

## ESSAY

# *THE RELIGIOUS LEFT AND CHURCH-STATE RELATIONS: A RESPONSE TO KENT GREENAWALT AND BERNIE MEYLER*

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I am extremely grateful to Kent Greenawalt and Bernie Meyler for the generosity of their responses, their insights, and the challenges they present regarding my recent book.<sup>1</sup> In *The Religious Left and Church-State Relations*, I argue that the religious Left or religious liberals<sup>2</sup> are better equipped to combat or engage religious conservatives or the religious Right<sup>3</sup> than are secular liberals. By religious liberals, I mean to refer to those who reach liberal conclusions from religious premises. In the context of church-state relations, this means a commitment to strong free exercise values and an opposition to tight connections between church and state.<sup>4</sup> For my purposes, the secular Left reaches the same conclusions on the basis of secular premises.<sup>5</sup> By contrast, the religious Right opposes separation of church and state, although it is also committed to the free exercise of religion.<sup>6</sup>

### I. TAXONOMY

Meyler argues that my classifications of the religious Left, the secular Left, and the religious Right are not “airtight.”<sup>7</sup> She observes that some people who are generally conservative on most political issues

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<sup>1</sup> STEVEN H. SHIFFRIN, *THE RELIGIOUS LEFT AND CHURCH-STATE RELATIONS* (2009).

<sup>2</sup> I make no distinction between the “religious Left” and “religious liberals.”

<sup>3</sup> Similarly, I make no distinction between “religious conservatives” and “the religious Right.”

<sup>4</sup> See SHIFFRIN, *supra* note 1, at 2.

<sup>5</sup> The ACLU argues on the basis of secular premises and reaches liberal conclusions. See, e.g., *County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter*, 492 U.S. 573 (1989) (ACLU argued that the local government’s display of a crèche and a menorah violated the Establishment Clause). If a secular “liberal” opposes free exercise or favors tight connections between church and state, he or she would not be a liberal for my purposes.

<sup>6</sup> See SHIFFRIN, *supra* note 1, at 119.

<sup>7</sup> Bernadette Meyler, *Constitutional Commitments and Religious Identity*, 19 CORNELL J.L. & PUB. POL’Y 751, 754 (2010) (reviewing SHIFFRIN, *supra* note 1). Meyler is a gifted deconstructionist, and I am guessing she has never seen an airtight category.

might oppose tight connections between church and state. I do not disagree. Some otherwise conservative evangelicals do fit Meyler's description.<sup>8</sup> It is good to have allies who are otherwise conservative, but regrettably, they are not typical of the religious Right. Meyler goes further. She is not convinced that the category of religious conservative<sup>9</sup> is useful.<sup>10</sup> She notes that I do not equate religious conservatives with conservative theological positions. In fact, I use the term *religious conservatives* to refer to those who entertain conservative theological positions and conservative political positions.<sup>11</sup> There is no easy correlation between theology and political position. For example, African Americans adhere to conservative theology and, for the most part, liberal politics. They are not religious conservatives as I define them. It would be possible to believe in liberal theology and conservative politics, but that combination is not much alive on the American political scene. If it were, I would question the failure to understand that liberal theology should drive one towards a liberal view of church-state relations. Finally, in addressing conservatives, Meyler notes that secular conservatives exist. Of course they do, but my argument is that the theological power of the religious Right needs to be countered. I see no similar argumentative power on the church-state issue in the arsenal of secular conservatives. If I did, I would need to address it.<sup>12</sup>

More significantly, Meyler also denies that a fundamental connection exists between the religious Left and the positions of favoring free

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<sup>8</sup> The strongest religious proponents of church-state separation at the time of the founding were Baptists. Although Baptists were the libertarians of their era, most Baptists have turned in a conservative political direction. In so doing, they have for the most part turned away from their historic opposition to tight connections between church and state. But some Baptists have not abandoned the historic church-state views of the Baptist church. Although most of those are generally liberal on political issues, many are conservative. See SHIFFRIN, *supra* note 1, at 118.

<sup>9</sup> Given that I equate "religious conservatives" with "the religious Right," I assume she would say the same about the religious Right.

<sup>10</sup> Meyler, *supra* note 7, at 752–53 n.8.

<sup>11</sup> Meyler presumes that there are those who might be called religious conservatives who favor free exercise. *Id.* and accompanying text. This is an understatement. Leaving aside some Scalia-lovers in the Federalist Society, the *Smith* decision was widely opposed by the religious Right and across the political spectrum. See SHIFFRIN, *supra* note 1, at 104 & n.43. That is why Congress so easily and so quickly tried to overturn the decision. I do not think a commitment to free exercise distinguishes liberals from conservatives. On the other hand, religious conservatives and religious liberals are more likely to favor the free exercise side of the balance in hard cases than secular liberals. *Id.* at 119.

<sup>12</sup> Similarly, Meyler observes that some people might have an ideological position because of religion and others might happen to be both politically and religiously conservative without recognizing any connection between the two. Meyler, *supra* note 7, at 752–53 n.8. I think this is also true particularly because many millions of Americans have not reflected at any depth on the political implications of their theology. A religious-political dialogue would compel them to do just that. In any event, I do not need a separate category to make Meyler's distinction for purposes of my argument.

exercise and opposing tight connections between church and state.<sup>13</sup> I am not sure what she is getting at here.<sup>14</sup> Perhaps she is distinguishing between the religious Left and religious liberalism, which I do not do. The standard liberal position is to favor free exercise and oppose tight connections between church and state. If Meyler is suggesting that many who hold liberal positions on some issues do not hold liberal positions on other issues, then we agree.<sup>15</sup> Perhaps she means to suggest that many secular liberals are not as keen on free exercise as religious liberals. If so, then we agree on that as well. Indeed, I argue that religious liberals and religious conservatives share common views on the free exercise question.<sup>16</sup> In any event, I define the religious Left as a group that favors free exercise and opposes tight connections between church and state. The precise number of people on the religious Left as I define it is certainly debatable.<sup>17</sup> But the exact number is irrelevant to my constitutional argument, and I do not take Meyler to be denying that the numbers on the religious Left are so paltry as not to be a possible political force.<sup>18</sup>

## II. THE RELIGION CLAUSES

In the book, I argue that the best understanding of the Religion Clauses is most compatible with religious liberalism even though I do not argue for that understanding by referring to religious premises.<sup>19</sup> As a part of that interpretation, I argue in Chapter Two that the Establishment Clause is supported by seven values: (1) it protects religious liberty and autonomy, including preventing the government from forcing taxpayers to support religious ideologies to which they are opposed; (2) it stands for equal citizenship without regard to religion; (3) it protects against the destabilizing influence of having the polity divided along religious lines; (4) it promotes political community; (5) it safeguards the autonomy of the state to protect the public interest; (6) it shelters

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<sup>13</sup> See Meyler, *supra* note 7 at 759–60.

<sup>14</sup> She makes the point in passing and does not elaborate. Accordingly, she does not offer a definition of her own, and she does not refer to data.

<sup>15</sup> Many members of Black churches have progressive views on the economy, but more conservative views on social issues. See, e.g., SHIFFRIN, *supra* note 1, at 98, 108. Traditional Catholics favor many liberal positions and oppose others. See, e.g., *id.* at 118.

<sup>16</sup> See *supra* note 11.

<sup>17</sup> See SHIFFRIN, *supra* note 1, at 1–2.

<sup>18</sup> Indeed, in her conclusion, Meyler refers to the religious left as a large group. See Meyler, *supra* note 7, at 759–60.

<sup>19</sup> I believe that religious argument is appropriate in politics, though not in judicial fora. In addition, if religious arguments are used in the political sphere, they must be translated into secular terms before they can be the basis for law if the Establishment Clause is to be respected.

churches from the corrupting influences of the state; and (7) it promotes religion in the private sphere.<sup>20</sup>

Meyler observes that a secular liberal could accept that the Constitution stands for these values even if the secular liberal did not support, for example, the promotion of religion in the private sphere. Yes, a secular liberal could do so, but most do not. Few secular liberals would think the seventh value is in fact a constitutional value and many First Amendment scholars try to reduce the values of the Religion Clauses to liberty or religious equality.<sup>21</sup> I am afraid that only a small minority of secular liberals would accept the seven values I identified.

In applying these values, I argue that government use of religious symbols such as the crèche and the Ten Commandments should be unconstitutional.<sup>22</sup> On the other hand, I argue that the use of “In God We Trust” on coinage and the mention of God in the Pledge of Allegiance are constitutional,<sup>23</sup> although I regret the need of citizens to have government express their religious views, because our Constitution is now and has always been embedded in a predominantly monotheistic culture.<sup>24</sup> We need to interpret the Constitution we have, not the Constitution we would like to have. In so arguing, I reject reliance on the pragmatic recognition that any attempt to overturn the practice would produce a political firestorm including a constitutional amendment. My position is the courts should not be able to take political consequences into account primarily because I believe fear of consequences would make courts less

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<sup>20</sup> SHIFFRIN, *supra* note 1, at 29.

<sup>21</sup> Meyler suggests that the work of Christopher Eisgruber and Lawrence Sager is my primary foil. Meyler, *supra* note 7 at 753; see CHRISTOPHER L. EISGRUBER & LAWRENCE SAGER, *RELIGIOUS FREEDOM AND THE CONSTITUTION* (2007). This is an understandable reaction and others have also assumed it. It is true that by arguing that multiple values underlie the Establishment Clause, my argument departs from their excellent book. Moreover, by denying the centrality of the equality value to the jurisprudence of the Religion Clauses, I differ from the argument of their book, as well as that of Martha Nussbaum. See MARTHA NUSSBAUM, *LIBERTY OF CONSCIENCE* (2008). Finally, contrary to their views, I argue that the Constitution regards religion as valuable. But Eisgruber and Sager’s work was never my target. I started writing my book before their book appeared. In exploring the limits of equality, I make many arguments they would freely accept. I agree that their approach can provide robust protection though not enough political strength. They are not my primary foil on the left because they oppose the wall of separation metaphor. They do not think that focusing on the tightness of the relationship between church and state is a sensible approach to the problem. I do not agree with them, but my primary battle is with those secular liberals who also disagree with Eisgruber and Sager. My central claim is that religious liberals, rather than secular liberals can better defend the separation metaphor, and my primary target is secular liberals who favor a high wall between church and state.

<sup>22</sup> See SHIFFRIN, *supra* note 1, at 28–29, 119–22.

<sup>23</sup> The use of the Pledge in classrooms with small children, however, creates a coercive atmosphere and should not be permitted under the Constitution. *Id.* at 48.

<sup>24</sup> See *id.* at 42–50. We have moved from a predominantly monotheistic, Christian culture to a monotheistic culture, but we have not yet moved to a genuinely multicultural culture.

vigilant than they should be in protecting civil liberties.<sup>25</sup> In his outstanding book on the Establishment Clause, Greenawalt argues that mild endorsements like “Under God” in the Pledge of Allegiance create rare instances in which justices should take political consequences into account.<sup>26</sup> Greenawalt does not press this view in his remarks, but he does wonder whether I think “a court is *ever* justified in reaching decisions on this basis and being less than candid about what it is really doing.”<sup>27</sup>

I think a circumstance may exist in which consideration of political consequences might be appropriate in an individual case without regard to the larger effects of engaging in such a practice, but the larger effects must be considered. Opening the door to this type of practice offers an excuse not to be courageous in protecting civil liberties. This practice might have doomed *Brown v. Board of Education*<sup>28</sup> from the start, and it is likely that concerns about political consequences led the Court in the wrong direction after *Brown*. I believe it is better to keep the door tightly shut.

In response to my argument that compulsory public education can in some circumstances be constitutional in the high school years,<sup>29</sup> though not a wise policy,<sup>30</sup> Meyler offers an interesting discussion of home schooling, citing Kim Yuracko in support of the view that home schooling has detrimental effects.<sup>31</sup> She suggests that the arguments I make in support of compulsory public education can provide a useful counterweight to an asserted right to home schooling.

Home schooling, in my view, is very much a mixed bag. It is certainly not a homogeneous phenomenon. Some home schooling is very well done, with appropriate regard for the needs of children for opportunities to socialize with other children; some is harmful to children. It seems clear to me that states should regulate home schooling programs, which they would be allowed to do, as states may regulate private education. The issue cannot be resolved properly by the invocation of absolute parental rights or by sweeping appropriate invocations of those rights away. The issue needs to be addressed with attention to the facts on the ground, and those facts may differ from locality to locality. One of the things I worry about is that political forces in some areas might render appropriate state regulation ineffective. I also worry that school boards

<sup>25</sup> See *id.* at 48–50.

<sup>26</sup> 2 KENT GREENAWALT, RELIGION AND THE CONSTITUTION: ESTABLISHMENT AND FAIRNESS 102 (2008).

<sup>27</sup> Kent Greenawalt, *In Celebration of Steven Shiffrin's The Religious Left and Church-State Relations*, 19 CORNELL J.L. & PUB. POL'Y 741, 744 (2010).

<sup>28</sup> 347 U.S. 483 (1954).

<sup>29</sup> See SHIFFRIN, *supra* note 1, at 65–81.

<sup>30</sup> *Id.* at 80–81.

<sup>31</sup> Meyler, *supra* note 7, at 751, 755.

are hostile to affording extracurricular opportunities to home-schooled children, which privileges institutional considerations over the needs of children in a school district. I can see a case for a constitutional right to home school in some circumstances, but only with careful attention to the circumstances and to the alternative options. In the main, I think the real issue is to generate the political will appropriately to regulate home schooling.

### III. POLITICS AND THEOLOGY

As Greenawalt recounts, I argue that the public reason doctrine is based on a misconceived understanding of respect, an empirically unfounded concern about stability, and a failure to prioritize in achieving justice.<sup>32</sup> Meyler suggests that I might be too blasé about the stability issue.<sup>33</sup> She points to the inflammatory role of religion in seventeenth century England. But the strictures of public reason have never been respected in the United States, and stability has not been undermined.<sup>34</sup> I recognize this is contingent, and I recognize that stability should be one of the values underlying the Religion Clauses,<sup>35</sup> but I do not believe the religious wars of Europe are likely to occur here in our more tolerant age.

Greenawalt wonders whether my view that comprehensive views should freely be used in politics is based simply on a pragmatic recognition that reciprocity from the religious Right will not be forthcoming.<sup>36</sup> My conclusion is not merely a pragmatic response to the lack of reciprocity. I believe that uninhibited, robust, and wide-open politics are valuable, that it is desirable to know where speakers are coming from, that speakers should not feel shackled, particularly in expressing their deepest views, and that it is not necessary that every political expression be directed to every person in the broad public audience.

Greenawalt also wonders whether the doctrine of public reason should apply to public officials. He mentions the late Senator Ted Kennedy in particular.<sup>37</sup> My view is that the Establishment Clause forbids government from taking positions on religious issues. So government cannot use religious premises as a basis for legislation (consider whereas

<sup>32</sup> See SHIFRIN, *supra* note 1, at 116; Greenawalt, *supra* note 27, at 742.

<sup>33</sup> See Meyler, *supra* note 7, at 756–57.

<sup>34</sup> This is not to deny the existence of religious violence in our history, SHIFRIN, *supra* note 1, at 31, or that the Establishment Clause may have mitigated that violence. *Id.* But such violence has not at any point been so severe as to threaten national stability, nor can the violence be traced to the exercise of public reason.

<sup>35</sup> I think that religious integration of the public schools has contributed to stability and that a full-scale system of vouchers would create balkanization that would create long-term risks. See *id.* at 92–93.

<sup>36</sup> Greenawalt, *supra* note 27, at 746.

<sup>37</sup> *Id.*

clauses) or judicial conclusions. But individual politicians do not engage in official government action with their speeches.<sup>38</sup> It seems to me entirely appropriate for politicians to make transparent the philosophy that guides their actions whether or not that philosophy is religious. The failure of Democratic politicians to do this has sometimes made it easy for Republicans to claim a monopoly on religious belief.<sup>39</sup>

This does not mean that it would have been wise for every Democratic politician to call attention to his or her religious views. In Ted Kennedy's case, there might have been two grounds for caution despite his deep faith.<sup>40</sup> Kennedy was not given to public self-disclosure in any event, but the Mary Jo Kopechne tragedy<sup>41</sup> might have made him reticent to refer to his religion even if he had. Referring to religion politically can be perceived as a claim to good character and any such appeal by Kennedy would predictably have reignited attacks on his character with the Kopechne event serving as a symbol for Kennedy's entire life. It could be that Kennedy was best advised to stick to the issues, as he did throughout his career.

The second factor that might have steered Kennedy away from religious references is the Catholic Church's position on abortion. The Catholic Bishops seem to have privileged the abortion issue over other issues including starving children, torture, and imperial wars. If Kennedy emphasized his Catholic faith, he risked having to deal with a cry from certain Bishops that he should not be able to receive the Eucharist. The abortion emphasis of the Catholic Bishops not only serves to deter pro-choice Catholic politicians from publicly referring to their religion, but would also appear to have major implications for Presidential politics in the Democratic Party. It seems obvious that any nominee in the Democratic Party will be pro-choice. Accordingly, as Robert Shrum puts it, "Forces within the Catholic Church . . . could return us to the pre-JFK era so that no Catholic need apply, at least in the Democratic Party."<sup>42</sup>

Whether politicians refer to their religion or not, it seems clear that serious theological debate will never occur in the American political sphere. The population is too pluralistic and the political public sphere too superficial to make serious theological debate politically attractive. Moreover, corruption of the Republican Party and the Democratic Party

<sup>38</sup> If a speech on the legislative floor might be used to import religious reasons as part of the legislative intent, then a legislator must be cautious. Legislation must always be grounded in fully adequate secular reasons, and religious arguments in support of legislation must always be translated into secular justifications if the Establishment Clause is to be respected.

<sup>39</sup> See SHIFFRIN, *supra* note 1, at 125–27.

<sup>40</sup> See EDWARD M. KENNEDY, TRUE COMPASS 504–05 (2009).

<sup>41</sup> For Kennedy's reflections on his responsibility for the accident, his terrible decisions, his sorrow, and his guilt, see *id.* at 288–92.

<sup>42</sup> ROBERT SHRUM, NO EXCUSES: CONCESSIONS OF A SERIAL CAMPAIGNER 446 (2007).

by money has left them both without a political soul. If the goals of progressives are to be accomplished, the most important debates will take place at the grassroots level.

Meyler wonders whether theological debates on this issue can be effective.<sup>43</sup> She observes that there will always be religious individuals and groups that strive for tighter connections between church and state and that differences among, and, I would add, within, religious groups are acute. It would be politically naïve of me to deny that. Similarly, it would be naïve of me to suppose that members of the hardcore religious Right would be easily persuaded even though astounding evidence of changes in religious attitudes abounds.<sup>44</sup> The audience most susceptible to persuasion on these issues is in the great religious middle of the country. Much of that audience has not given serious thought to church-states and is not theologically sophisticated.<sup>45</sup> My basic contention is that the religious Left has a more politically attractive position than the secular Left with respect to church-state relations.<sup>46</sup> In the case of religious symbols, for example, regrettably I think that most Americans do not care that a governmental display of the Ten Commandments discriminates against Buddhists, Hindus, atheists, and agnostics—though I believe in the equality argument and think it deserves to be strongly articulated. I argue that the typical American is more likely to be moved by a demonstration showing that the use of religious symbols by government ends up cheapening the symbol and harming religion. For example, the combination of merchants and government in displaying Christmas lights all over towns in order to stimulate purchasing takes the Christianity out of Christmas.

But, as Meyler recognizes, I have doubts that secular liberals have a coherent account of the Establishment Clause. Such liberals, in my view, have a difficult time explaining why religion alone is subject to an Establishment Clause. In reply, Meyler suggests that “secular liberals may believe—on the basis of substantial historical evidence—that religion has furnished and continues to furnish the greatest possible threat to the stability of the state.”<sup>47</sup> I must say that given the unjust character of the American state and its imperial nature, I wish that it were less stable than it is. But I believe Meyler’s claim about a religious threat places too

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<sup>43</sup> Meyler, *supra* note 7, at 756–57.

<sup>44</sup> See SHIFFRIN, *supra* note 1, at 117–19.

<sup>45</sup> This is true of most Americans. See *id.* at 118, 226–27 n.67.

<sup>46</sup> Meyler denies that “religious liberals will *always* be able to be more persuasive than secular liberals.” Meyler, *supra* note 7, at 759 (emphasis added). By contending that religious liberals have a more attractive political position, I do not and did not affirm the sweeping conclusion that Meyler denies. I doubt she meant to suggest that I did.

<sup>47</sup> *Id.* at 759.

much weight on ancient European experience.<sup>48</sup> Indeed, the claim that religion has ignited wars, though true in part, simply downplays the material role that greed and the desire for empire have played as well. No one, I trust, thinks that the turmoil of the Middle East or in the north of Ireland is exclusively about religion. But coming back to home, what is the threat here? Is there really a stability risk in the placing of a crèche on a staircase in a government building? Is there a stability risk to providing vouchers to poor children?<sup>49</sup> I do not believe that most modern Establishment Clause issues can be explained in stability terms.

Meyler argues that secular liberals can object to vouchers on equality grounds because the material effect of granting vouchers would favor some religions over others.<sup>50</sup> I agree with that and did so in the book.<sup>51</sup> But that does not explain why only religion is in the Establishment Clause. Moreover, secular liberals on the whole are opposed to vouchers in principle, without regard to the particulars, and I do not think they have a good explanation for why. Some secular liberals cite Madison for the proposition that their tax dollars should not support religions. Apart from the sudden and selective reverence for original intent, since when did liberals find their identity wrapped up with their money? And, in any event, that argument provides no justification for why supporting religion is special. By contrast, religious liberals argue—and here, the European experience is telling—that financial aid to religious institutions has historically been corrupting and otherwise harmful.

Although secular and religious liberals have different bases for arriving at similar conclusions, I argue that secular liberals should form a political coalition with religious liberals in advancing progressive ideals. I recognize, however, that those secular liberals who are particularly hostile to religion might balk at entering into such a coalition on the grounds that religion is destructive superstition and that the march of reason and science will ultimately vanquish it. But the sociology of religion speaks loudly against the latter conclusion,<sup>52</sup> and religion has historically, on balance, been a progressive force in the United States.<sup>53</sup>

Greenawalt questions whether the arguments I make about the superstition claim are likely to persuade hostile secular liberals.<sup>54</sup> Basically, I contend that those who deny or affirm the existence of God are subject to something of a postmodern critique. Following William

<sup>48</sup> See *id.* at 756–57; *supra* notes 33–34 and accompanying text.

<sup>49</sup> I do think a long-term stability risk could be presented by a wide scale system of vouchers. See *supra* note 34.

<sup>50</sup> Meyler, *supra* note 7, at 759.

<sup>51</sup> See SHIFFRIN, *supra* note 1, at 103.

<sup>52</sup> *Id.* at 129.

<sup>53</sup> *Id.* at 131–32.

<sup>54</sup> Greenawalt, *supra* note 27, at 747–49.

James, Hans Küng, and Charles Taylor, I maintain that reason cannot prove or disprove the existence of God and that believers and non-believers stand on the same epistemological ground. With James, Küng, and Taylor, I suggest that human beings have a *choice* to affirm or deny the existence of the supernatural. This is not to say that most believers experience their views as chosen, but as Taylor argues, beliefs about the existence of God (or not) may well be grounded in the attractiveness of a corresponding political identity.

In response, Greenawalt doubts that hostile liberals are likely to be persuaded that reason does not support their position.<sup>55</sup> In my view, reason supports theism and non-theism. It does not conclusively support either. Nonetheless, I do not suppose that my discussion would persuade hostile liberals. The most I would hope for with some of them is the recognition that their position has not been conclusively demonstrated. In my view, a political coalition held together with the glue of tolerance is difficult enough to maintain; a political coalition composed of people with contempt for each other's views is excessively fragile.

Greenawalt, who maintains Christian beliefs, observes that some Christians do not give sufficient credit to the role of reason. He maintains that belief in the virgin birth of Mary would be particularly difficult for a hostile liberal to swallow.<sup>56</sup> Indeed, one theologian identifies the doctrine as one most likely to offend participants in modern secular culture.<sup>57</sup> Note, however, that one can dispute the virgin birth and still believe in God, as many do. The issue of the virgin birth is primarily of concern to those modern Christians who already believe in God. Undoubtedly, most Christians believe that the virgin birth actually is a historical fact, and such beliefs have persisted for centuries among Christians. On the other hand, the story of the virgin birth appears in only two of the gospels, is described in inconsistent ways, and appears to be derived from a preexisting source.<sup>58</sup> It is often difficult to know what is presented as history in the Bible and what is presented as parable.<sup>59</sup> For many modern theologians, the story of the virgin birth is designed as a parable, primarily to tell us something about the special character of

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<sup>55</sup> *Id.* at 748.

<sup>56</sup> *See id.*

<sup>57</sup> *See* TYRONE L. INBODY, *THE MANY FACES OF CHRISTOLOGY* 82 (2002). It does not stand alone, however. It would be part of the larger question of the likelihood that God would intervene in miraculous way.

<sup>58</sup> RICHARD P. MCBRIEN, *CATHOLICISM* 540–41 (New ed. 1994).

<sup>59</sup> For an assessment, see *MARY IN THE NEW TESTAMENT: A COLLABORATIVE ASSESSMENT BY PROTESTANT AND ROMAN CATHOLIC SCHOLARS* 289–92 (Raymond E. Brown et al. eds., 1978).

Jesus,<sup>60</sup> and secondarily about Mary,<sup>61</sup> rather than the recording of a historical fact.

Second, Greenawalt argues that hostile liberals have reason to question the existence of an omnipotent, loving God in light of (among other things) the extreme suffering of many innocent creatures. Indeed Hans Küng has called this problem of evil the “rock of atheism.”<sup>62</sup> I certainly should have discussed the issue in my book. On its own terms, however, the argument does not compel atheism. It does place a formidable challenge to the claim that God is both omnipotent and loving. But God could be less than omnipotent. If so, the existence of evil would not be inconsistent with a loving God. I also believe that the desirability of free will is consistent with moral evil and an omnipotent and loving God. But free will does not explain natural evils caused by earthquakes and hurricanes. Many attempts have been made to reconcile moral and natural evil with an omnipotent and loving God. I would not claim that any of them are compelling. With respect to natural evil, I would rather think that God is not omnipotent than think that the human vantage point is insufficiently divine and, therefore, fails to understand that the suffering of children is really a blessing in disguise or that it is justified retaliation for someone’s sins.<sup>63</sup>

Finally, Greenawalt suggests that hostile liberals would be unlikely to forgo expressing their views in the public sphere because they might wish to further the cause of truth and in the long run pave the way for the abandonment of mild religious endorsements.<sup>64</sup> I agree that hostile liberals are unlikely to abandon public expression of their views in the public sphere. What I would hope they might realize is that expressions of religious hostility *in connection with specific political advocacy* are counterproductive. They are unlikely to speed us along the path to the elimination of mild religious endorsements. Regrettably, in any event, I think the goal of eliminating mild religious endorsements is not realizable in this century and probably not in the next. To the extent it depends on the population’s abandonment of religion, I think one might as well

<sup>60</sup> *Id.* at 544.

<sup>61</sup> See ELIZABETH A. JOHNSON, *TRULY OUR SISTER: A THEOLOGY OF MARY IN THE COMMUNION OF SAINTS* 31 (2003) (discussing the concept of virginity as not literal, but a symbol of self-direction, integrity, and openness to God).

<sup>62</sup> HANS KÜNG, *ON BEING A CHRISTIAN* 431 (1974). Ironically, Max Weber argued that the problem of evil was the “driving force of all religious evolution.” Max Weber, *Politics as a Vocation*, in *FROM MAX WEBER: ESSAYS IN SOCIOLOGY* 123 (H.H. Gerth & C. Wright Mills eds., New ed., 1991) (1958).

<sup>63</sup> For discussion of the problem of evil, see, e.g., SUSAN NEIMAN, *EVIL IN MODERN THOUGHT: AN ALTERNATIVE HISTORY OF PHILOSOPHY* (2002); RICHARD SWINBURNE, *IS THERE A GOD?* 95–113 (1996); KÜNG, *supra* note 62, at 428–36; J.L. MACKIE, *THE MIRACLE OF THEISM: ARGUMENTS FOR AND AGAINST THE EXISTENCE OF GOD* 150–76 (1982).

<sup>64</sup> Greenawalt, *supra* note 27, at 748–49.

wait for Godot. Religion addresses serious needs of human beings, and predictions of secularization have been discredited. Even in Europe, the decline in religiosity is more about hostility toward religious institutions than about hostility toward religion.<sup>65</sup>

#### CONCLUSION

Kent Greenawalt and Bernie Meyler have offered insightful comments on the book's taxonomy, on its interpretation of the Religion Clauses, and on its views on politics and theology. In closing, I think it would be helpful to reiterate central themes of the book.

The Religion Clauses cannot be reduced in support to a single value or a small set of values. The avoidance of tight connections between church and state is the best way to promote and protect religion. The use of religious symbols by government and financial support to religion tends to harm religion rather than to support it. Nonetheless, the current composition of the Supreme Court is likely to interpret the Constitution to permit the breaking down of the already weak wall separating church and state.

Such interpretations will move the battle concerning church-state relations from courtrooms to the political sphere. In that sphere, it is vital that the theological claims of the religious Right be confronted on their own terms. The problem with the religious Right is not that it makes its arguments in the public sphere, but that the Right has bad theology and bad politics. The religious Left is better equipped to make those arguments than the secular Left. Indeed, much of the secular Left does not believe that theological arguments should be discussed in politics. But that is self-defeating. This does not mean that the secular Left has no role to play in arguing about church-state relations. Both religious and secular liberals can and should press equality arguments in the mass media and at the grassroots level. Indeed, as a general matter, secular and religious liberals need to focus less on their philosophical differences and to concentrate more on the urgent necessity of forming a political alliance designed to bring about progressive change.

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<sup>65</sup> SHIFFRIN, *supra* note 1, at 162–63 n.66.