

1-1-1991

The Religious, The Secular, and the Antithetical

Frederick Mark Gedicks
BYU Law, gedicksf@law.byu.edu

Follow this and additional works at: https://digitalcommons.law.byu.edu/faculty_scholarship



Part of the [Religion Commons](#), and the [Religion Law Commons](#)

Recommended Citation

Frederick Mark Gedicks, *The Religious, The Secular, and the Antithetical*, 20 CAP. U. L. REV., 113 (1991).

This Article is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

THE RELIGIOUS, THE SECULAR, AND THE ANTITHETICAL

FREDERICK MARK GEDICKS*

Since the Enlightenment, religious belief and secular knowledge in the West have been at loggerheads. The Enlightenment aimed to rid Western society of ideological superstitions, especially religious ones. Although the relationship between belief and knowledge during the last three centuries has been complex and variable, it has almost always been adversarial. Religion and secularism have settled at opposite poles on a continuum between subjectivity (belief) and objectivity (knowledge). In most of the intellectual confrontations between these two adversaries, knowledge has prevailed in a way that has discredited belief, so that belief was steadily relocated from the center of Western politics to its periphery. This has resulted in a contemporary public culture in the United States that is largely secular, despite an American private life in which religion has remained vital and vibrant.¹

The eclipse of belief by knowledge was momentous. Nevertheless, the result of the confrontation may be less significant than how the confrontation came about. The institutional hegemony of the medieval church, with its theological correlate of salvation through church-administered sacraments, was drastically diminished by a Reformation Protestantism that emphasized individual faith and salvation. Both Catholicism and Protestantism were opposed by the Enlightenment claim that Truth can be objectively uncovered by reason and empiricism. This claim is now under sustained attack by what might loosely be called the post-modern critique, which maintains that even scientific objectivity is impossible, and no way of knowing is naturally privileged. From Catholicism to Protestantism to naturalism to post-modernism, the pattern has remained the same. An ideological challenger has sought to expose its predecessor ideology as a fraud, as power mas-

* Professor of Law, Brigham Young University. J.D., University of Southern California; B.A., Brigham Young University. Ted Blumoff, Cole Durham, and Jim Gordon reviewed an earlier version of this paper and made many helpful comments. I am also indebted to Dr. Steven Sondrup of the Comparative Literature Department of Brigham Young University, who introduced me to the work of Hazard Adams. Mark Peterson provided indispensable research assistance. Portions of this paper are drawn from a chapter in my forthcoming book, co-authored with Roger Hendrix, entitled CHOOSING THE DREAM: THE FUTURE OF RELIGION IN AMERICAN PUBLIC LIFE, to be published by Greenwood Press in 1991.

1. Gedicks, *Toward a Constitutional Jurisprudence of Religious Group Rights*, 1989 WIS. L. REV. 99, 100 & n.3 (1989) (citing various sources).

querading as Truth. Having done so, the challenger ideology has assumed the mantle of naturalness and inevitability that comes with social predominance, only to be itself exposed as mere power in disguise by a subsequent critique. Throughout the last 500 years, ideologies have come and gone, but power has remained.

It is not surprising, then, that contemporary scholarship, both within legal academia and without, is full of deconstructive and critical arguments to the effect that power is all there is.² Yet, imagining that power is the only structure which organizes the world is deeply disquieting, triggering nihilistic images of human life as illusion, fraud, and absurdity. As Ruth Anna Putnam has observed, "Knowledge and morality without foundation give us a sense of vertigo."³ Perhaps this is why conventional legal scholarship, often chooses to dismiss deconstruction and the Critical Legal Studies movement rather than to engage them.⁴ The proliferation of doctrinal balancing tests continues unabated in the law reviews, bloodied perhaps, but unbowed.

If the post-modern critique is valid, if power is really all there is, then ignorance and fear will not send it away. Only by confronting ideas can a person test their validity and learn to live with them, if she must. In any event, "the challenge cannot be evaded."⁵

One of the major figures in American literary criticism, Hazard Adams, has met the post-modern challenge by admitting the force of its epistemological critique without accepting its nihilistic implications. Addressing the question how a work of literature enters the Western canon of "great works," Adams observes that "canonizing" a text is not a *literary* but a *power* concept. Contemporary critics tend to expose formally neutral literary criteria as disguised power criteria. However, such critics often substitute their own power criteria against those of the dominant ideol-

2. See, e.g., R. RORTY, *CONTINGENCY, IRONY, AND SOLIDARITY* xiii (1989) [hereinafter R. RORTY, *CONTINGENCY*] ("socialization, and thus historical circumstance, goes all the way down—there is nothing "beneath" socialization or prior to history which is definatory of the human"); M. TUSHNET, *RED, WHITE AND BLUE: A CRITICAL ANALYSIS OF CONSTITUTIONAL LAW* 318 (1988) ("Human experience consists of connectedness and autonomy, love and hate, toleration of others and anger at their differences from an ever-changing 'us.' Neither the liberal tradition nor the republican one can accommodate the aspects of experience that the other takes as central. Critique is all there is.").

3. Putnam, *Creating Facts and Values*, 60 *PHIL.* 187, 195 (1985) [hereinafter R. Putnam].

4. See, e.g., Carrington, *Of Law and the River*, 34 *J. LEGAL EDUC.* 222 (1984) (arguing that CLS scholars do not belong in law schools). Notables in the literary world who have chosen to engage (rather than to dismiss) the deconstructive critique include George Steiner, see G. STEINER, *REAL PRESENCES* (1989), and John Ellis, see J. ELLIS, *AGAINST DECONSTRUCTION* (1989).

5. G. STEINER, *supra* note 4, at 134.

ogy. For example, Adams criticizes those feminists who protest the undeniable white, male, and elitist character of the traditional literary canon while championing the work of other authors for the apparent principal reason that they are Third World females of color. The power criteria of whiteness, maleness, and class are thus challenged by criteria that are different and perhaps even opposite, but which are nevertheless power criteria in their own right. Adams's principal thesis is that authentic literary criteria can emerge only in an "antithetical" or "visionary" mode—i.e., in a critical stance that attempts to withdraw from all oppositions of power without either negating those oppositions or generating power criteria itself.⁶

I propose to examine the contemporary American conflict between religion and secularism in public life through the lens of this insight into the nature of power in critical discourse. I will argue that the general exclusion of religious belief from the discourse of American public life is merely the latest turn in the historical relationship of church and state which extends back to the Middle Ages.⁷ Philosophically, the exclusion of religion from public life is grounded on the Enlightenment distinction between subject and object which correlates to the contemporary distinction between belief and knowledge.⁸ Conventional liberal wisdom suggests that secularism fulfilled the Enlightenment dream of politics without desperate and violent ideological conflict.⁹ I will suggest, however, that the secular society is not the destination of Western history, but merely another ideological waystation.¹⁰ What could be beyond secularism? Contemporary political dialogue, and American public life in general, must assume a tone like Adams's visionary antithetical voice if the United States is ever to develop a post-secular public culture that does not merely exchange secular power for religious power in measuring the legitimacy of public discourse. In other words, public discourse in a post-secular, post-modern society must evolve from the current view that secularism is the departure point and limit on public debate, and it must accomplish this without substituting in its place religion as the new departure point and

6. Adams, *Canons: Literary Criteria/Power Criteria*, 14 CRITICAL INQUIRY 748 (1988) [hereinafter Adams, *Canons*]. For a recent collection of Adams's work (including the foregoing essay), see H. ADAMS, *ANTITHETICAL ESSAYS IN LITERARY CRITICISM AND LIBERAL EDUCATION* (1990).

7. See *infra* Part I. Like all historical relationships, that between church and state has been highly complex, and the historical account set forth in Part I unavoidably ignores much of this complexity for the sake of brevity and clarity.

8. See *infra* Part II.

9. See, e.g., W. BERNS, *THE FIRST AMENDMENT AND THE FUTURE OF AMERICAN DEMOCRACY* (1976); Solum, *Faith and Justice*, 39 DE PAUL L. REV. 1083 (1990).

10. See *infra* Part III.

limit. I will close, then, with a closer examination of Adams's antithetical voice and its implications for both belief and knowledge in American public life.¹¹

I

Up to the 16th century, religion and government in the West were unified, each representing a different aspect of the same divine authority. Post-Reformation Europe from the 16th to the 18th centuries saw an institutional (but not a social or political) disengagement of religion and government brought on by both theological and political imperatives. Following the American revolution on into the 19th and early 20th centuries, the United States moved away from sectarian public discourse in search of a language that would unify the cultural and religious diversity created by increased education, industrialization, and immigration. By the 1930s, however, the United States had inherited the full legacy of the Enlightenment. The pragmatic move away from sectarian language in service to cultural and political unity was transformed into a normative preference of secularism among intellectual elites as the language of progress and learning.

A

Secularism began with the distillation of two separate spheres of institutional influence within society as a result of the Reformation. One sphere became the domain of the spiritual, ruled by the church; the other the domain of the secular, ruled by the state. At this time, the word "secular" merely described property previously owned by the church which had been legally transferred to individuals or government for nonecclesiastical uses.¹² The meaning of the word eventually broadened into a general description of all institutions that were not related to the church. Prior to the Reformation, however, the concepts "religious" and "secular" did not exist as descriptions of fundamentally different aspects of society. Although there clearly was tension and conflict in the relations between church and state during this time, the state was not considered to be nonreligious. Both church and state were part of the Christian foundation upon which medieval society was built.¹³

11. See *infra* Part IV.

12. H. KUNG, ON BEING A CHRISTIAN 26-27 (1976).

13. Most historians believe that the concept of separate realms of religious and secular authority did not begin to take shape until the 15th century. See, e.g., G. SABINE, A HISTORY OF POLITICAL THEORY 226, 355 (rev. ed. 1950). See also H. KUNG, *supra* note 12, at 556. Harold Berman argues that the separation of church and state took conceptual form as the result of the church's emergence as a visible and separate corporate structure following the estab-

(continued)

There were two forces that encouraged the institutional separation of church and state into fundamentally different social spheres of the religious and the secular; one force was theological, the other political.

The church of the Middle Ages had fallen heir to the classical idea that "the purpose of the state was to establish and conserve a complete and finished program of life."¹⁴ It was theologically committed to the spiritual leadership of the church and the divinely sanctioned rule of kings and princes. Thus, although early Christian theologians like Augustine had written of separate spiritual and temporal spheres of social life, they did not understand these spheres to be fundamentally different—that is, the state was not understood to be nonreligious, but was simply a different aspect of the sovereign authority of God.¹⁵

In any event, Augustine and his Platonism were eventually eclipsed by the Aristotelianism of Thomas Aquinas. With the Aristotelian conception of the world as a unified whole, Aquinas taught that the spiritual and the temporal were bound together in "a universal synthesis, an all-embracing system, the keynote of which was harmony and concilience."¹⁶ However, the violence and oppression that were the facts of medieval life made harmony and reconciliation unlikely touchstones for analyzing social life. Accordingly, theologians of the late Middle Ages and the early Reformation returned to the Augustinian separation of the spiritual and the temporal. This time, however, the separation was made more fundamental.¹⁷ Luther and Calvin both argued that God had

lishment of papal supremacy in the late 11th century. However, even Berman acknowledges that church and state remained intertwined until well after that time, and he appears to concede as well that the gains of the church in this respect were not finally consolidated until the Reformation. See H. BERMAN, *LAW AND REVOLUTION* 87-114 *passim*, 268, 288 (1984).

14. A. LINDSAY, *RELIGION, SCIENCE, AND SOCIETY IN THE MODERN WORLD* 7 (1943).

15. Augustine, for example, conceived of the world as divided between the "City of God"—the spiritual province of the church—and the "City of Man"—the temporal province of the state. Nevertheless, for Augustine

there was not one body of men who formed the state and one which formed the church, for all men were included in both. There was only a single Christian society, . . . and it included . . . the whole world.

G. SABINE, *supra* note 13, at 225.

16. *Id.* at 248.

17. For example, Alasdair MacIntyre states that in the late Middle Ages, the synthesis of the spiritual and the temporal advocated by Aquinas was "replaced by an appeal to divine revelation and to mystical experience," which together emphasized the "distance between God and man." A. MACINTYRE, *A SHORT HISTORY OF ETHICS* 119 (1966).

instituted two kingdoms on earth, one spiritual to be administered by the church, and the other temporal to be ruled by a civil sovereign. This dualism was incorporated into the theologies of certain Protestant sects of the late Reformation, such as the Anabaptists in Europe—ancestors of the contemporary Amish and Mennonite sects—and the separatist Puritans in England. In the view of both Anabaptists and Puritans, unity or alignment of the church with civil government unavoidably corrupted the church and stained the religious conscience of its believers. The only solution that would preserve the religious integrity of the church and its believers was separation of their religious activities of devotion and worship from the political activities of government. Thus, both Anabaptists and Puritans incorporated a theological principal of church-state separation.¹⁸

The "Reformation" is an ironic name for the revolution set off by Luther, since far more was destroyed by the Reformation than was reformed by it.¹⁹ Despite the threat of torture by the Inquisition, the heresy of Protestantism spread throughout Europe. Moreover, it quickly became clear that the heretics themselves often disagreed as violently with each other as they did with Rome. A prince who established, say, Lutheranism as the state religion within his realm had to contend with unrest not only from the Catholics among his subjects, but also from non-Lutheran Protestant dissenters. No longer could civil government assume that society rested on any sort of religious consensus; the Reformation "fragment[ed] moral authority in the modern world."²⁰

This moral fragmentation marked the birth of something the Western world now takes for granted—religious pluralism. In the 16th and 17th centuries, however, pluralism was a new phenomenon that posed a serious challenge to the ability of the emerging nation-states of Europe to govern their subjects. As the Protestant Reformation and the Catholic Counter-Reformation contended throughout Europe, kings and princes chose sides by establishing either Catholicism or one of the new Protestant sects as the official state religion of their respective realms. Although dissenters from the state religion were sometimes tolerated, this was the exception rather than the rule, especially in the early days of the Reformation. This meant that obedience to the crown usually had a theological as well as a political dimension: One who obeyed the king was perceived as recognizing not only the civil authority of

18. M. ASHLEY, *ENGLAND IN THE SEVENTEENTH CENTURY* 26-33 (3d ed. 1967); R. BAINTON, *THE REFORMATION OF THE 16TH CENTURY* 95-101, 107, 233 (1952).

19. See *THE COLUMBIA HISTORY OF THE WORLD* 518-19 (P. Garraty & P. Gay ed. 1972) [hereinafter Garraty & Gay].

20. R. NEUHAUS, *THE NAKED PUBLIC SQUARE* 174 (2d ed. 1986).

the king to govern the realm, but also the religious authority of the church or sect with which the king had aligned his domain.²¹

So long as obedience to civil authority retained a religious dimension, one could count on massive civil disobedience on the part of dissenters from the state religion. The ability of civil government to enforce the law and command the respect of its subjects would be in doubt. The new religious pluralism that now existed in most of Europe demanded that civil and ecclesiastical authority be separated if the nation-states were not to spend extraordinary resources merely to maintain civil law and order.²²

For both theological and political reasons, then, the catholic unity of church and state on which European society had rested for nearly a thousand years eventually disappeared. Although by the end of the 18th century the established state church was still the rule for the nations of Europe, most of them, by law or custom, had reached accommodations with religious dissenters which recognized their existence and occasionally even granted them limited political and civil rights. With this tacit recognition that secular government had no jurisdiction over religious conscience, widespread civil disobedience eventually ceased. The Reformation thus yielded the first condition for creation of the secular society, namely, the conceptualization of church and state as inhabiting separate spheres of social life.

B

Pluralism presented an even greater problem for the United States than it did for Europe. The various colonies had been settled by culturally and ethnically diverse groups of people. Difficulties of travel and communication in the 17th and 18th centuries ensured that the colonies would develop generally different ways of living and thinking rather than melding their differences into a common culture. This cultural diversity was a fact of colonial religious life as well. The Congregationalists of New England reflected the strict Calvinism of their Puritan forebears, while the Anglican establishment of England was strongest in Virginia and the other Southern colonies. Maryland was settled by Roman Catholics. Baptists, Presbyterians, and Methodists, and to a lesser extent Catholics and Jews, were sprinkled throughout all of the colonies,

21. See Smith, *Separation and the "Secular": Reconstructing the Disestablishment Decision*, 67 TEX. L. REV. 955, 964 (1989) ("With church and state united, . . . dissent from the church would naturally imply opposition to the state").

22. This is one aspect of Locke's argument for religious toleration. See Locke, *A Letter Concerning Toleration* in J. LOCKE, *TREATISE OF CIVIL GOVERNMENT AND A LETTER CONCERNING TOLERATION* 167, 213-221 (C. Sherman ed. 1979) (originally published 1689).

with perhaps the most diverse religious population residing in the mid-Atlantic colonies of New York and New Jersey. Towards the end of the 18th century, the influence of the secular Enlightenment was felt in the proliferation of deism among intellectuals like Benjamin Franklin, Thomas Jefferson and Thomas Paine. It was due in no small part to the religious diversity of the colonies that the Bill of Rights contained unprecedented provisions guaranteeing freedom of religious conscience and prohibiting the establishment of a national church.²³

As if the religious diversity of the 18th century were not enough, the Second Great Awakening exploded upon the American scene in the early 19th century. This period saw the resurgence of Protestant fundamentalism, with the multiplication of Protestant sects almost beyond number and the formation of numerous experimental religious communities. This period also saw the birth of distinctly American religions like Christian Science and Mormonism.

By the midpoint of the 19th century, it had become clear that no single religious denomination would ever dominate the American cultural scene; there were simply too many of them for any one to rise above the rest. As a consequence, there was no single denominational language that was adequate to the task of communication among such a theologically diverse population. Of necessity, Americans began to move toward a less sectarian language in public life. It was only by using a more secular language that one could carry on public business and dialogue without importing into the discussion the divisive theological differences that were reflected in the distinctively religious voices of the innumerable American sects. "Secular" gradually came to be associated with "religiously neutral."

The move away from sectarian language as the preferred American vocabulary of public discourse did not immediately signal the end of public religious influence. In the first place, there was no explicit 19th century ethic that required the divorce of religion from politics and government; on the contrary, both churches and individuals actively intervened on behalf of self-consciously religious agenda well into the 20th century.²⁴ There was no clear

23. See generally Adams & Emmerich, *A Heritage of Religious Liberty*, 137 U. PA. L. REV. 1559, 1594-95 (1989); Berman, *Religion and Law: The First Amendment in Historical Perspective*, (1986) 35 EMORY L.J. 777, 787-88, (1986).

24. Smith, *supra* note 21, at 966-71. Thomas Curry has argued that Americans of the founding era understood "establishment of religion" to refer only to the state's funding and coercing participation in a particular religion, T. CURRY, *THE FIRST FREEDOMS* 133-37 *passim* (1986), an understanding that persisted into the 19th century. Curry summarizes this point as follows:

Both those who supported and those who opposed state support of religion agreed that an establishment of religion meant primarily a
(continued)

division of society into spheres of the religious and the secular in the 19th century; rather, religion and government emerged as competing centers of institutional authority, each of which tacitly recognized the pre-eminence of the other in certain matters. In 19th century America, this meant that as a matter of both custom and law, the government could not interfere in the internal affairs of the church, and the church likewise was prohibited from writing its theology into law to be enforced by the government.²⁵ For the individual citizen, however, no such limits existed. While government could not coerce religious belief, it was perfectly free to regulate and even to prohibit religiously motivated action whenever it was thought desirable for public safety or welfare.²⁶ By the same token, it was both legally and culturally acceptable for individuals to argue public policy in explicitly religious, even sectarian, terms, and many did so. Indeed, the abolitionist movement of the early part of the 19th century and the Progressive movement of the latter part of the century were both decisively influenced by groundswells of religious fundamentalism. By the 1930s, however, politicians discovered that maximizing their political appeal to a diverse religious population in an industrial society required that they mute the sectarian element of their message. A politician who needed votes from a theologically diverse electorate could succeed only if

state preference for one religion that constituted a tyrannical intrusion of the government into religious affairs. [T]he image of an establishment that continued to dominate in the minds of Americans during the revolutionary period was one modelled on the Anglican establishment in England.

Id. at 191-92.

Robert Cord has gone further, arguing that the founders understood the establishment clause to permit government aid and assistance on a nondenominational or nonpreferential basis. See R. CORD, *SEPARATION OF CHURCH AND STATE* (1982). In contrast, Douglas Laycock argues that the framers understood the establishment clause to prohibit financial assistance even on a nonpreferential basis, and that they would have understood it to prohibit the nonfinancial assistance characteristic of the defacto Protestant establishment if they had thought about the question. Laycock, "Nonpreferential" Aid to Religion: A False Claim About Original Intent, 27 WM. & MARY L. REV. 875 (1986) [hereinafter Laycock, *Original Intent*]. Whereas Cord and Laycock both believe that the historical evidence supports the view that the founders consciously understood the religion clauses to apply to nonpreferential aid, Curry argues that the founders simply did not think about the question in these terms, if at all. See, e.g., T. CURRY, *supra*, at 123-24.

25. See, e.g., *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871).

26. See, e.g., *Reynolds v. United States*, 98 U.S. 108 (1878). Michael McConnell has recently cast doubt on the proposition that the belief-action distinction was settled law when *Reynolds* was decided. See McConnell, *The Origins and Historical Understanding of the Free Exercise of Religion*, 103 HARV. L. REV. 1409, 1430-31 (1990).

he used a language that appealed to all without offending any. This move away from sectarian language was encouraged by the dramatic increase in immigration from Europe during the second half of the 19th century, which added significant numbers of Catholics and Jews to the diversity of Protestant sects that already existed among Americans. Thus, the move away from sectarianism toward secularism in public discourse was inspired, not by any Enlightenment belief that the separation of church and state required more than the institutional separation of the Reformation, but rather by the pragmatic instinct that a more secular public discourse was essential to political success.

The move away from sectarianism toward secularism likewise did not obscure the fact that Americans remained generally Protestant despite the recent influx of non-Protestant immigrants. However, seemingly limitless sectarian differences restricted even this influence to general manifestations that would not provoke theological argument among the Protestant majority, such as extolling the virtues of hard work and individualism, or appropriating Biblical images like William Jennings Bryan's "cross of gold." While religious imagery remained acceptable and influential in American public life, the need to keep such imagery at a high level of generality diluted it of much of its rhetorical power. Perhaps more important, it necessarily restricted theologically meaningful religious discourse to private life, outside of the public realm of law, politics, and government. Vague references to deity, expiation, forgiveness, and charity, typified by Lincoln's Second Inaugural Address, began to delineate the boundary of effective religious discourse in public. Sectarian discourse became increasingly confined to private life, and ultimately survived in public life only as "civil religion"—faintly Protestant platitudes which reaffirmed the religious base of American culture despite being largely void of theological significance.²⁷

Thus, Protestantism still affected public business, but implicitly, more as the source and background of political movements than as the movements themselves. This religious influence has become known as the "defacto Protestant establishment."²⁸ Public schools read from the King James Bible and emphasized individuality rather than community in judgment and action.²⁹ A similar

27. Cf. R. BELLAH, *THE BROKEN COVENANT: AMERICAN CIVIL RELIGION IN TIME OF TRIAL* (1975). Bellah considers civil religion to have considerably more substantive content than I suggest in the text.

28. M. HOWE, *THE GARDEN AND THE WILDERNESS* 11 (1965).

29. By the end of the 19th century American Catholics had become so frustrated by the pervasive Protestant bias of the public schools that they withdrew from the public school system altogether and established an extensive system of privately funded parochial schools. See generally *Everson v. Board of Educ.*, 330 U.S. 1, (1947) (Jackson, J., concurring) ("Our public school, if not a product of Protestantism, at least is more consistent with it than
(continued)

Protestant piety was reflected in the solidification of customs such as legislative prayer and recognition of Thanksgiving, Christmas and Easter holidays. States outlawed blasphemy, punished atheism, and enforced the Christian Sabbath. The resurgence of political activity by religious fundamentalists in the latter part of the 19th century put government authority behind temperance, anti-evolution and anti-polygamy laws. These laws and actions often were not defended in theological terms—as necessary, for example, to building the kingdom of God on earth—but rather in more secular terms, as necessary to building and maintaining a well-ordered, “civilized” society.³⁰

The 19th and early 20th centuries in the United States, then, were characterized by a curious melding of religion and government in American public life which left public discourse caught between sectarian and secular language. It would not remain long in this awkward and unstable state, however. The pragmatic move toward a public discourse with less offensive and more broadly appealing religious content sowed the seeds of a more fundamental limitation on public discourse which bore fruit in the 20th century.

C

Reformation Protestants, whether as dissenters or as the established church, were every bit as uncompromising and fanatical as were their Catholic predecessors.³¹ So blindly and completely did the

with the Catholic culture and scheme of values.”); Bradley, *The No Religious Test Clause and the Constitution of Religious Liberty: A Machine That Has Gone of Itself*, 37 CASE W. RES. 674, 684, 727-28 (1987); Laycock, *A Survey of Religious Liberty in the United States*, 47 OHIO ST. L.J. 409, 417-18 (1986).

30. See, e.g., *Reynolds v. United States*, 98 U.S. 145, 166-67 (1878); cf. T. CURRY, *supra* note 24, at 123-24 (discussing 18th century American attitudes):

The modern mind tends to assume that the logical corollary to the statement ‘no religious Profession in particular [should] be established’ is that religion in general may or should be established, but that was not what [was] assumed. [T]hey opposed a particular Protestant denomination to Protestantism in general, which later they did not equate with an establishment. [T]he notion of prayer and worship based on the Bible that was accepted by all Protestants did not amount to a general establishment, but constituted an essential foundation of civilization.

For a summary of the extensive interactions between religion and government during this period, see Berman, *supra* note 23, at 780-85; Laycock, *Original Intent*, *supra* note 24, at 914-18.

31. G. CLARK, *THE SEVENTEENTH CENTURY* 309-12 (2d ed. 1947); see, e.g., G. SABINE, *supra* note 13, at 363 (describing Calvinism as generally “illiberal, oppressive, and reactionary”). Protestants and Catholics alike in the

(continued)

adherents to different religious sects hate that each persisted in decades-long attempts to exterminate the others, culminating in the mindless carnage of the Thirty-Years War in continental Europe³² and a century of violence in England caused by Henry VIII, his daughter Mary, and the Puritan Revolution.³³ This bloodshed, of course, was in addition to the ubiquitous oppression of Jews and other nonChristians.³⁴

To the 17th century intellectual, then, religion was a scourge, whether it was Protestant or Catholic. It had become a violent and destabilizing enterprise that put the world on a backwards course.³⁵

post-Reformation period persecuted, tortured, and killed people for their failure to confess orthodox beliefs. See, e.g., M. ASHLEY, *supra* note 18, at 125-27; R. BAINTON, *supra* note 18, at 56, 101-06; G. CLARK, *supra*, at 313-317; G. SABINE, *supra* note 13, at 372.

32. GARRATY & GAY, *supra* note 19, at 586-88. Intermittent religious war had raged in Europe for over 100 years prior to the outbreak of the Thirty Years War in 1618. GARRATY & GAY, *supra* note 19, at 584; G. SABINE, *supra* note 13, at 372. However, the Thirty Years War brought unprecedented devastation to Western Europe:

[W]arfare now became general [and] took on a life of its own. Most of the fighting had been done, according to the custom of the time, by mercenaries. When after years of costly campaigning the rulers ran out of money, the mercenaries extracted their wages in the form of plunder, rape, and senseless destruction. Troops of armed men roamed the countryside in search of peaceful towns to loot. They blackmailed entire communities, pillaged churches and monasteries.

GARRATY & GAY, *supra* note 19, at 588. For a summary of diplomatic and political aspects of the War, see G. CLARK, *supra* note 31, at 158-62.

33. M. ASHLEY, *supra* note 18, at 80-81; R. BAINTON, *supra* note 18, at 197-99, 204-06. Many of the deaths during Henry's reign, however, were less the result of religious animus than of misapprehension by his subjects of the implications of his conflicted political strategy of "schism without heresy," by which he sought to escape the authority of the Pope while at the same time maintaining a national church that was in all other respects orthodox. *Id.* at 197-99.

34. See, e.g., H. Kung, *supra* note 12, at 168.

35. See R. NEUHAUS, *supra* note 20, at 156:

[T]he wars of religion of the sixteenth and seventeenth centuries have left an indelible mark upon Western political thought and practice. From that experience we presumably learned that particularist religion is an impossibly divisive dynamic, destroying the foundations of the *polis* it would control. Still in the 19th century [intellectuals] were operating from the memory of religion's ambition and ability to dominate.

See also T. EAGLETON, *LITERARY THEORY: AN INTRODUCTION* 17 (1983):

(continued)

Accordingly, the ethic that grew out of the secular Enlightenment was that reason, education, and science held the key to civilization and progress.³⁶ When considered against the order of the newly discovered Newtonian universe, the dogmatism, violence, and fanaticism that seemed to have accompanied 16th and 17th century religion stamped it as a dangerous superstition. The Enlightenment project was to apply the tools of reason and science to the truth claims of religion, thereby liberating society from the intellectual oppression and political instability that religion perpetuated. Freed from the restraining influence of unreasonable and undemonstrable beliefs, society could progress to a more tolerant and enlightened state.³⁷ Thus, the authoritarianism of both Catholic and Reformation Protestant ecclesiology was severely criticized.³⁸ Rather than insisting that the commandments be obeyed because they issued from God, and that priests and rulers be respected because they represented God on earth, Enlightenment thinkers required reasonable and increasingly empirical explanations for such obedience and respect. When the churches could not supply naturalistic explanations for their beliefs, they became intellectually discredited.

The Enlightenment reached full flower in the United States during the 20th century.³⁹ The conflict between evolution and fundamentalist religion which culminated in the *Scopes* trial is an example of how science displaced religion in American public life during the 20th century. Edward Purcell writes that during this era,

the idea of the middle ages, dominated by scholastic philosophy, an authoritarian church, and a hierarchical social order, emerged as the preeminent symbol of everything that was bad in human society. Science, gaining strength since the seventeenth century, and finally able to discredit those

Eighteenth century England had emerged, battered but intact, from a bloody civil war in the previous century which had set the social classes at each others' throat; and in the desire to reconsolidate a shaken social order, the neoclassical notions of Reason, Nature, order and propriety . . . were key concepts.

36. See G. CLARK, *supra* note 31, at 243-44, 253-55; H. KUNG, *supra* note 12, at 86, 413; G. SABINE, *supra* note 13, at 577, 620.

37. See, e.g., A. MACINTYRE, *supra* note 17, at 181 (describing Helvetius's belief in "almost limitless possibilities of transforming human nature, if only political despotism and ecclesiastical obscurantism did not prevent radical reform of the educational system").

38. See, e.g., J. ROUSSEAU, *THE SOCIAL CONTRACT AND DISCOURSES* 129-41 (G. Cole trans. ed. 1950).

39. See E. PURCELL, *THE CRISIS OF DEMOCRATIC THEORY: SCIENTIFIC NATURALISM AND THE PROBLEM OF VALUE* (1973).

"Dark Ages," was inextricably tied up in the minds of most intellectuals with everything that was best in human society.⁴⁰

Today, there is a serious division between religion (especially conservative religion) and intellectual life. Indeed, the term "fundamentalist" is generally taken to be a synonym for "anti-intellectual," and even so-called "liberal" denominations are not taken seriously to the extent that they cling to beliefs in genuine divinity.⁴¹ Faithfulness to the ideal of the secular society predominates among American intellectuals,⁴² and aggressive secularism pervades American intellectual life.⁴³ Public life goes on without religion, although large numbers of Americans remain religiously faithful in private.

II

Despite its having toppled the edifice of religion in the public square, secularism itself is built on a weak intellectual foundation.

40. *Id.* at 61.

41. See R. NEUHAUS, *supra* note 20, ch. 13.

42. White, *Response to Roger Cramton's Article*, 37 J. LEGAL EDUC. 533, 533 (1985):

[There is] a peculiar division between academic and religious thought in our culture. In the academic world, we tend to speak as though all participants in our conversation were purely rational actors engaged in rational debate; perhaps some people out there are sufficiently benighted that they turn to religious beliefs or other superstitions, but that is not true of us or, if it is true, we hide it, and it ought not to be true of them. Ours is a secular academy and, we think, a secular state.

See also K. GREENAWALT, *RELIGIOUS CONVICTIONS AND POLITICAL CHOICE* 6 (1988):

A good many professors and other intellectuals display a hostility or skeptical indifference that amounts to a thinly disguised contempt for belief in any reality beyond that discoverable by scientific inquiry or ordinary human experience.

Accord M. PERRY, *MORALITY, POLITICS AND LAW* 10, 211 n.10 (1988) [hereinafter M. PERRY, *MORALITY, POLITICS AND LAW*]; Cramton, *Beyond the Ordinary Religion*, 37 J. LEGAL EDUC. 509 (1985); Lee, *The Role of the Religious Law School*, 30 VILL. L. REV. 1175 (1985); Shane, *Prophets and Provocateurs*, 37 J. LEGAL EDUC. 529 (1987).

43. J. REICHLEY, *RELIGION IN AMERICAN PUBLIC LIFE* 360 (1985) (marveling at the persistence of religious belief in the United States despite "recent incursions by civil humanism among cultural elites").

In the critique that follows, I rely primarily on Roberto Unger's seminal work, *Knowledge and Politics*.⁴⁴ However, Unger is hardly alone in rejecting the epistemological premises of the Enlightenment. Contemporary refutation of these premises has been widespread and decisive. It is, for example, a major focus of the work of Thomas Kuhn,⁴⁵ Hillary Putnam,⁴⁶ and Richard Rorty,⁴⁷ to name three prominent contemporary philosophers.

The Enlightenment aimed to rid society of ideological superstitions, especially religious ones. The fundamental axiom of Enlightenment thought was that the world could be understood through the objective application of reason and science once the distorting influence of religious ideologies was overcome.⁴⁸ Although this view has undergone numerous changes, it survives essentially intact in liberal political theory. Beneath the Enlightenment privilege granted to secularism lie the roots of liberal psychology, from which liberal political theory is derived. In the classical liberal account of mind and its relation to the world, a radical distinction is drawn between subject (the mind) and object (the world).⁴⁹ Mind is the manifestation of human will, and exhibits the uniqueness of human personality. Each person has different tastes, preferences, and beliefs, and as a result each person makes different choices about how to live. However, the choices people make, together with their consequences, take place in only one place—Reality, or the “world-as-it-really-is,” somewhere “out there.” There are as many combinations of tastes, preferences, beliefs, and choices as there are minds, but none of these affect the singular and essential nature of Reality; it exists in itself, independent of the innumerable manifestations of will within it.⁵⁰ Unger has written that in the liberal account of mind and world,

[w]hat distinguishes men from one another is not that they understand the world differently, but that they desire different things even when they share the same understanding of the world. There is only one world of facts and only one

44. R. UNGER, *KNOWLEDGE AND POLITICS* (1975).

45. See, e.g., T. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (2d ed. 1970).

46. See, e.g., H. PUTNAM, *REASON, TRUTH AND HISTORY* (1981).

47. See, e.g., R. RORTY, *PHILOSOPHY AND THE MIRROR OF NATURE* (1979) [hereinafter R. RORTY, *THE MIRROR OF NATURE*].

48. See *supra* notes 35-38 and accompanying text.

49. Unger argues that this division has been the foundation of Western conceptions of the self for at least 300 years, R. UNGER, *supra* note 44, at 40, 299 n.12.

50. R. UNGER, *supra* note 44, at 39 (“We may be able to show why it is that we choose one course of action rather than another, but . . . we do not suppose that the choice of a goal is the same as the acknowledgement of a fact.”).

form of understanding, fundamentally alike in everyone. A man may know more or less about the world, but whenever two men know something truly what they know is the same thing.⁵¹

This characterization of the liberal position simplifies the variety and complexity that exist in liberal thought, as Unger himself admits.⁵² Nevertheless, he argues that some version of this description of the position works its way into virtually every aspect of modern intellectual thought so that "it offers a vantage point from which to grasp the entire condition of modern thought."⁵³ Whether or not this global characterization is valid, I intend to argue the more modest thesis that Unger's description constitutes a position from which to understand and criticize the dominance of secularism in American public life.

The foregoing account of mind and world is the foundation of liberal epistemology: Knowledge of Reality is the only true knowledge.⁵⁴ The will, in its infinite variety, is not subject to rational analysis; its choices are arbitrary, and thus cannot yield information about Reality.⁵⁵ Something is "true" only to the extent that it

51. *Id.* at 40.

52. *Id.* at 8.

53. *Id.*

54. See Peller, *Reason and the Mob: The Politics of Representation*, 2 *TIKKUN*, no. 3, at 28-29:

[A] continuing thread of th[e Enlightenment] construction of the world has been the notion that there is a radical distinction between truth, the representation of the way the world really is, and myth, an interpretation of the world that cannot be proven and thus is merely sentimental or poetic.

55. Unger argues that "choice is not reducible to understanding." R. UNGER, *supra* note 44, at 42. Desires can be either facts or choices, but never both at the same time:

Desires can be viewed as either determined facts or contingent choices, depending on whether we want to explain conduct or to criticize and to justify it, [b]ut the relation between the two assumptions, desire as determined fact and as arbitrary choice, remains forever a mystery.

Id. at 43. Accordingly, reason alone cannot defend or attack choices, since desire is beyond rational analysis. Reason can tell us how best to get what we want (desire as choice), but it cannot tell us what we want (desire as fact). It therefore has a subsidiary role in justifying or criticizing choice:

(continued)

corresponds to Reality.⁵⁶ Under liberal premises, then, it is incoherent to talk about "true" choices; one can only talk about "A's" choices and "B's" choices. And how does one know whether a proposition corresponds to Reality and thus is True? Medieval scholastics sought to demonstrate the correspondence by forcing empirical observation into a wholly mental construct.⁵⁷ Enlightenment science then reversed field, forcing what made sense into a wholly empirical construct.⁵⁸ Contemporary philosophy seeks "to show the mediation and synthesis" of these two orders: rationalism, or the "order of ideas," and empiricism, or the "order of events."⁵⁹ No such synthesis has succeeded and become dominant, but the effort has had its effect, disqualifying as knowledge rationalism that is unempirical, and empiricism that is irrational. Thus, unless a proposition or phenomenon lies within the realm of observable human experience or can be logically proved from empirically verifiable premises, it cannot constitute knowledge about the world. Instead, it is condemned to the private world of the will, where "Truth" and "Reality" have no meaning.

The radical separation of mind and world is replicated in liberal political theory. Unger notes that in a liberal political system operating under the "rule of law," laws must be, *inter alia*, "general, uniform, and public," and the government must be perceived as ideologically neutral—"either as above the antagonism of private values or as the framework within which those interests are represented and reconciled."⁶⁰ Thus, the most uncontroversial kinds of government action in a liberal political system are based on objective facts. On the other hand, government actions which appear to be based upon some subjective value preference are problem-

[W]hen all is said and done, reason cannot command us to choose a course of action simply because it is worthy of being chosen, nor can it prohibit us from settling on some new aim for our activities. Its industry in the service of desire is indispensable, but limited.

Id. at 44.

56. This theory, sometimes called the "correspondence" or "copy" theory of truth, is argued in a variety of forms. Garth Hallett has summarized them as "essentialist"—e.g., Plato, Aristotle, Aquinas and Locke; "empiricist"—e.g., Russell; and "atomist"—e.g., early Wittgenstein. G. HALLETT, *LANGUAGE AND TRUTH* ch. 1 (1988).

57. R. UNGER, *supra* note 44, at 13 ("the order of events [was reduced] to that of ideas so that logic provided the key to all explanation (rationalism)").

58. *Id.* at 13-14 ("the order of ideas [was reduced] to that of events so that causality served as the basis of a unified science of the world (empiricism)").

59. *Id.* at 14 (describing structural and dialectical theory as examples of such efforts).

60. *Id.* at 73.

atic because they reveal an ideological bias in the decision maker.⁶¹ To avoid this, it is argued that liberal government must be neutral between competing conceptions of the good.⁶² This explains, for example, the Supreme Court's reluctance to allow government to suppress pornographic speech in the absence of conclusive empirical data showing that pornography contributes to criminal behavior. Without such data, banning pornography appears as a subjective value choice that arbitrarily privileges one among a number of competing values,⁶³ rather than an action based upon knowledge of Reality. Thus, notwithstanding its intuition that pornographic speech is neither desirable nor important, the Court imposes a relatively stringent standard of review on government efforts to outlaw it.⁶⁴

To say that the government must be neutral between competing conceptions of the good, however, is not to say that it must be neutral between competing conceptions of Reality. Once the nature and content of Reality has been convincingly demonstrated, neutrality does not require that government remain aloof from competing conceptions of it. For example, excluding members of the Flat-Earth Society from eligibility for National Science Foundation grants would not be a departure from neutrality. Once revealed, Reality is "beyond mere interpretation," embodying "truth itself."⁶⁵ Liberal government might tolerate those who dissent from Reality by letting them speak, but it is not required to indulge such dissenters to the extent of ordering its affairs as if they might be right. Therefore, when confronted with ideological dissensus, one of the key tasks of

61. See *id.* at 89 ("If the law applier cannot justify his decisions, because they appear to rest on his own individual and subjective values, liberty will suffer.")

62. See, e.g., B. ACKERMAN, *SOCIAL JUSTICE IN THE LIBERAL STATE* (1980); J. RAWLS, *A THEORY OF JUSTICE* (1972).

63. See, e.g., Henkin, *Morals and the Constitution: The Sin of Obscenity*, 63 COLUM. L. REV. 391 (1963).

64. Compare *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, at 63 (1973) ("Nothing in the Constitution prohibits a State from reaching [the] conclusion [that commercial exploitation of sex is socially harmful] and acting on it legislatively simply because there is no conclusive evidence or empirical data.") and *Young v. American Mini Theatres, Inc.* 427 U.S. 50, 70 (1976) ("few of us would march our sons and daughters off to war to preserve the citizen's right to see 'Specified Sexual Activities' exhibited in the theatres of our choice") with *Miller v. California*, 413 U.S. 15, 30, 33-36 (1973) (pornography may be outlawed as obscene only if it appeals to the "prurient interest" under community standards, portrays specifically defined sexual conduct in a "patently offensive way," and lacks "serious" intellectual value when considered "as a whole"). Although the *Miller* test is not as stringent as the standard of review applied to political speech, it is more exacting than either rational basis review or even the intermediate-level scrutiny applied to regulation of commercial speech.

65. Peller, *supra* note 54, at 43. See also R. Putnam, *supra* note 3, at 192 ("Facts are the way things are, the way things (or events) happen").

liberal politics is to police the epistemological boundary between mind and will by distinguishing subjective values from objective facts.⁶⁶ An idea or conception that originates in the subjective world of value choices is suspect as a justification for government action. Conversely, ideas and conceptions that are placed in the objective world of Reality are presumptively legitimate as justifications for government action, regardless of the number or vigor of dissenters. In contemporary American culture, secularism constitutes the test of residency in the world of knowledge. Only if an idea or concept can be expressed in secular terms—that is, can be verified by reference to ordinary human experience or by reasoning from empirically verifiable premises—does it qualify fully as knowledge.

Confining religion to the subjective side of the boundary between subject and object is the principle strategy by which liberalism has controlled religion since the Enlightenment. In the religious world, subject and object, fact and value, and public and private are often unified, not divided.⁶⁷ Many religious statements about Reality are not merely description, but incorporate as well a normative imperative.⁶⁸ "Jesus is the son of God" is not simply genealogy. Moreover, religious statements about Reality cannot be verified by naturalistic conventions. Their "truth" is less a matter of reason or experiment than of faith. Thus, the eventual triumph of the Enlightenment in 20th century America meant the installation of secularism as the exclusive means of accessing Reality, and the banishment of transcendent enterprises like religion to the margins of public life as arbitrary value preferences. Secularism became the privileged discourse in American public life, the baseline measure of comparison in assessing the cultural validity of all other modes of discourse.

66. See R. UNGER, *supra* note 44, at 135:

There must be a complete separation of the will, which makes choices, and of reason, which produces objective knowledge. In the regime of legal justice . . . , the results of legislation and adjudication cannot be justified simply by their usefulness to individual and subjective values. Above all, there must be a neutral method of adjudication that allows one to apply the rules regardless of considerations of value or purpose.

67. Gedicks, *Some Political Implications of Religious Belief*, 4 NOTRE DAME J. L. ETHICS & PUB. POL. 419, 427-32 (1990).

68. R. UNGER, *supra* note 44, at 41, 109, 112.

III

Philosophers these days have largely abandoned the correspondence theory as a test of truth or rationality,⁶⁹ as Professor Perry suggests.⁷⁰ This does not mean, however, that it is without influence in the contemporary world. On the contrary, it remains the dominant test of truth and rationality among the general population, if not among philosophers.⁷¹ And, as Professor Fejfar points

69. See, e.g., G. HALLETT, *supra* note 56, ch. 2 (arguing that all versions of "isomorphic" thinking are seriously flawed); T. EAGLETON, *supra* note 35, at 143, 146 (arguing that classical notions of reality as whatever is "out there," and truth as whatever corresponds to reality, have been seriously undermined); Candlish, *The Truth About F.H. Bradley*, 98 MIND 331, 339 (1989) ("the idea that language and reality might be identical is hard to take seriously, whatever some philosophers might have thought"). See also Meynell, *An Approach to Truth*, 29 HEYTHROP J. 192 (1988) (conceding that "we have nowadays abandoned the correspondence theory of truth," then attempting partially to rehabilitate it). But see Forbes, *Truth, Correspondence and Redundancy* in FACT, SCIENCE, AND MORALITY 28 (1986) (defending a correspondence theory of truth). Hallett specifies that "isomorphism"—the general view that truth entails the necessary matching of words, thoughts, and things—denotes a somewhat narrower relationship than "correspondence," *id.* at 5, but is a necessary condition for it, *id.* at 29.

70. M. Perry, *Love and Power: The Role of Religion and Morality in American Politics* (unpublished manuscript) (Jan. 1990) [hereinafter M. PERRY, LOVE AND POWER] (matching "judgments or statements or sentences" with "facts" on the basis of a truth relationship between the paired items "arrived on the scene only comparatively recently and has been as conclusively refuted as any philosophical theory can be") (quoting A. MACINTYRE, *WHOSE JUSTICE? WHICH RATIONALITY?* 357-58 (1988)); M. PERRY, *MORALITY, POLITICS, AND LAW*, *supra* note 42, at 41 ("many centuries of attempts to explain what 'correspondence' is have failed") (quoting R. RORTY, *CONSEQUENCES OF PRAGMATISM* vi, xix (1982)); *id.* ("The idea that truth is a passive copy of what is 'really' (mind-independently, discourse independently) 'there' has collapsed under the critiques of Kant, Wittgenstein, and other philosophers") (quoting H. PUTNAM, *supra* note 46, at 130).

71. See, e.g., G. HALLETT, *supra* note 56, at 17 ("the isomorphic view of speech, thought, and reality is not based on argument but is taken for granted. Various pre-reflective views powerfully suggest it") (footnote omitted); *id.* at 18 (discussing "the influential, widely held version [of isomorphic thinking] that populates the mind with universal concepts and the universe with corresponding essences"); M. PERRY, *MORALITY, POLITICS, AND LAW*, *supra* note 42, at 40 ("the 'copy' or 'correspondence' theory of truth/knowledge . . . is very likely the man-in-the-street's position"); Peller, *supra* note 54, at 28:

Even after the philosophers have abandoned the epistemological project, the attempt to find some firm ground to distinguish truth from myth, and even after the notion that the world can be neatly divided in the Cartesian way between the mind and the body has been rejected

(continued)

out, this mode of thought remains dominant in Western education, including (or perhaps especially) Western legal education.⁷² As a result, the liberal account of mind and world continues powerfully to shape American politics. Its power lies in its ideal of neutrality. In theory, at least, liberalism takes no position on the validity of subjective preferences, only on the nature of Reality, once properly demonstrated. Although in practice the clarity of this distinction is blurred,⁷³ it is clear that government neutrality is anchored in the objective world—coercive government action is far more likely when its premises are rational or empirical than when such premises cannot be produced. When liberal government purports to avoid religious conflict in politics by remaining religiously neutral, what it is really doing is taking the agnostic position with respect to religious belief.⁷⁴ In other words, it treats religious belief as subjective preference which reveals the mind of the believer, rather than as objective knowledge which reveals Reality.⁷⁵ Unfortunately for liberals, this position can be genuinely neutral only if the boundary between the world of subjective preference and the world of objective fact is natural, fixed, and inevitable. Such understanding as we have of Reality these days has thrown that proposition into serious question. Quantum physics, for example,

intellectually, these categories for perceiving and talking about the world continue to play powerful roles in our day-to-day lives, in the way that we understand ourselves and each other.

See also Adams, *Neo-Blakean Prolegomena to an Unlikely Academic Structure* in H. ADAMS, *supra* note 6, at 272, 274 [hereinafter Adams, *Prolegomena*] (observing that the correspondence theory is “pervasive in public science and the public eye”); R. Putnam, *supra* note 3, at 189 (noting the tendency of nonscientists to exaggerate the certainty of scientific knowledge).

72. Fejfar, *Legal Education and Legal Scholarship: From Rationalist Discourse to Dialogical Encounter*, 20 CAP. U.L. REV. 97 (1991).

73. For arguments that, in fact, liberal politics is not ideologically neutral, see M. PERRY, LOVE AND POWER, *supra* note 70; M. PERRY, MORALITY, POLITICS, AND LAW, *supra* note 42, ch. 3; R. SMITH, LIBERALISM AND AMERICAN CONSTITUTIONAL LAW (1985).

74. J. Garvey, *God Is Good* (1990) (unpublished manuscript); see e.g., McConnell & Posner, *An Economic Approach to Religious Freedom*, 56 U. CHI. L. REV. 1, 2 (1989); Marshall, *The Case Against the Constitutionally Compelled Free Exercise Exemption*, 40 CASE W. RES. 357, 408-09 (1990).

75. See, e.g., McConnell & Posner, *supra* note 74, at 10:

There is no difference to an economist *qua* economist between a nuisance—say, some form of air pollution—that inflicts costs on third parties greater than the benefits to transactors, and a religion that inflicts cost on nonadherents that they would be willing to pay something, perhaps a lot, to remove.

has demonstrated that objective observation is impossible.⁷⁶ The observer of the universe is also a participant in creating what is observed.⁷⁷

Secularism does not mark any "natural" distinction between mind and world; there is no necessary connection between Reality and our descriptions of it, and no way decisively to demonstrate the extent, if any, to which our descriptions correspond to Reality.⁷⁸ As Professor Ball observed, distinctions like the one between belief and action,⁷⁹ which derive from the liberal division between mind and world, are drawn by the state for its own convenience.⁸⁰ Secularism does not guard the boundary between mind and world so much as it manipulates it.⁸¹

76. See P. DAVIES, *GOD AND THE NEW PHYSICS* ch. 8 (1984).

77. *Id.*

78. This creates what Unger calls the antinomy of theory and fact. We compare theories independent of facts to see which theory most accurately describes those facts, at the same time realizing that it is theory that gives facts meaning in the first place, since they have no meaning in themselves:

Thinking and language depend on the use of categories. We must classify to think and to speak. But we have no assurance that anything in the world corresponds to the categories we use. Our ideas about science and nature seem to imply that we believe both that our classifications can be true and false and that the question of their truth and falsity is unanswerable and illusory.

R. UNGER, *supra* note 44, at 36. See also Heidegger, *The Origin of the Work of Art* in M. HEIDDEGGER, *POETRY, LANGUAGE, THOUGHT* 17, 50 (A. Hofstadter trans. 1971) ("The true is what corresponds to the real, and the real is what is in truth. The circle has closed again."); R. Putnam, *supra* note 3, at 195:

Every experimenter when he turns to construct a theory to fit his data discards some of the latter as erroneous; often he can identify a cause (or a likely cause) of the error, but there are times when data are rejected simply because they do not fit. At which point does this sort of thing turn into "the theory justifies the data", thereby undermining the very integrity of science? At what point do facts which are to be the foundation of science turn into fictions?

79. See, e.g., *Employment Div. v. Smith*, 110 S. Ct. 1595, 1599, 1600 (1990) (citing *Reynolds v. United States*, 98 U.S. 145, 166 (1878)); see *supra* note 26 and accompanying text.

80. Ball, *The Unfree Exercise of Religion*, 20 CAP. U.L. REV. 39 (1991).

81. See Peller, *supra* note 54, at 28-29:

The construction of a realm of knowledge separate from superstition and the identification of a faculty of reason separate from passion was not . . . simply some mind game played by philosophers and professional intellectuals. These categories have always served political roles

(continued)

From this insight has come the post-modern critique. It argues that liberalism is a failure, the residue of the uncompleted work of the Enlightenment. Post-modernism rejects the radical distinction between subject and object that privileges the latter as real and disables the former as merely relative. In fact, post-modernism denies that there is any way neutrally to demonstrate Reality. To the wide variety of those who identify themselves as post-modernists, reason and science are often as suspect as religion.⁸² "One might think of post-modernism," writes Mark Edmundson, "as trying to get done what its practitioners had sensed modernism had failed to do; that is, to purge the world of superstition in *every* form."⁸³ In post-modern thought, the Enlightenment project is a failure, having only succeeded in replacing worship of God (a religious power criterion) with worship of science (a secular power criterion). The liberal assumption is that secularist discourse naturally, neutrally and inevitably reveals Reality. Post-modernism, on the other hand, asserts that there is no privileged discourse that can lay bare Reality and affirm the Truth; *all* forms of human discourse are biased and skewed by ideological allegiance.

Post-modernism does not necessarily entail denial that Reality exists, only denial that one can know in any objectively decisive way what Reality is like.⁸⁴ Nor does it deny that the usefulness of

in differentiating groups as worthy or unworthy and in justifying particular social hierarchies.

See also T. EAGLETON, *supra* note 35, at 124:

[M]an needs to police the absolute frontier between the [subjective and the objective] as vigilantly as he does just because it may always be transgressed, has always been transgressed already, and is much less absolute than it appears.

82. See generally Adams, *The Fate of Knowledge*, in H. ADAMS, *supra* note 6, at 223, 228-29:

The idea of empiricism as the foundation of science has been largely dismissed. The whole realm of the philosophy of science has become a battleground since the notion has been put forward that science and its processes are governed to some considerable extent by the social and institutional fabric in which the work is carried on and the nature of the work is constituted. [T]he role of the scientist has been hemmed in and structured according to laws that have little to do with the old idea of the autonomous subject investigating an object.

83. Edmundson, *Prophet of a New Post-Modernism: The Greater Challenge of Salmon Rushdie*, HARPER'S MAG., Dec. 1989, at 62, 63 (emphasis added).

84. Thus, as Perry points out, rejection of the correspondence theory does not require rejection of the realist position—that Reality exists independent
(continued)

human knowledge may derive from some relationship to Reality.⁸⁵ What it protests is the privileging of certain kinds of knowledge as real, and other kinds of knowledge as un-real, based on some claimed access to Reality. Any such claim must be false because, as Perry has succinctly stated, "we lack access to Reality."⁸⁶

In the post-modern view, "certain meanings are elevated by social ideologies to a privileged position, or made the centres around which other meanings are forced to turn."⁸⁷ In other words, what constitutes knowledge, and therefore what is considered Real, is a function of culture rather than of nature.⁸⁸ Those in a position to influence society and culture impose their view of the world—of Reality—on the less powerful by dressing their view up in the guise of nature.⁸⁹ "He who has the power to decide what a thing will be

85. Thus, rejection of the correspondence theory does not require that one accept the complete dependence of Reality on mind. Although we may forever lack access to Reality, we still know enough to get things done. See M. PERRY, *LOVE AND POWER*, *supra* note 70; cf. P. DAVIES, *supra* note 77, at 219:

[T]he quantum theory has prompted many physicists to declare that there is no "objective" reality at all. The only reality is that revealed through our observations. Adopting this view, it is not possible to pronounce a particular theory "right" or "wrong", merely that it is useful or less useful, a useful theory being one which connects a wide range of phenomena in a single descriptive scheme to high accuracy.

86. M. PERRY, *MORALITY, POLITICS AND LAW*, *supra* note 42, at 41.

87. T. EAGLETON, *supra* note 35, at 131.

88. *Id.* at 135 ("[S]igns which pass themselves off as natural, which offer themselves as the only conceivable way of viewing the world, are by that token authoritarian and ideological"); R. UNGER, *supra* note 44, at 103 ("the experience of the precariousness and contingency of all shared values in society . . . arises from the sense that shared values reflect the prejudices and interests of dominant groups rather than a common perception of the good").

89. Lacan, *The Meaning of the Phallus* in *FEMININE SEXUALITY: JACQUES LACAN AND THE ÉCOLE FREUDIENNE* 74 (J. Mitchell & J. Rose ed. 1982). Using the image of the phallus, Lacan argues that the key to exercising power in modern society is the "presence" that is assumed to underlie and give meaning to language—that is, the Reality that we take to be simultaneously independent of yet represented by our words. By speaking—using language—one takes upon herself the power of the phallus, projecting the Reality behind the words she uses against those to whom she speaks:

For the phallus is a signifier, a signifier whose function in the intrasubjective economy of analysis might lift the veil from that which it served in the mysteries. For it is to this signified that it is given to designate as a whole the effect of there being a signified. . . .

Id. at 79-80. See also *id.* at 78, If there were no such presence behind language, however, words would have no essential meaning and,

(continued)

called," writes Unger, "has the power to decide what it is."⁹⁰ The subjective and arbitrary view of the world espoused by the dominant ideology then appears as an objective fact which need not be defended in ideological terms—indeed, which need hardly be defended at all.⁹¹

If this post-modern insight is correct, then secularism has no exclusive claim as the language of American public life. Public religious discourse was discredited as arbitrary subjectivity by a secular critique that pretends to be neutral and objective, but which beneath that pretense is itself arbitrary and subjective. There can no longer be any empirical argument for keeping religious discourse out of public life. If there is to be authentic political dialogue, then both religious and secular voices properly assert themselves in public life.

This is not to say that secular knowledge may not be more useful than religious knowledge in many contexts. Often secularism is more useful than religion, given a specific task or need.

it served in the mysteries. For it is to this signified that it is given to designate as a whole the effect of there being a signified. . . .

Id. at 79-80. *See also id.* at 78, If there were no such presence behind language, however, words would have no essential meaning and, therefore, no power. Language could not project the non-existent presence; indeed, it could not project anything at all, except itself. *See id.* at 82, 83. Accordingly, power cannot assert itself effectively through language unless the non-existence of the Reality language purports to represent is hidden or disguised: "[T]he phallus can only play its role as veiled, that is, as *in itself* the sign of the latency with which everything significant is struck as soon as it is raised to the function of a signifier." *Id.* at 82 (emphasis added). *See also id.* at 83-84. Without Reality, the basis of exercising power in society is naked imposition.

90. R. UNGER, *supra* note 44, at 80.

91. *See* T. EAGLETON, *supra* note 35, at 124:

[A]ll conventions and operations [of a society] are the ideological products of a particular history, crystallizing ways of seeing . . . which are far from uncontroversial. Whole social ideologies may be implicit in an apparently neutral critical method; and unless studying such methods takes account of this, it is likely to result in little more than servility to the institution itself.

See also Putnam, *supra* note 3, at 194:

[T]he familiar world of facts is simply the world of a very familiar version. It is the world of a theory so old, so entrenched, so successful, that it is for us the world that is "there," that needs explaining (but not warranting). . . .

The task of politics with respect to religion, however, is neither so focused nor so mechanical. At the heart of conflicts between belief and knowledge is the question "how we should contend with each other's deepest differences in the public sphere."⁹² Liberals sometimes argue that secularization is the necessary solution to this problem.⁹³ Without largely privatizing religion and secularizing public life, the argument goes, a religiously plural society runs the risk of dissolving into the chaos and violence that characterized post-Reformation Europe. Thus, in this view, the American experiment has proven that the only way for people peacefully to coexist in a religiously plural society is to remove religious belief as a legitimate predicate for political and other public action. Religious people can participate in public life, but only if they mute their religious beliefs by translating them into secular dialect.⁹⁴

92. THE WILLIAMSBURG CHARTER: A NATIONAL CELEBRATION AND REAFFIRMATION OF THE FIRST AMENDMENT RELIGIOUS LIBERTY CLAUSES 8 (1988).

93. See, e.g., Zimmerman, *To Walk a Crooked Path: Separating Law and Religion in the Secular State*, 27 WM. & MARY L. REV. 1095, 1101-03 (1986); Solum, *supra* note 9, at 1089-92; Marshall, *supra* note 74, at 409-411.

94. Commentators who point to the numerous intersections between religion and politics during recent decades as evidence that American politics is not hostile to religion have missed the point. See, e.g., Blumoff, *Disdain for the Lessons of History: Comments on Love and Power*, 20 CAP. U.L. REV. 159 (1990); Tushnet, *Religion in Politics* (Book Review), 89 COLUM. L. REV. 1131, 1134-35 (1989) (reviewing K. GREENAWALT, *supra* note 42); Thomas, *Comments on Papers by Milner Ball and Frederick Gedicks*, 4 NOTRE DAME J.L. ETHICS, & PUB. POL. 451, 453 (1990). Because religions cannot demonstrate the correspondence of their beliefs to Reality under the naturalistic conventions of liberal epistemology, they and their beliefs are confined to the private world of preference and denied admission to the public world of knowledge. Only if religious individuals and organizations disguise the religious character of their beliefs can they engage in public dialogue. In other words, to participate properly in liberal politics, they must refashion their beliefs to fit liberal conceptions of knowledge. Speaking from an environment in which fact and value are united, they must excise from their speech all references to matters which are beyond ordinary human experience or incapable of empirical demonstration, since these are classified by liberalism as value choices that cannot be subjected to rational or empirical analysis, and thus are not "real". Many religious people and organizations have done this, translating their beliefs from a language of faith into the language of secularism—of unbelief. Having done so, they are free to speak as loudly as they want in the political area. Unfortunately for them, what they say is no longer authentic, having been cut off from the transcendent source of meaning and power that moved them to speak in the first place. As Perry has observed, such people are not participating in political dialogue as their authentic selves, but as "some one—or some thing—else." M. PERRY, *MORALITY, POLITICS AND LAW*, *supra* note 42, at 182; *accord* Gedicks, *supra* note 67, at 432-39. Yet, religious people and organizations that do not properly sanitize their speech are controversial for
(continued)

The use of American history to buttress the argument for a secularized politics is curious. The American adoption of a public ethic of secularism is a phenomenon of only the last fifty or sixty years; prior to 1930, public life in the United States was not secular.⁹⁵ While it is true that the United States has been spared the religious violence that shook post-Reformation Europe, crediting this to secularism is problematic since it did not become the norm for American public life until long after the founding era. Whatever has allowed us to live with "our deepest differences," it is not public secularism.

More fundamentally, secularism has not *solved* the problem posed by religion in public life so much as it has *buried* it. By placing religion on the far side of the boundary marking the limit of the real world, secularism prevents public life from taking religion seriously. Secularism does not teach us to live with those who are religious; rather, it demands that we ignore them and their views. Such a "solution" can remain stable only so long as those who are ignored acquiesce in their social situation. The last two decades suggest that acquiescence in a secularized public life (by religious conservatives, at least) is vanishing, if it has not already disappeared.

IV

The stridency with which religion has re-entered American public life in the last decade underscores the importance of Adams's insight that most critical discourse opposes power with power. There remains the possibility that the conflict between religion and secularism in public life could end with the triumph of religion. Against an international backdrop of regional religious violence and resurgent fundamentalism, the prospect of public life governed by a dominant religious ideology is not pleasant.⁹⁶ Thus, those who feel threatened by the possibility of a repressive religious regime fight ever harder against the entrance of religious ideologies into public life, at the same time that adherents to such ideologies are

having spoken at all. They are criticized as intruding upon secular areas beyond their competence, as were the Catholic Bishops in authoring their pastoral letters on economic justice and arms control; or ridiculed, as was Pat Robertson in publicly declaring the power of prayer; or ignored, as was no less a liberal hero than Martin Luther King when he expounded the theological basis of nonviolent civil disobedience and racial equality. And if unsanitized religious speech comes into proximity with the actual processes of law-making, it becomes a basis for declaring the products of those processes unconstitutional under the establishment clause. *See, e.g.,* Edwards v. Aguillard, 482 U.S. 578 (1987); Wallace v. Jaffree, 472 U.S. 38 (1972); Epperson v. Arkansas, 393 U.S. 97 (1968).

95. *See supra* Part I-B.

96. *Cf.* M. Atwood, *THE HANDMAID'S TALE* (1985).

fighting ever harder to enter public life. The way out of this zero-sum power struggle—perhaps the only way—is adoption of an antithetical voice for public discourse that rises above the conflict between religion and secularism without negating it.

The antithetical struggle is the striving to oppose power without invoking power and without denying the contradiction in power relationships. In the antithetical stance, one seeks to provide “creative opposition”⁹⁷ to both the prevailing power and its opposite without privileging either one.⁹⁸ An antithetical stance would seek to free one from the polarized oppositional structure of public discourse that is the consequence of liberal epistemology. At the same time, it would seek to recognize that opposites might both be valid even though they cannot be reconciled.⁹⁹ The subject-object distinction irresistibly draws one to frame questions in a “one-or-the-other, all-or-nothing” mode. The triumph of one pole is the defeat of the other. But such victories and defeats are only temporary, lasting only as long as it takes to develop the next critique and set up a new oppositional structure. Power is never defeated, but only transformed.¹⁰⁰ In

97. Adams, *Canons*, *supra* note 6, at 753.

98. *Id.* at 754 (emphasis added): “The ‘antithetical’ strives to refuse all negations arising from the gestures of power: the object over the subject, the universal (or general) over the particular, the ‘good’ over the ‘evil,’ and in all cases *vice versa*.”

99. Adams, *Prolegomena*, *supra* note 71, at 272-73 (discussing Romantic poet William Blake’s distinction between negations and contraries):

A negation is a situation of oppositions in which one side is privileged over the other, negating the right of the other to equal existence. One side is declared good, the other evil. A true contrary would be one in which the distinction itself is one side of an opposition of equality.

100. Adams uses the feminist attack on the white, male, aristocratic character of the Western literary tradition as an example of this phenomenon. See Adams, *Canons*, *supra* note 6, at 755-57. He argues that an author’s gender is theoretically irrelevant to inclusion or exclusion of such author’s works from the literary canon. Gender is highly relevant, however, to canonization decisions dominated by power criteria, which explains the relative lack of racial, gender, and class diversity among canonized literary works. However, feminist criticism which champions the cause of female authors on the theory that they were excluded from the Western literary canon as the result of male power criteria, may itself constitute the invocation of alternative power criteria derived principally from the characteristics of female writing. The decanonization of a work solely because it is male (or female) would be thoughtlessly to reject its antithetical character; similarly, canonization of a work solely because it is female (male), without regard to its antithetical character, is merely to substitute female power criteria for male power criteria (or vice versa). Adams argues that antitheticality explains why works by certain authors with ideologically embarrassing or even repugnant beliefs remain within the canon:

(continued)

an antithetical stance, by contrast, one refuses to accept the conventional dualistic definition of a question which demands that one choose between polarities. By stepping outside the conceptual boundaries that polarized oppositions fix around the set of "acceptable" solutions to public policy issues, the antithetical voice reveals and illuminates new approaches and resolutions that would otherwise lay undiscovered. Antitheticality "influences . . . the deepest level of human action: how we see things."¹⁰¹ "[It] continually challenges one to think further in a new light or to think again through the whole—even to the point of unresolvable contradictions—and to be prepared always to bring in the other that the text suddenly seems to have supplied."¹⁰²

A familiar antithetical figure in the Western tradition is the prophet of the Hebrew bible. The prophet cannot oppose the power struggle between orthodoxy and reform with his own power, because he has none. Lacking social, political or economic status, positioned on the fringes of society as a solitary figure, he can move his hearers to action only by opening to them the poetic vision of his prophetic message. Yet the prophet is nonetheless effective for his lack of power, for the vision of prophecy does indeed touch and change the hearts of its hearers. And the vision does so in a way that simultaneously transforms and preserves the conflict between orthodoxy and reform.

The relevance of antitheticality to legal institutions has not gone unnoticed in the legal world. Professor Perry's work, in particular, resonates to the antithetical. Perry has argued that the Supreme Court should facilitate moral dialogue rather than resolve

The fact remains that the Anglo-American critical establishment, which can be described as for the most part politically liberal [but] not leftist, has not found itself able to and has not wished to banish from the canon Pound, Eliot, and Lawrence on the right or the early Auden on the left. The point is that something is operating in the case of many canonized moderns that is apparently deeper than either literary . . . or power criteria and seems to be powerfully antithetical to them.

Id. at 756. Noting the irony of describing antitheticality as a "powerful" opposition to power, Adams substitutes "visionary" for "powerful" in describing the strength of antithetical opposition: "[V]isionary antitheticality is a power contrary to power." *Id.* He concludes that some female writers should enter the canon and that some male authors should exit it, but only on the basis of visionary antitheticality rather than power criteria. *Id.* at 755, 757.

101. Adams, *Canons*, *supra* note 6, at 753 (discussing Oscar Wilde).

102. *Id.* at 758. See also Adams, *The Dizziness of Freedom; or, Why I Read William Blake*, in H. ADAMS, *supra* note 6, at 3, 17 [hereinafter Adams, *Freedom*] ("Every institution worth anything must have built into it a contrary, reprobate intellectual principle so that imagination is not negated.").

doctrinal questions,¹⁰³ and has expressly invoked the prophetic metaphor.¹⁰⁴ Indeed, antitheticality is implicit in the title of his current project, *Love and Power*.

Even some Supreme Court decisions can be argued to have a visionary antithetical dimension. In *Brown v. Board of Education*,¹⁰⁵ for example, the Court refused to confine itself to the separate-but-equal analysis that had guided the constitution of race relations since *Plessy v. Ferguson*,¹⁰⁶ more than half a century earlier. Instead, the Court simply stated that *Plessy's* separate-but-equal formula is inherently unequal.¹⁰⁷ And having unfolded its vision of racial equality, it declined to coerce conformity to it.¹⁰⁸ By refusing to order immediate desegregation, the Court permitted the South (and the North) to evade the force of its decision for more than a decade. Only repeated exercises of power by all three branches of the federal government were sufficient to begin the dismantling of de jure and de facto segregation. How, then, did the unenforced decision of *Brown* come to be the pivotal legal text for racial equality in the 20th century?

Brown's significance lies in its vision of hope rather than in the force of the power which it declined to invoke. *Brown* signalled to the black community in the United States that change was possible, if not inevitable, that they had at least one ally among the institutions of government. This signal was sufficient to energize the black community to take political action. Some have argued that this political activity, more than any judicial decision, was the most significant influence on the government to put the force of its power behind the civil rights movement.¹⁰⁹

But the deployment of federal power has not solved the problem of racial conflict in the United States.¹¹⁰ The United States is still

103. See M. PERRY, MORALITY, POLITICS AND LAW, *supra* note 42, ch. 6.

104. M. PERRY, THE CONSTITUTION, THE COURTS, AND HUMAN RIGHTS 98-102, 111-14 (1982).

105. 347 U.S. 483 (1954).

106. 163 U.S. 537 (1896).

107. 347 U.S. at 495: "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate education facilities are inherently unequal."

108. 349 U.S. 294, 301 (1955) (ordering desegregation to commence "with all deliberate speed").

109. See, e.g., G. STONE, L. SEIDMAN, C. SUNSTEIN & M. TUSHNET, CONSTITUTIONAL LAW 474 (1986); Bachman, *Lawyers, Law, and Social Change*, 13 N.Y.U. L. REV. & SOC. CHANGE 1, 17-21 (1985).

110. I do not wish to be understood here as suggesting that the Supreme Court's delay in enforcing its decision in *Brown* was a good thing, or that (finally) invoking the force of federal power on behalf of black civil rights was a bad thing. I am suggesting only that the appeal to government power, while it resulted in an immediate and dramatic improvement of the social situation of blacks, ultimately resolved little in American race relations.

searching for the answer to the question implied by the 14th Amendment and posed explicitly in *Plessy*: What should "equal protection of the laws" mean? A "color-blind" society is not the answer. Even if all of the sociological and ideological attitudes and institutions which now stand in the way of racial justice in the United States were to melt away, racial difference in the form of artistic, musical, literary, linguistic and other variation would still remain. Such difference is rightfully a source of pride and value, not only to the culture that generates it, but to the larger and broader communities to which members of the culture belong. We still have not been able to distinguish those instances in which recognition of race is harmful from those instances in which this recognition is valuable. For a vision of racial justice to be truly antithetical, it must eliminate racial injustice without eliminating racial difference. By so doing, it transforms the relationships between races so that one sees and acts on the relationships in a different and more elevated way, without denying that opposition—in the form of difference rather than conflict—still inheres in the relationships.¹¹¹

What, then, does an antithetical stance contribute to the current conflict between religion and secularism in American public life? A post-modern politics must include religious knowledge if it is to depart from the illusion of neutrality fostered by the privileging of secular discourse. There can be no mistaking the difficulty of this task, requiring as it will strange new habits of citizenship in the public square. At the same time, there can be no avoiding the conclusion that continued exclusion of religious speech from public life is an arbitrary exercise of social power.¹¹² The Judeo-Christian tradition has persisted through more than three millennia because it works—it helps large numbers of people to live well. As Professor Perry stated, the Biblical narrative of the Jerusalem-based religions preserves and communicates a deep human wisdom.¹¹³ We ought to consider this wisdom in our political deliberations, because "religion is important," and "God is good."¹¹⁴ An antithetical stance would recognize the value in religion and decline to invoke power to keep it at the margins of public life. Thus, antitheticity would

111. Cf. Adams, *Freedom*, *supra* note 102, at 10:

When two things are identical, they are not the same, they each maintain their own identities but are in a relation of identity. This is the contrary to the alienating object/subject negation and is at the base of [William] Blake's ethic, which calls for mutuality in human relations.

112. See *supra* Part III.

113. M. PERRY, *LOVE AND POWER*, *supra* note 70.

114. J. Garvey, *supra* note 74, at 1; cf. H. BERMAN, *THE INTERACTION OF LAW AND RELIGION* 75 (1974) ("we must recognize that the great passions which created our [religious] heritage also create a presumption in favor of preserving it").

permit religious knowledge to take a place in the "real" world alongside secular knowledge.

There is no doubt that this involves risk. Elements of the religious right often seem all too willing to substitute religious power criteria for secular ones in American public life. This suggests an antithetical imperative for religion, if it wishes fully to participate in public life. In one sense, post-modernism is good news for religion, foreshadowing the end of the secular monopoly on public life, and on knowledge generally. In another sense, however, post-modernism is a threat to religion or, at least, to conservative religion. If there really is no neutral position from which to discern the Truth, as post-modern critiques generally argue, then there can be no coherent claim to exclusivity of Truth—a claim which has been an important and persistent component of many Western religions. Without a privileged epistemological position from which to discover the "world-as-it-really-is," one can only create the world as she and her community experience it.

This is not to say that post-modernism deters one from trying to understand how others experience the world. It means only that perceptions of how the world is can be authoritative only for those who experience and hold them. A person's religious experiences are nonetheless real, but whatever conclusions they lead her to about Reality can be controlling only for her. "Truth" becomes "truths," which may not only be multiple, but contradictory.¹¹⁵ Thus, post-modernists tend to emphasize freedom and understanding rather than Truth (or truth).¹¹⁶

Conservative religion must come to grips with why it wants to participate in public life. Imposing religious ideology on American public life is merely to exchange secular criteria of legitimacy for religious ones. Although religious people become the privileged insiders and secular people become the alienated outsiders, the nature of the conflict—the arbitrary imposition of social power—remains the same. If the point of religious participation in public life is to suppress competing secular conceptions of the world, then such participation is not worth the fight.¹¹⁷ If Western belief systems have

115. Cf. R. RORTY, *THE MIRROR OF NATURE*, *supra* note 47, at 10 (suggesting that "truth" is "what is better for us to believe" rather than "the accurate representation of reality") (quoting William James).

116. See, e.g., R. RORTY, *CONTINGENCY*, *supra* note 2, at xiii (the "historicist turn" in philosophy "has helped us substitute Freedom for Truth as the goal of thinking and of social progress"). See also Adams, *Freedom*, *supra* note 103, at 13 ("The dizziness of reading Blake... is the dizziness of an *exhilarating* freedom in language, the sense that there is always an opportunity before us, always a reading to be accomplished.") (emphasis in original).

117. Perry thus suggests that such groups should not be permitted to engage in public discourse, since they presumably lack the skills to engage in ecumenical dialogue. M. PERRY, *LOVE AND POWER*, *supra* note 70; cf. R. Putnam, *supra* note 3, at 204 (suggesting that moral dialogue with fascists is impossible

(continued)

worked for three thousand years, then surely Western knowledge has worked for at least three hundred—indeed, it has succeeded beyond anyone's wildest dreams. God is good, but so is science; it, too, has helped many people to live their lives well.¹¹⁸ Religion cannot take its place alongside secularism as a legitimate public discourse unless secularism remains a legitimate discourse as well. "Religion without science is blind. Science without religion is lame."¹¹⁹

* * *

Deconstructive criticism is powerful.¹²⁰ If no one can tell us how the world is, if "[c]ritique is all there is" and contingency "goes all the way down,"¹²¹ then the human dilemma seems to be a fearful choice between the ruthless imposition of power and utter silence.¹²² The antithetical stance points a way out of this nihilistic conundrum. Religion and secularism both tell us something we can know about the world, even if neither can tell us how the world is.¹²³ That the knowledge of the world generated by each might contradict that of the other is hardly reason for rejection.¹²⁴ As the Mormon prophet Joseph Smith once observed, "by proving contraries, truth is made manifest."¹²⁵ Only by antithetically embracing all that we might know can we ever hope to understand what is.

and undesirable). Although this, too, is to oppose power with power, it may be unavoidable. Even Adams concedes that no antithetical discourse can be wholly free of power criteria. Adams, *Canons*, *supra* note 6, at 758.

118. Cf. P. DAVIES, *supra* note 77, at ix ("science offers a surer path to God than religion."). See also B. RUSSELL, *WHY I AM A CHRISTIAN* (1940).

119. Einstein, *quoted in* P. DAVIES, *supra* note 77, at epigraph.

120. See, e.g., G. STEINER, *supra* note 4, at 132 (asserting that, on its own premises, deconstruction is irrefutable).

121. See *supra* note 2 and accompanying text.

122. See Adams, *Canons*, *supra* note 6, at 764.

123. Cf. P. DAVIES, *supra* note 77, at 219 ("physics tells us what we can know about the universe, not how it is") (quoting Niels Bohr) (emphasis in original).

124. Cf. Putnam, *supra* note 3, at 98 (suggesting that contradictory versions of an event might both be valid).

125. Quoted in E. ENGLAND, *DIALOGUES WITH MYSELF: PERSONAL ESSAYS ON MORMON EXPERIENCE* ix (1984); accord, Adams, *Freedom*, *supra* note 102, at 5 ("Without Contraries is no progression") (quoting Blake, *The Marriage of Heaven and Hell*, in *THE COMPLETE POETRY AND PROSE OF WILLIAM BLAKE* 34 (D. Erdman ed. 1982)).

