scope of charitable,
medical, and educational activities still undertaken by religious
groups today. Let the Catholic church stand as a powerful example
of this. The HHS mandate is so consequential because the Catholic
church is so heavily involved in precisely these three areas, as the
operator of nearly 7,500 primary and secondary schools, enrolling
2.5 million students, and 630 hospitals (comprising nearly 13% of
American hospitals and 15% of hospital beds), 400 health centers,
and 1,500 specialized homes, making it the operator of the largest
private educational and health-care systems in the country. In
addition, Catholic Charities USA is the seventh-largest charity
in the nation (the second largest being the religiously oriented
Salvation Army).

History, too, would suggest the justice of according religion a
central role in the improvement of the country. You won’t hear this
sort of thing from the noisy New Atheists, but evangelical religious
conviction was the chief source of what was arguably the greatest
reform movement in American history, the nineteenth-century
movement to abolish slavery, and played an essential role in the
Civil Rights Movement of the postwar era. And more recently, one
can point to a growing body of social-scientific evidence, appearing
in the work of writers as diverse as Byron Johnson, Arthur Brooks,
Jonathan Haidt, and Robert Putnam, indicating that religious
belief correlates very reliably with the fostering of generosity, law-
abidingness, helpfulness to others, civic engagement, social trust,
and many other traits that are essential to a peaceful, productive,
and harmonious society. One must, of course, stipulate that there
will always be hypocrites, charlatans, fakes, and abusers in religious
organizations, as in all walks of life. But it would appear that, far
from religion being a poison, as the late Christopher Hitchens
liked to argue, it has, at least in America, been an antidote. It seems
counterproductive to downplay its many benefits.

Last but not least, there is an argument that I will call meta-
physical. It is often said that religious freedom is the first freedom,
since it is grounded in the dignity and integrity of the human
person, which requires that each of us be permitted to fulfill our
right, and duty, to seek and embrace the truth about our existence,
and live out our lives in accordance with our understanding of that truth. This is, or should be, a universal freedom, because the great questions of human existence are not the exclusive province of professors and savants, but belong to us all. Any good society, committed to the flourishing of its members, should recognize and encourage and support that search. To acknowledge that fact in a public way, with an explicit recognition of the valuable place of religion, is an important declaration about the value a society places on the spiritual and moral life of its members.

III

Of course, much of the preceding paragraph could be warmly embraced by those who think “freedom from religion” should be one of the imperative goals of the moment. But there is a deeper question here, the question of whether this freedom itself, and more generally the liberal individualism we have come to embrace in the modern West, is sustainable absent the Judeo-Christian religious assumptions that have hitherto accompanied and upheld it. The Italian writer Marcello Pera, for example, has argued that it is a dangerous illusion to believe that such ideas as the dignity of the human person can be sustained for long without reference to the deep normative orientation of the Christian faith.

Pera’s concerns had been precisely anticipated by one of the most religiously heterodox figures of early American history, Thomas Jefferson; and we would do well to follow his lead in this respect. On one of the panels decorating the walls of the Jefferson Memorial in Washington appear these searing words: “God who gave us life gave us liberty. Can the liberties of a nation be secure when we have removed a conviction that these liberties are the gift of God? Indeed I tremble for my country when I reflect that God is just, that His justice cannot sleep forever.”

Jefferson was speaking in that passage of the moral scourge of slavery. But the larger point, that the very possibility of liberty itself was reliant upon a willingness to understand it as a gift of God, rather than a dispensation of man, serves as more than a rhetorical device in this context. Even a world-class skeptic like Jefferson
understood that removing the name of God from the foundations of American life could lead to fearful consequences. Which provides yet another reason why maintaining the special status of religion in American life is not merely a reasonable and defensible path, but one of fundamental importance.

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