

2014

Is Religious Freedom Irrational?

Michael Stokes Paulsen

University of St. Thomas School of Law

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



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

Recommended Citation

Michael S. Paulsen, *Is Religious Freedom Irrational?*, 112 MICH. L. REV. 1043 (2014).

Available at: <https://repository.law.umich.edu/mlr/vol112/iss6/10>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

IS RELIGIOUS FREEDOM IRRATIONAL?

*Michael Stokes Paulsen**

WHY TOLERATE RELIGION? By *Brian Leiter*. Princeton and Oxford: Princeton University Press. 2013. Pp. xv, 133. \$24.95.

INTRODUCTION

Brian Leiter¹ is almost exactly half right. There is no convincing secular-liberal argument for religious liberty, in the sense of unique accommodation of religious beliefs and practices specifically *because* they are religious. Indeed, from a thoroughgoing secularist perspective—from a stance of committed disbelief in the possible reality of God or religious truth, and perhaps also from the perspective of unswerving agnosticism—“toleration” of religion is almost intolerably foolish. Affirmatively protecting the *free exercise* of religion, in the strong sense of freedom of persons and groups to act on religious convictions in ways opposed to secular legal norms, is even harder to justify. Religious liberty simply does not make much sense on purely secular grounds that start from the premise that sincere religious conviction does not correspond to anything real. That is Leiter’s starting point, and it is not surprising that he ends up where he does—concluding that there is no good reason for uniquely protecting religious conscience and conduct.

But there is an altogether straightforward reason for this. The philosophical premises upon which a serious commitment to religious liberty depends are ultimately *religious premises*. To look for secular justification for religious liberty is to look in the wrong place. And not to find such secular justification is not shocking. Religious freedom (as I have argued at length elsewhere)² at bottom only makes full sense on the suppositions that God exists or may well exist; that God’s nature and character are such (or may well be) as to give rise to obligations of loyalty and fidelity and thus to obligations with respect to human conduct; that the true commands of God, whenever knowable, are, in principle, prior to and superior in obligation to the commands of men; and that human civil society, acknowledging the

* Distinguished University Chair and Professor of Law, University of St. Thomas School of Law. I would like to thank Robert Delahunty, Stanley Fish, John Nagle, and Luke Paulsen for comments on an early draft. All errors and views are my responsibility.

1. Karl N. Llewellyn Professor of Jurisprudence and Director of the Center for Law, Philosophy, and Human Values, University of Chicago Law School.

2. Michael Stokes Paulsen, *The Priority of God: A Theory of Religious Liberty*, 39 PEPP. L. REV. 1159 (2013) [hereinafter Paulsen, *The Priority of God*]; see also Michael Stokes Paulsen, *God Is Great, Garvey Is Good: Making Sense of Religious Freedom*, 72 NOTRE DAME L. REV. 1597 (1997) [hereinafter Paulsen, *Making Sense of Religious Freedom*] (reviewing JOHN H. GARVEY, *WHAT ARE FREEDOMS FOR?* (1996)).

priority of God's true commands (yet conceding the inability of human governmental institutions to know them perfectly), rightly must accommodate the broadest possible sphere of religious liberty to plausible claims of religious obligation, even when such a sphere of liberty involves conduct in conflict with society's usual rules. Without such foundationally religious premises, religious liberty does *not* make great sense as a social and constitutional arrangement.

Why Tolerate Religion? If one is a secularist, there really is no fully acceptable answer. The only convincing reason for protecting religion is the conviction that there is, or may be, such a thing as ultimate religious truth, that such truth is in principle the most important thing there is, and that, consequently, it should prevail over any social rule, law, or custom to the contrary. If religious truth might exist, the freedom to pursue it is worth protecting to the highest degree possible; and the freedom to act in accordance with one's sincere religious convictions similarly merits the greatest possible societal indulgence and legal protection. And one can reach *those* convictions on rational premises: Religious belief is (in at least some of its forms) an entirely rational, reasonable position. Even if reason might not get one all the way to religious faith (and may better support some religious beliefs than others), it supports the general rationality of religious conviction. Protection of religious freedom is, largely as a result of this fact, an equally sensible policy. Liberty is an imperfect policy, but it is good for promoting rational inquiry and for protecting what may well be rationally justified, true, and (if so) supremely important religious convictions.

Leiter assumes the opposite (quite literally, he *assumes* it): that religion is intrinsically false and irrational.³ This is a major philosophical and intellectual weakness in his argument, as I discuss below. But if one starts, as Leiter does, from the premise that there are not and could not possibly be such things as religious truths—that religious belief is, *by definition*, a set of irrational ultimate commitments⁴—then one is sure to get to the conclusion that serious religious liberty makes no sense.

Well then, how about it: Is religious freedom irrational? Is *belief in the possibility of true religious belief* silly or confused, so as to make special protection of religion derivatively foolish or insane? Is religious conviction so intrinsically irrational that it is almost literally crazy (or at best craven) for the framers of the First Amendment to have singled out the free exercise of religion for special constitutional indulgence?

In Part I of this Review, I describe Leiter's project, point out areas of agreement and disagreement, and lay bare the underlying (and I think deeply vulnerable) premises of his argument. Nonetheless, in Part II, I

3. Leiter writes: "I am going to assume—uncontroversially among most philosophers but controversially among reformed epistemologists—that . . . religious belief is a *culpable* form of unwarranted belief given . . . ordinary epistemic standards." P. 81. I discuss this assertion below. See *infra* Part III.

4. As I discuss below, this premise is at the core of Leiter's chapter purporting to define religion. See *infra* text accompanying notes 10–12.

briefly conclude—in somewhat ironic agreement with Leiter—that meaningful religious freedom cannot be justified on secularist grounds. A satisfactory justification for religious liberty depends on essentially religious premises.

But do those religious premises make sense? In Part III, I take Leiter to task for the stunning shallowness of his position that religious conviction is *defined by* its irrationality (in addition to other incidental features), a philosophically unsophisticated proposition unworthy of a mind as subtle as Leiter's. In contradistinction to Leiter, I will define religion in terms of its *philosophical attributes* and sketch in broad strokes the reasonableness of the serious philosophical arguments for theistic religious conviction. These, in turn, support the rationality of a regime of religious freedom that includes vigorous protection specifically of religious conscience and conduct. One need not subscribe to any particular religious belief or to any religious belief at all to embrace this philosophical and moral justification for religious liberty. One need only accept the philosophical possibility that there may be such things as true religious beliefs, and that this possibility has important consequences that rightly trump the ordinary commands of civil government.

Finally, I conclude the Review by posing the reverse question of Leiter's: From the perspective of a convinced religious belief, *why tolerate secularism?* If one starts from religious premises (as our society once did, in substantial part, as many in it still do, and as many other societies do), is there any fully convincing reason to tolerate secularism—a philosophy of categorical rejection of religious premises as being valid for constitutional public policy and other social purposes? From the perspective of faith in a real God, does it make sense to tolerate secularism, as an *ism*, in opposition to what one is convinced are the true moral commands of God? Can religious freedom, in the sense of protection of the free *non-exercise* of religion, and the preservation of government neutrality with respect to religion in the public square, be justified on *religious* premises?

Like Leiter's book, my discussion is mostly *not* about the meaning of the Constitution's religious freedom provisions as legal texts. If original public meaning is the proper approach to reading and applying constitutional texts—and I believe it is⁵—it ultimately *does not matter* whether religious freedom makes contemporary secular philosophical sense: the task of written constitutionalism is to seek to ascertain, and faithfully apply, the meaning that the words, phrases, and concepts of the document would have had to informed speakers and readers of the language at the time, in the social and political context in which they lived, including the foundational backdrop premises and understandings those societies would have embraced.⁶ If

5. See generally Vasan Kesavan & Michael Stokes Paulsen, *The Interpretive Force of the Constitution's Secret Drafting History*, 91 GEO. L.J. 1113 (2003); Michael Stokes Paulsen, *Does the Constitution Prescribe Rules for Its Own Interpretation?*, 103 NW. U. L. REV. 857 (2009).

6. Of course, the constitutional and philosophical questions are not *entirely* unrelated. To the extent that one can identify and understand the framing era's underlying justification for religious liberty, that understanding can shed positive light on the meaning of the religious

that is the case, it is irrelevant for purposes of faithful interpretation of the Constitution whether religious freedom is justifiable in contemporary secularist philosophical terms. The provisions exist; they mean what they mean; and, if we consent to be governed by a written constitution, their original public meaning binds us, whether we think the provisions continue to make sense or not. In a *constitutional* sense, then, the answer to Leiter's question—*Why Tolerate Religion?*—is that this is a decision “We the People” made in adopting the First Amendment, and it remains obligatory for so long as we agree to be bound by our present written Constitution.⁷

That does not answer the question of why we as a society should choose to *have* a constitutional provision protecting the free exercise (and freedom of non-exercise) of religion. That is the philosophical question, almost wholly distinct from the question of constitutional interpretation. And that question—the question of *why* a liberal political society should protect religious freedom—is the subject of Leiter's provocative book, and of this critical Review.

I. LEITER'S PROJECT: WHY SPECIALLY PROTECT RELIGION?

Leiter's thesis is summed up in his rhetorical-question title: *Why Tolerate Religion?* The book is short (133 pages plus endnotes—about 40,000 words). Even at that, the argument is somewhat repetitious, with frequent re-formulations of the question posed: Is there any good, secular philosophical justification—any argument that assumes the invalidity of religious belief—for exempting religious behavior, specifically as such, from society's usual rules and commands? Leiter's answer is an emphatic *no*.

The first two chapters define Leiter's terms. Chapter One, entitled simply “Toleration,” defines and defends toleration as the (usually admirable) principle of putting up with a belief or practice *notwithstanding one's view that it is wrong or harmful*. Leiter's explication here is straightforward: toleration implies not indifference to right or wrong, but a stance of sometimes putting up with what one is convinced is wrong, despite its wrongness. He treats conventionally, and usually sympathetically, the standard range of arguments for “toleration” in general: Millian epistemic and utilitarian arguments for the possible value of error in the search for truth and the possibility of one's own judgment being flawed (pp. 19–21); Lockean (and

liberty provisions that that generation enacted. There is good reason to believe that, historically, the Free Exercise and Establishment Clauses of the First Amendment reflect the essentially religious premises that justify religious freedom in the first place. That suggests that the religion clauses should be understood against the backdrop of such premises, that ambiguities should be resolved in accordance with such premises, and that judicial interpretations of these texts that assume a secularist standpoint are anachronistic and likely to produce unsound interpretations of those provisions as authoritative legal texts. See Paulsen, *Making Sense of Religious Freedom*, *supra* note 2, at 1610–16; Paulsen, *The Priority of God*, *supra* note 2, at 1162, 1181–84.

7. One can contest the philosophical justification for dead-hand-of-the-past written constitutionalism, too, of course. See Paulsen, *supra* note 5, at 916–18. But that is a discussion for a different book and a different review.

related) arguments concerning the incapacity of the state or other authority to judge truth correctly or inculcate it effectively (pp. 9–12); and Kantian–Rawlesian—with a slight revision, one might add *Christian*—moral arguments about how one would wish to be treated if roles were reversed or not known in advance.⁸ In the main, the chapter is largely preparatory, laying groundwork for Leiter’s later claim that, whatever the justification for toleration as a general principle, there is nothing special about religion that distinguishes it as uniquely worthy of toleration.

Chapter Two, entitled “Religion,” introduces a more tendentious line of discussion. Leiter defines religion as systems of belief that: (1) “issue in *categorical demands on action*” and (2) “do not answer ultimately (or at the limit) to *evidence and reasons*” (p. 34), but are instead “*unhinged from reasons and evidence*” (p. 84). This is the core of Leiter’s definition of religion: categorical commands not warranted on the basis of reason or evidence.

Religion has two further attributes, but, Leiter says, these are not critical to his argument because they overlap in relevant ways with the first two features. The third characteristic is that religion typically involves “a *metaphysics of ultimate reality*” (p. 47). This criterion serves to distinguish irrational “personality cults” from irrational *religion* but is not independently important to his argument, Leiter posits, because the second defining feature of religion (insulation from reason and evidence) “already captures what is significant” (pp. 48–49). The “*metaphysical* character of religious beliefs” is simply synonymous with being unhinged from reason and evidence (p. 49). A fourth and final feature is that religion offers “*existential consolation*,” in the sense of purporting to render understandable and tolerable “the basic existential facts about human life, such as suffering and death” (p. 52). For Leiter, this simply describes how religion functions; it is not identified as relevant to the question of tolerating religion.⁹

This definition—“religion” as an essentially irrational set of ultimate, categorical commitments—is central to Leiter’s thesis. This formula, in

8. Pp. 15–19. Leiter employs Rawles’s classic formulation of assuming an “original position”—a position from which one supposedly should choose the rules one would pick if he did not know in advance how his own moral positions or values would fare under such rules. Pp. 15–17. In some respects, this resembles Christianity’s most basic moral teachings about treatment of others: “Do for others what you want them to do for you: this is the meaning of the Law of Moses and of the teachings of the prophets.” *Matthew* 7:12 (Good News Translation) (quoting Jesus) (internal quotation marks omitted); see also *Mark* 12:30–31 (GNT) (establishing that the two most important commandments are to “[l]ove the Lord your God with all your heart, with all your soul, with all your mind, and with all your strength” and to “[l]ove your neighbor as you love yourself” (quoting Jesus) (internal quotation marks omitted)); cf. *Matthew* 5:43–47 (recounting Jesus teaching his followers to love their enemies).

9. Leiter unequivocally embraces, as the “clearly correct Nietzschean posture,” p. 91, the view that religious beliefs are necessarily false beliefs. See pp. 78, 90–91. Yet even under this unsympathetic view of religion, one might make a weak argument for religious toleration on the Nietzschean premise that the holding of false and unwarranted beliefs may be a necessary condition for life itself. Pp. 90–91.

slight variation, is repeated many times throughout the book.¹⁰ Indeed, it is fair to say that this definitional premise is the hinge of Leiter's entire essay. It is *because* religious exercise is, by definition, action almost uniquely disconnected from reason and evidence that it makes little sense to protect, indulge, tolerate, or even respect it. (I will have more to say about this definition, and the conclusions Leiter derives from it, later in the Review.)¹¹

Given this definition, the argument against legal accommodation specifically of religious conscience or conduct becomes an easy downhill ride. Chapter Three repeats the book's title question, "Why Tolerate Religion?" Not surprisingly, Leiter can find no reason to tolerate religion specifically. Indeed, the case for toleration of religion is weaker than the case for toleration generally:

If what distinguishes religious beliefs from other important and meaningful beliefs held by individuals is that religious beliefs are both insulated from evidence and issue in categorical demands on action, then isn't there reason to worry that religious beliefs, as against other matters of conscience, are far more likely to cause harms and infringe on liberty? And might that not even form the basis of an argument for why there are special reasons not to tolerate religion? (p. 59; footnote omitted)

10. *E.g.*, p. x ("I also assume, as will become clear, that religious belief always involves some degree of *false* or at least *unwarranted* belief . . ."); p. 31 ("[Religious belief] is based on *faith*, not *reasons*." (citing TIMOTHY MACKLEM, *INDEPENDENCE OF MIND* 133 (2006))); p. 34 ("[Religious beliefs] do not answer . . . to *evidence* and *reasons*."); p. 34 ("Religious beliefs . . . are insulated from ordinary standards of evidence and rational justification . . ."); p. 35 ("Fanatics will hold any set of beliefs *regardless of the evidence* . . ."); p. 39 ("[A]ll [the major religions] countenance at least some central beliefs that are not ultimately answerable to evidence and reasons . . ."); p. 39 ("[T]he distinctively religious state of mind is . . . believing something *notwithstanding the evidence and reasons* that fail to support it or even contradict it."); p. 40 ("Religious beliefs are . . . insulated from revision *in light of evidence*."); pp. 41–42 ("[A]ncient testimonial evidence [supporting religious beliefs] deserves no credence at all. . . . [Believers hold their beliefs] insulated from reasons and evidence."); p. 49 (arguing that religious belief is partly defined by "*insulation from evidence*"); pp. 49–50 (noting that religious beliefs involve "*insulation from reasons and evidence*"); pp. 55–56 (suggesting that religious beliefs are "*insulated from evidence and reasons*"); p. 56 (discussing the effects of "*exposure to opinions that are insulated from reasons and evidence*"); p. 60 (stating that there is no reason to think that "*evidence would thwart grossly unjust categorical demands*" and noting "*the atrocities so commonly perpetrated by religious zealots*"); pp. 60–61 (indicating that the distinctive character of religious beliefs "*is defined by the categoricity of its demands conjoined with its insulation from evidence*"); p. 62 (suggesting that religion involves a "*potentially harmful brew of categorical commands and insulation from evidence*"); p. 63 (discussing the harm resulting from religion's "*conjunction of categoricity and insulation [from] evidence*"); pp. 63–64 (describing religion as a "*conjunction of categorical fervor . . . bas[ed] in epistemic indifference*"); p. 79 (discussing the parameters of "*blameworthy epistemic irresponsibility*" and "*culpably false belief*"); p. 80 ("[P]ersistence of belief in God is a kind of miracle because it is so unsupported by reasons and evidence." (quoting Alex Byrne, *God: Philosophers Weigh In*, *BOS. REV.*, Jan.–Feb. 2009, at 31)); p. 81 ("[R]eligious belief is a *culpable* form of unwarranted belief given . . . ordinary epistemic standards."); p. 83 (implying that religion consists of "*beliefs unhinged from reasons and evidence*"); p. 84 (suggesting that religious beliefs are "*unhinged from reasons and evidence*"). I stopped inventorying such passages at page eighty-five.

11. See *infra* Part III.

Leiter stops (just) short of embracing this view explicitly. He remarks on “the atrocities so commonly perpetrated by religious zealots” (p. 60) and questions whether there could be “any *special* reason to tolerate beliefs whose distinctive character is defined by the categoricity of its demands conjoined with its insulation from evidence” (pp. 60–61). A need for existential consolation does not justify religious toleration, he argues, because nonreligious individuals find ways of attaining such consolation without resorting to “belief systems involving the potentially harmful brew of categorical commands and insulation from evidence” that characterizes religion (p. 62). Unless one possessed “an antecedent bias in favor of religion,” there is no reason to believe that “the conjunction of categoricity and insulation from evidence” produces more good than harm (p. 63). Leiter therefore concludes that “[s]ingling out religion for toleration is tantamount to thinking we ought to encourage precisely this conjunction of categorical fervor and its basis in epistemic indifference” (pp. 63–64).

Chapter Four presses Leiter’s position further: “Why Respect Religion?” Is there any reason, Leiter asks, to accord religious beliefs actual *respect*, of some affirmative kind,¹² rather than the barest toleration? Leiter finds none. What is there about religion that could merit such respect? Leiter sets forth “three considerations”—three possible ways of thinking about religious belief that might help sort out whether it might merit respect notwithstanding its irrationality (p. 75).

First, religious beliefs might be *simply* false, but harmlessly and forgivably so. If that were the case, one might be inclined to treat such views with a modicum of respect beyond mere recognition and minimal toleration (pp. 75–76). A second possibility is that religious beliefs are unworthy of respect because they are “*perniciously false*,” in the sense of potentially causing “immeasurable harm to human beings” (pp. 76–77). The case is close for denying any respect to religion on these grounds, Leiter states, because of the conservative political and moral views held by many religious persons, and the obviously reprehensible consequences of such views.¹³ In the end, however, Leiter graciously declares that “such a posture is not warranted” because religious beliefs will not *always* be harmful (p. 83).

12. Leiter distinguishes between minimal “recognition respect” and more affirmative “appraisal respect,” which evaluates more positively or at least agnostically the views or conduct with which one disagrees. Pp. 69–73.

13. Leiter, asking whether religion has any special “*value* that we should appraise highly or *merely* tolerate,” p. 82, begins his answer as follows:

It might be tempting in the United States in the early twenty-first century to think the answer obvious. After all—to take an example close to home—religious believers overwhelmingly supported George W. Bush, widely considered one of the worst presidents in the history of the United States, whom many think ought to be held morally culpable both for the illegal war of aggression against Iraq as well as the casualties resulting from domestic mismanagement. Of course, if we really thought there were some connection between religious belief and support for the likes of Bush, then even toleration would not be a reasonable moral attitude to adopt toward religion: after all, practices of toleration are, themselves, answerable to the Millian Harm Principle, and there would be no reason *ex ante* to think that Bush’s human carnage is something one should tolerate.

The best justification for denying affirmative respect to religion, Leiter suggests, is the third possibility: “*Religious belief is (epistemically) culpable false belief*” (p. 77). By this, Leiter means that religious conviction “is unwarranted and one ought to know it is unwarranted” (p. 77). Back in the fourteenth century, holding religious beliefs might not have constituted “blameworthy epistemic irresponsibility,” but “after the Scientific Revolution and the Enlightenment,” this is no longer so (p. 79). Holding religious beliefs today is “*culpably without epistemic warrant*” (pp. 84–85) because such beliefs are at variance with all rational evidence and are “unhinged from reasons” (pp. 83–84). Since there is no good instrumental justification for respecting religion—it does not conduce to particularly good outcomes (pp. 85–86) even if it does not always produce bad ones—there is little left on which to base any respect.

As with the preceding chapter, much of the argument of Chapter Four turns on Leiter’s understanding and definition of religion as intrinsically irrational. At this point, if not earlier, the argument would seem to require engagement with the serious arguments put forth on the other side, by noted philosophers, theologians, and scientists, for the rationality of religious conviction and its consistency with other systems of knowledge. Leiter does not do so. The philosophical arguments for crediting, or even respecting, the rationality of religious belief systems can be dismissed, Leiter writes, on the ground that their proponents “are uniformly religious believers” (p. 80) who merely seek to vindicate “irrational and long-discredited positions without any actual argument or evidence” (p. 90).

This chapter is the weakest of the book. I will have more to say below about Leiter’s casual and unreasoned dismissal of the serious (if debatable) philosophical arguments for theism. Those arguments have been advanced by eminent theist philosophers and by eminent *atheist* philosophers (of whose existence Leiter inexplicably purports to be unaware).¹⁴ Leiter does not engage the arguments for philosophical theism but simply waves them away as the arguments of philosophical theists. (As I argue below, this failure to engage competing philosophical arguments is a serious failing of the book, and one that undermines Leiter’s position at a point crucial to his overall thesis.)¹⁵

P. 83. Hostility to the political and moral views that he ascribes to certain religious persons appears to have been part of what motivated Leiter to write this book. His Preface begins: “My interest in the topic of religious toleration arose when teaching at the University of Texas–Austin and witnessing in the years 2001 to 2008 the pernicious influence of reactionary Christians on both politics and public education in the state.” P. ix.

14. Leiter is obviously wrong—and perhaps even disingenuous—in saying that those who defend the rationality of religious belief and its consistency with science “are uniformly religious believers.” P. 80. As I discuss below, there are several notable philosophers and biologists who are avowed atheists but who defend the rationality of religious belief and its consistency with science. Leiter knows of their existence. He has attacked certain of them (in rather personal terms) in internet blog posts. See *infra* note 36 and accompanying text.

15. See *infra* Section III.B.

Finally, Chapter Five discusses “The Law of Religious Liberty in a Tolerant Society.” Here, Leiter makes some fair (if fairly conventional) points: Universal exemption from society’s laws for *all* forms of conscience, religious or otherwise, would devolve into anarchy (p. 94). There are also, Leiter concedes, practical line-drawing advantages to a legal scheme that focuses specifically on *religious* liberty, in terms of the ability of government to identify the genuineness of conscience claims (p. 95). Further, there are problems with the no-exemptions view, in that it readily can degenerate into intolerance and discrimination (pp. 100–08). Finally, the problem of harm to others—the limits to toleration—remains under any approach (pp. 109–15).

The most distinctive (if dubious) claim of this final chapter is that the First Amendment’s non-establishment of religion principle means not only that government may not *coerce, sponsor, promote, or endorse* religion (to proceed from clearest to less clear implications of non-establishment) but further that government *may affirmatively exclude* religious speech and expression by private individuals and groups from the public square, and certainly from public schools: “It is one thing for the state to criminalize a particular religion and its practice”—Leiter agrees that this would not be very tolerant—but it is “quite another for the state to say that the religion and its practices do not belong in the public schools” (p. 108). Leiter embraces this latter position vigorously:

The state can establish a Vision of the Good that does not include religion, meaning that state schools need not accommodate religious expression, contrary to the wrong turn taken by the U.S. Supreme Court; what the state cannot do, consistent with a principle of toleration, is deny individuals the opportunity to express in other aspects of their life a religiously grounded Vision of the Good. (p. 123)

This is an extreme view. Leiter, to his credit, acknowledges that it is contrary to a string of unanimous and near-unanimous Supreme Court Free Speech Clause decisions that stand for the basic propositions that government may not censor, suppress, or discriminate against the speech of private persons or groups based on its content or viewpoint—including speech on religious topics or reflecting religious viewpoints—and that this principle extends to any situation where government has made facilities or programs open for expression by the public or an appropriate subset thereof (like students or student groups).¹⁶ Leiter laments the equal inclusion of religious

16. See, e.g., *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819 (1995); *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (plurality opinion in part); *Widmar v. Vincent*, 454 U.S. 263 (1981). Leiter’s view would seem to justify not merely suppression of student religious expression at public schools but also suppression of any distinctively religion-based conscientious objections to school requirements designed to inculcate the state’s secular “Vision of the Good.” See p. 13. His stance closely parallels Justice Frankfurter’s majority opinion in *Gobitis*, which upheld the expulsion from public schools of Jehovah’s Witness children for refusing to participate in a Pledge of Allegiance salute designed to instill community secular values. *Minersville Sch. Dist. v. Gobitis*,

ideas in the public sphere—a stance that seems like active *intolerance* of religion, not simply minimal toleration (which would concede the propriety of equal treatment of religious speech, expression, and association within the Millian marketplace of ideas).

Leiter's view is consistent with his posture toward religion generally. If religion consists of irrationally unhinged, potentially harmful categorical commitments, *why not* seek to exclude the baleful influence (in Leiter's words, the "potentially harmful brew" (p. 62)) of religious views from the public school environment or, for that matter, from public discourse generally (assuming First Amendment freedom of speech principles, as well as freedom of religion, did not stand in the way)? Indeed, on Leiter's premises, his overall conclusion—that there is no convincing reason specially to protect religious liberty—would not seem quite strong enough: Why not (as his treatment of religious speech tends to suggest) go further and *suppress* religion or religious identity, *discriminate against* the exercise of religious beliefs or conscience, and *exclude from* public debate religious ideas and viewpoints? Why *even tolerate* religion, in the sense of putting up with its existence at all, if religion is intrinsically irrational and misguided, imposes its irrationality in the form of categorical commands on its pliant adherents, and often produces such socially harmful results?¹⁷ Isn't constitutional protection of religious exercise, and perhaps even of religious expression, irrational?

310 U.S. 586 (1940), *overruled by* W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943). The state may secure such "desirable ends" by

having its public school children share a common experience at those periods of development when their minds are supposedly receptive to its assimilation

. . . .

What the school authorities are really asserting is the right to awaken in the child's mind considerations as to the significance of the flag contrary to those implanted by the parent.

Id. at 597–99. Religious freedom is sufficiently preserved by allowing parents to attempt "to counteract by their own persuasiveness the wisdom and rightness of those loyalties which the state's educational system is seeking to promote." *Id.* at 599. The Court substantially repudiated *Gobitis* three years later in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), on general freedom-from-compelled-speech grounds, but not explicitly on religious-freedom grounds.

17. I have described this general stance toward religious freedom in other writing as "the 'Post-Modern' View" that rejects special protection of religious liberty because it rejects the possibility of religious truth. Paulsen, *The Priority of God*, *supra* note 2, at 1178–81. It differs from the "Modern" view that would protect religious liberty even though it would remain skeptical of the possibility of religious truth and the (earlier) "Liberal" view that accepts the notion of religious truth but protects religious liberty because it is skeptical of government authority to determine it. *Id.* at 1164–78. Ironically, the "Post-Modern" stance shares much in common with the "Pre-Liberal" view, which posits a single religious truth to which all should be required to subscribe, and rejects religious liberty on that ground. *Id.* at 1166–67.

II. IS RELIGIOUS FREEDOM IRRATIONAL?

In spite of deeply problematic premises, Leiter's conclusion is essentially right: a serious, distinctive commitment to religious freedom makes little sense absent some "antecedent bias" (to accede for a moment to Leiter's term) *in favor of* religion (p. 63)—some social and legal belief that the sincere exercise of religious conviction *really is* specially and uniquely worthy of constitutional protection. Put differently, religious liberty only makes entire sense on essentially religious philosophical presuppositions. Cut out those premises or presuppositions—presume instead that religious belief is intrinsically invalid, irrational, and unreal—and the case for tolerating religious exercise in opposition to usual social rules vanishes.

In a backhanded way, then, *Why Tolerate Religion?* usefully if not quite intentionally demonstrates that the argument for religious liberty, to make full sense, must be one that first accepts the validity or potential validity of religious beliefs as supplying true standards governing persons of faith. If religion is viewed as intrinsically consisting of absolutist existential commitments "unhinged from reasons and evidence," the case for special protection of religious liberty collapses. Indeed, it would seem downright whacky—the intentional accommodation of lunacy—deliberately to afford constitutional protection or indulgence to the categorical commands of irrational belief systems utterly unhinged from reason. Why on earth would anyone put in the Constitution a Free-Exercise-of-Beliefs-Unhinged-from-Rationality Clause?

I have advanced a version of this claim before, in an article first published more than fifteen years ago¹⁸: religious freedom makes sense only on the premises that God exists, that God makes claims on the loyalty of human beings, that these claims, in principle, should have priority over the claims of civil society, and that the state is not the arbiter of religious truth.¹⁹ But these premises are no longer universally shared. To the modern secular, irreligious mind, it is "embarrassing" to think "that the Constitution might single out religion for special protection, and perhaps even preferred treatment—and not provide comparable protection for skepticism, agnosticism, rationalism, humanism, or atheism."²⁰ Some secularists indeed "believe that religious faith is crazy (or, if they put it more gently, 'irrational') and its adherents are the functional equivalent of lunatics."²¹ To such a way of thinking, "it would be crazy" to accord religion special constitutional protection²²: "Why would anyone in his right mind protect the free exercise of lunacy (especially if a lot of people are lunatics)?"²³

18. Paulsen, *Making Sense of Religious Freedom*, *supra* note 2, at 1610–15.

19. *Id.* at 1611.

20. *Id.* at 1612.

21. *Id.* at 1613.

22. *Id.* at 1614.

23. *Id.*

Leiter and I may be starting from different places and employing competing philosophical paradigms. But in the end, are we not posing the same question, albeit from opposed perspectives, about the value of religion? We both ask, “Why tolerate religion?” And we both answer that there is no persuasive reason *unless one first assumes the possible or likely validity, and if so the resulting supreme importance, of true religious conviction.*

Leiter rejects any such possibility, and so concludes that it is unwarranted to base public policy on any such assumption of possible religious truth or even to hedge one’s bets in such regard. It would seem to follow, on this view—though Leiter withholds these exact words—that a social policy of protecting or specially tolerating religious belief and exercise is *itself* irrational. I accept the possibility of true religious views, and therefore think religious freedom rational, desirable, and vital.²⁴

The issue is fairly joined at this point: Is *religious belief* so intrinsically irrational that the framing generation’s decision to protect its free religious exercise is also irrational? Is religious freedom the irrational indulgence of irrationality? If so, what are we to make of the First Amendment’s protection of the free exercise of religion?

III. IS RELIGIOUS BELIEF IRRATIONAL?

The answer, I submit, is that theistic religious belief—belief in a creator God—is rational and reasonable. It has always been so regarded by Western intellectual civilization, typically (there are notable exceptions) even by those who reject theistic religion. The rationality, or at least the plausibility, of belief in God has been defended by some of the greatest philosophical minds of all time and is defended by formidable philosophers today, including both persons of theist religious conviction and atheists (and agnostics) who support the philosophical plausibility of religious faith even while remaining personally unconvinced by the argument. Partly as a result, American *political* philosophy consistently has regarded theistic religious belief as entitled to a strong presumptive rational validity and sought to protect its free exercise, in appreciation of the presumptive rationality and enormous objective and subjective importance of such religious convictions.

Is this constitutional faith in religious faith reasonable? This Part proceeds in three steps: First, I set forth an alternative definition of “religion” in terms of its essential philosophical premises. Next, I contrast this with

24. The brilliant seventeenth-century French mathematician and philosopher Blaise Pascal famously argued for religious faith as a rational choice in the presence of irreducible philosophical uncertainty, based in part on a calculation (or “wager”) about probable truth propositions, the necessity of making a decision, and an appraisal of the stakes of erroneous conclusions of different kinds. BLAISE PASCAL, *PENSÉES* No. 418, at 121 (A.J. Krailsheimer trans., Penguin Books rev. ed. 1995) (1670). One wonders whether there might not be an analogous, Pascal-like argument for a social policy of religious liberty, predicated on recognition of the possibility of religious truth coupled with recognition of the enormously harmful consequences of a policy that erroneously denied the right of persons and groups to act in accordance with such truth. See *infra* text accompanying note 47 (discussing the rationality of the framers’ apparent “bet” on religious liberty).

Leiter's definition of religion—which, as noted above, seems to bear the entire weight of his argument—and show how Leiter fails to engage seriously the philosophical argument for the rationality of religious faith. Leiter's casual dismissals make for easy rebuttals, and I set forth in abbreviated form a few of the fairly standard responsive arguments. Finally, I conclude that, contra Leiter, it is entirely reasonable for society to credit the philosophical premises underlying religious faith and thus not only to tolerate religion but to privilege its free exercise.

A. *Defining "Religion": A Specific Type of Philosophical Belief System*

The philosophical case for theism is not incontestable. But neither is it possible fairly to rule it out of bounds or blithely dismiss it without reasoned argument. *Religion* and *Secularism*, in their many and varied forms, are simply competing philosophical systems resting on competing intellectual premises.

At the (great) risk of being reductionist: *Religion* refers to philosophical belief systems that credit the possibility or probability—or that embrace as fact—that physical existence and reality are not self-created or self-contained but ultimately derive from some external act of creation, by some *cause*, being, or entity *extrinsic to and independent of* the physical universe, existence, and reality as perceived by ordinary human capacities. In short, religion proceeds from some understanding of a self-existent, creating *God*. Different religions differ in their understandings of the nature and character of this creator or cause and the relationship of such a being to created physical existence. Religion (typically) derives from these premises further conclusions about the consequences of these understandings for ascertaining the meaning of existence, the purpose and ends of human life, and the implications for proper human conduct and life-orientation.²⁵

Secularism, in contrast, refers to philosophical belief systems that do *not* credit the possibility that reality derives from some act of creation or a creator extrinsic to known physical reality; rather, physical existence is a self-contained, causally-closed system that simply *is*, with no particular implications for ascribing meaning to human existence or prescribing human conduct.

25. In some ways, this last feature of religion corresponds to Leiter's fourth criterion, that religion offers "existential consolation," p. 52, though it is considerably richer than Leiter's formulation. The implications of the existence of God, for man's relationships and moral duties, is at the core of the Jefferson–Madison functional definition of religion, set forth in the *Virginia Declaration of Rights* and quoted in Madison's *Memorial and Remonstrance Against Religious Assessments*: "[T]he duty which we owe to our Creator, and the manner of discharging it." JAMES MADISON, MEMORIAL AND REMONSTRANCE AGAINST RELIGIOUS ASSESSMENTS (1785), reprinted in 8 THE PAPERS OF JAMES MADISON 298, 299 (Robert A. Rutland et al. eds., 1973) (quoting VA. DECLARATION OF RIGHTS, § 16 (1776)) (internal quotation marks omitted); see also *Everson v. Bd. of Educ.*, 330 U.S. 1, 64 (1947) (quoting same).

“Religion” and “secularism” thus describe broad categories of root philosophical belief systems—models for describing and understanding existence.²⁶ Both religious and secularist systems involve some degree of speculative extrapolation, and inference, from the known to the unknown (and perhaps unknowable). Indeed, one might even say, without irony, that in this respect both religious and secularist belief systems require some sort of “leap of faith.” Each tends to regard the other as deficient in some respect in its premises and explanatory capacity. Religious philosophical systems tend to regard secularism as failing to provide any explanation for existence itself, other than a circular one. Secularist philosophical systems tend to regard religious systems as simply positing unverifiable answers to this problem. (Note that, to some degree, each charge can be turned back against the position of the side making it.) Secularist philosophical systems regard religious philosophy as inconsistent with known, observable reality, and thus as utterly implausible. (“Miracles,” or supernaturalism in general, violate the laws of nature and science.) Religious philosophical systems counter that known, observable reality (or “nature”) cannot explain its own existence, except on some premise that violates these same supposed laws, and so requires explanation attributable to premises extrinsic to known existence (and therefore making tolerable, and believable, any and all lesser departures from usual observed reality—i.e., “miracles”).²⁷

I will say a bit more about the essential *rationality*—the reasonableness, based on (necessarily incomplete) evidence and (eminently debatable) philosophical premises and arguments—of theistic religious belief, in connection with examining Leiter’s breezy dismissal of such rationality (to which I turn next). For now, it should be sufficient to note that religion and secularism are simply two different, competing philosophical systems: they are contrasting accounts of physical existence and the nature of reality. Each is to some degree self-consistent—that is, coherent on its own premises. Neither is demonstrably correct or incorrect according to some objective standard external to both philosophical systems’ premises.

B. *Leiter’s Unreasoned Dismissal of Religion as Unreasoned*

Against this stands Leiter’s definition of religion as involving belief systems (1) that issue in categorical commands (pp. 33–34); (2) that do not answer to (and thus are “unhinged from”) reasons and evidence (pp. 33–34,

26. There are many examples within each category. Examples of “religion” are well known, though there is room for debate on the margins. See Paulsen, *Making Sense of Religious Freedom*, *supra* note 2, at 1621–23 (discussing debatable cases where popular understandings may differ from precise legal or philosophical definition of religion). Likewise, there are many variants of “secularist” philosophy, often coming with such labels as naturalism, scientism, materialism, humanism, or atheism.

27. For a powerful (and occasionally charming) defense of this philosophical position by a noted Christian writer, see C.S. LEWIS, *MIRACLES* (1947). For a very recent and intellectually formidable argument along these lines, see ALVIN PLANTINGA, *WHERE THE CONFLICT REALLY LIES: SCIENCE, RELIGION, AND NATURALISM* 65–128 (2011).

83–84); (3) that involve a metaphysics of ultimate reality (which is itself contrary to reason and evidence) (p. 47); and (4) that offer existential consolation (p. 52). As noted, it is the second criterion—religion’s postulated irrationality—that does most of the work in Leiter’s argument.²⁸

With respect, this definition simply is not very sophisticated. To define religion as “*unhinged*” from evidence and reasons partakes more of playground insult than philosophical insight. It appears designed not to treat seriously the premises and intellectual foundations of religious philosophical belief systems but simply to dismiss them—to define them out of the game. Leiter constructs a philosophical straw man and then burns it to the ground.

It is difficult to believe that one could have engaged seriously and open-mindedly the sophisticated philosophical arguments for theism—and the wide array of serious philosophers who have made them—and come away with Leiter’s dismissive, simplistic definition of religion.²⁹ There appears, in this volume at least, little reason to believe that Leiter has done that hard intellectual work. Leiter appears passingly familiar (at best) with at least some philosophers who think that there are reasons and evidence justifying certain forms of religious belief specifically in *God*. He cites one such major work in a general endnote, but seems not to have read it.³⁰ He also delivers a brief ad hominem attack on another distinguished scholar, indicating a level of familiarity with that thinker’s views.³¹

28. See *supra* Part I.

29. It is impossible, really, to treat seriously the works of such contemporary and modern theist philosophers as Richard Swinburne, Alvin Plantinga, Nicholas Walerstorff, Basil Mitchell, David Bentley Hart, Peter Kreeft, William Craig Lane, C.S. Lewis, or—going back further—Kierkegaard, Locke, Hobbes, Kant, Pascal, Aquinas, and many others, and come away with such deeply jaundiced opinions and stereotypes about religious philosophical thought. It is possible to engage the arguments of such thinkers and yet *reach conflicting conclusions*. But it seems unlikely that one could have engaged, thoughtfully, such arguments and concluded that there is *no rational basis* for them—that religion is, in its essential nature, unhinged from logical reasoning and evidence and that philosophical arguments for the rationality of religion can be dismissed as being, inevitably, of the same unhinged nature. Leiter makes just such an assertion. See p. 40; see also *infra* note 32.

30. See pp. 79–80 & 158 n.23. The work Leiter cites is ALVIN PLANTINGA, *WARRANTED CHRISTIAN BELIEF* (2000), a daunting book but one that rewards careful study. Plantinga’s more recent book, *Where the Conflict Really Lies: Science, Religion, and Naturalism*, is more accessible, less technical, and discusses some of the same themes. PLANTINGA, *supra* note 27. In that book, Plantinga builds a thoughtful and nuanced philosophical case for the lack of any true conflict between Christian religion and science and for the (ironic, given popular misconceptions) presence of a deep conflict between “Naturalism” and scientific method. *Id.* Leiter does not discuss any of Plantinga’s arguments.

Leiter also refers in passing to William Paley, an eighteenth-century theist philosopher, but does not cite Paley’s works or address his arguments. Leiter states only that it is “doubtful” that such “intellectualist traditions capture the character of popular religious belief” or “the typical epistemic attitudes of religious believers.” P. 39.

31. Leiter condemns John Finnis for claiming (building on Aquinas) that the norms of rationality and causation we presume valid when studying nature suggest the need for adequate causal reason for why *anything* is, and that this leans against random chance as a sufficient explanation for existence. Leiter characterizes this argument as “dogmatic incantation”

But that's it. Leiter does not engage the arguments for theism in the slightest. Instead, Leiter writes, of the vast philosophical literature defending the rationality of religious belief, just this: "I shall not, here, be able to address this literature in any detail" (p. 80).

In a book as slender as this (133 pages), on a point so critical to the author's entire thesis, to fling off such an airy dismissal seems little short of irresponsible. Leiter's only argument on this score (if one can call it that) comes in the next sentence, and is the feeblest of ad hominem: "Suffice it to observe that its proponents are uniformly religious believers, and that much of it has the unpleasant appearance of post-hoc—sometimes desperately post-hoc—rationalization" (p. 80).

Really? That's it?³² One could as well say the same thing of atheist or secular philosophers who reject religion: that they are desperately rationalizing, post hoc, their prior rejection of God, and that their nonreligious arguments should all be rejected because they are nonreligious persons and thus of course make such arguments. This is not philosophical argument at all. It is schoolyard name calling. It is an assertion that one should categorically exclude consideration of arguments that do not conform to one's own presuppositions. Anyone can play that game.

It is for good reason that the ad hominem fallacy is regarded as a low form of argument. It does not engage arguments but attacks persons. If the goal is to pursue truth, the game is to weigh arguments and reasoning, not simply to assert the self-evident rightness of one's position and then label and condemn opponents. Far better, I submit, to presume that people reach and hold the conclusions they do because they are persuaded of the correctness of the arguments for those conclusions, rather than presume that people make arguments simply to justify preconceived views that have no basis in reason or evidence. This holds true for religious philosophical positions, and those holding them, and for secular philosophical positions and those who hold them. To be sure, some folks on both sides prove disappointing on this score. (*People* are disappointing. This includes pastors, professors, and philosophers.) Some, on both sides, may indeed proceed from a desire to justify or rationalize predetermined positions and in fact be impervious to

and "a bludgeon meant to cow the opposition and vindicate the epistemic bona fides of irrational and long-discredited positions without any actual argument or evidence." Pp. 89–90.

32. It is. The only *argumentative* support Leiter offers for this assertion is a quotation of a summary of J.L. MACKIE, *THE MIRACLE OF THEISM* (1982), which Leiter then assumes to state the "dominant sentiment" that "the persistence of belief in God is a kind of miracle because it is so unsupported by reasons and evidence." P. 80 (quoting Alex Byrne, *God: Philosophers Weigh In*, Bos. REV., Jan.–Feb. 2009, at 31). Leiter does not set forth Professor Byrne's reasoning. Mackie's book itself does not appear in Leiter's bibliography. Earlier, Leiter makes a similar remark: "[I]ntellectualist traditions in religious thought" may be dismissed as "*insulated from evidence*" since "it is dubious (to the put [sic] matter gently) that these positions are really serious about following the evidence where it leads, as opposed to manipulating it to fit preordained ends." P. 40. Leiter offers no evidence for this claim. Leiter also states that within such intellectualist traditions, "it never turns out that the fundamental beliefs are revised in light of new evidence." P. 40. Leiter offers no evidence for this claim, either. (I discuss both claims in the text presently.)

countervailing arguments or evidence. Some religious believers seem to act this way; so do some atheists and secularists. But some do not. More to the point, if the argument would be valid, or credible, in the mouth of a principled proponent (or one with a different psychological disposition), the argument should be valid even if someone may have reasoned backward from desired conclusion to premises.³³ At all events, it should be sufficient—and necessary—to address the *arguments* actually made. It is not sufficient to dismiss them, by tarring with a broad brush all who make them.

There are three further problems with Leiter's dismissive stance: First, as noted above, it is simply factually false.³⁴ Leiter states that, within Anglophone philosophy, defenders of the rationality of religious belief "are uniformly religious believers" (p. 80). This is not so. Some of the most striking defenses of the rationality and plausibility of religious belief have been propounded by persons who are not themselves religious believers but atheists or agnostics who nonetheless find the arguments for theism tenable and the arguments against theism incomplete or unsatisfactory.³⁵ Leiter has tangled with some of these folks in other forums; why he ignores them here is

33. Leiter makes a basic philosophical error of confusing *motives* with *grounds* for belief. A devoted wife ("Anna") may wish to believe her husband ("Bates") innocent of a serious crime. She searches for exculpatory evidence and finds it. Her belief was true even when she lacked evidence. Her motive for the belief was irrelevant to its truth, but that *motive* led her to discover cogent *grounds* supporting the truth of her belief.

34. See *supra* note 14 and accompanying text.

35. There are a number of well-known trenchant contemporary philosophical criticisms of the dismissal of theism on the asserted ground of conflict with science, written by avowedly atheist scientists and philosophers. See, e.g., Stephen Jay Gould, *Impeaching a Self-Appointed Judge*, *Sci. Am.*, July 1992, at 118, 119, available at http://www.stephenjaygould.org/reviews/gould_darwin-on-trial.html (book review) ("[S]cience simply cannot (by its legitimate methods) adjudicate the issue of God's possible superintendence of nature. We neither affirm nor deny it; we simply can't comment on it as scientists. . . . Science can work only with naturalistic explanations; it can neither affirm nor deny other types of actors (like God) in other spheres. . . ."); Thomas Nagel, *The Fear of Religion*, *NEW REPUBLIC*, Oct. 23, 2006, at 25, 26, available at <http://www.newrepublic.com/article/the-fear-religion#> (book review) ("All explanations come to an end somewhere. The real opposition between . . . physicalist naturalism and the God hypothesis is a disagreement over whether this end point is physical, extensional, and purposeless, or mental, intentional, and purposive. On either view, the ultimate explanation is not itself explained. The God hypothesis does not explain the existence of God, and naturalistic physicalism does not explain the laws of physics.").

Nagel, who surely must be ranked among the most distinguished and provocative atheist academic philosophers alive (whether one agrees with his views or not), expounds on the rationality of religious philosophical systems and the limits of materialist naturalism in his recent book, *THOMAS NAGEL, MIND AND COSMOS: WHY THE MATERIALIST NEO-DARWINIAN CONCEPTION OF NATURE IS ALMOST CERTAINLY FALSE* (2012) [hereinafter *NAGEL, MIND AND COSMOS*]. Nagel is unabashed in insisting on his atheism even as he embraces the intellectual respectability of theistic philosophical arguments and notes the weaknesses of what he calls "materialist naturalism." See, e.g., *id.* at 15. Says Nagel, in a well-known quotation:

I want atheism to be true and am made uneasy by the fact that some of the most intelligent and well-informed people I know are religious believers. It isn't just that I don't believe in God and, naturally, hope that I'm right in my belief. It's that I hope there is no God! I don't want there to be a God; I don't want the universe to be like that.

THOMAS NAGEL, *THE LAST WORD* 130–31 (1997).

difficult to explain, for he is fully aware of their existence.³⁶ At all events, the claim that defenders of the rationality of religion are all religious believers is false. Leiter knows better.

Second, if their accounts are to be believed (and there is no reason to doubt them on this score), at least some serious theist philosophers were once committed atheists or principled agnostics whose religious conversions were a result of having become persuaded, intellectually, by reasoned argument, into abandoning long-held atheist, secularist, or humanist positions. C.S. Lewis is perhaps the most well-known example, though there are certainly many others, including notable former-atheist philosophers.³⁷ And of course that situation works in reverse: there are many former religious believers, of all different faiths, who have abandoned religious beliefs because they became intellectually persuaded that those beliefs were unsound. Again, it is simply not true that, as Leiter asserts, “it never turns out” that “fundamental beliefs are revised” in light of what is thought new evidence or argument (p. 40). Quite the contrary, beliefs are revised all the time, in both directions. That is how new atheists (and new theists) get made.

Third, it strikes me—here I am drawing on experience, not empirical data—that a great many religious believers (at least within my own faith tradition, Christianity) *would* revise their most fundamental beliefs if persuaded that hard facts, or unassailable philosophical argument, rendered their religious convictions untenable.³⁸ They hold to their faith beliefs not in defiance of reason and evidence but *because* of reason and evidence. They

36. Leiter is aware of Nagel's work and has attacked him (in rather nasty, personal terms) in internet blog posts. See, e.g., Brian Leiter, *Log-Rolling in Our Time: The Nagel/Plantinga Saga*, LEITER REP.: PHIL. BLOG (Dec. 3, 2012, 5:37 AM), <http://leiterreports.typepad.com/blog/2012/12/log-rolling.html> (“Nagel's . . . trafficking with [such] nonsense will not redound to [his] credit over the long haul.”); Brian Leiter, *Thomas Nagel Jumps the Shark, Part II*, LEITER REP.: PHIL. BLOG (Dec. 2, 2009, 6:02 AM), <http://leiterreports.typepad.com/blog/2009/12/Thomas-nagel-jumps-the-shark.html> (“What else can one say when a prominent, and formerly reputable, philosopher lends the fame of his name to endorse the latest misleading hatchet job on biological science by Stephen Meyer . . . ?”). Leiter does not engage Nagel's arguments in *Why Tolerate Religion?* Nagel is not mentioned or cited in Leiter's book, and none of Nagel's works is listed in Leiter's bibliography.

37. For Lewis's story of his conversion from atheism to Christianity, on intellectual and spiritual grounds of reasoned conviction, see C.S. LEWIS, *SURPRISED BY JOY* (1955). A more recent British example is Antony Flew, for many years the most prominent atheist philosopher in Britain, who became persuaded on philosophical grounds of the existence of a creator *God* or “first cause” extrinsic to creation itself, and became a theist/deist. His remarkable recantation of atheism, which caused a great sensation in Britain and elsewhere, is set forth in ANTONY FLEW, *THERE IS A GOD* (2007).

38. A familiar historical example is the Jewish and Christian revision of a (naïve, overly literal) reading of Psalm 104:5 (GNT) (“You have set the earth firmly on its foundations, and it will never be moved”), in light of Copernican scientific insights. See PLANTINGA, *supra* note 27, at 184. Scientific evidence can bring to light erroneous interpretive assumptions underlying particular religious doctrines, leading to their reconsideration or revision in ways that need not (but in theory could) undermine the essentials of religious convictions. *Id.* at 183–86.

are not psychologically immovable or impervious to reason; they simply evaluate the reasons, and weigh the evidence, differently than Leiter would.³⁹

Leiter is not slowed by any of this. Instead, he proceeds to say that, since most philosophers agree with him (except of course for religious believers, whose views can thus be dismissed), he therefore is “going to assume”—*assume!*—that competing epistemological arguments for the rationality of religion are “nothing more than an effort to insulate religious faith from ordinary standards of reasons and evidence in common sense and the sciences, and thus religious belief is a *culpable* form of unwarranted belief given those ordinary epistemic standards” (p. 81).

39. Most Christians I know, for example, would find their faith shaken to the core—and would almost certainly revise their beliefs, upsetting as this might be—were it decisively demonstrated as a factual matter, or philosophically indisputable or provable, that Jesus did not (and could not) rise from the dead; or if it were proven convincingly that Jesus in fact never lived but was wholly a literary construct of delusional disciples a generation or two later; or that there in fact is not (or could not possibly be) a God in the first place. If archeology, science, philosophy, literary criticism, or any other discipline could satisfactorily establish any of these things, Christianity (and likewise, I suspect, other religions) would fall. Christian religious beliefs, at least, rest on supposed *facts* about God, the universe, the true nature of ultimate reality, and certain events occurring in human temporal reality. These facts—and thus the beliefs that rest upon them—are falsifiable. Cut the factual premises and the beliefs fall. But that simply is not the situation (at least not at present); none of the factual predicates that would disprove Christian faith claims exists.

The reason that (most) Christians believe the things they do is not that they are *closed* to facts and evidence. It is that they *assess* the facts and evidence differently than non-believers do. On balance, Christians (and persons subscribing to the other major Abrahamic religious faith traditions) are inclined to assess the available evidence as tending to suggest that *God*, in some understanding, exists; that physical reality (and all its present manifestations) is extraordinarily difficult to explain on any premise other than the existence of some prior, immutable, intentional Creator separate and distinct from the physical universe; that such a Creator God is likely not only to exist but to be incomprehensibly beyond human capacity to imagine, understand, or fathom (except as and only to the extent revealed by God); that human reason is limited and, to a large extent, unreliable; and that proper understanding of the nature and character of God is essential for proper human conduct and orientation. (To a large extent, such philosophical-religious principles are shared in common by Christians, Jews, and Muslims. The specific nature of God’s revelation and commands of course differs markedly among these faiths.) These are considered philosophical beliefs, based on reasoning and on (necessarily incomplete) evidence. For many persons of faith, the incomplete nature of the evidence and uncertainty as to philosophical reasoning nonetheless lead them to proceed to more or less stable belief stances—that is, they form and act upon beliefs, notwithstanding uncertainty. Cf. PASCAL, *supra* note 24, No. 418. For some persons of faith (Christian and non-Christian), experience and feeling may make up deficits of less-than-certain knowledge. But rarely is settled religious conviction seriously held in *opposition* to believed objective scientific evidence or philosophical “proof” to the contrary.

Say what you will about these beliefs, the degree to which they possess or lack factual support, and the tightness of the logical or philosophical reasoning supporting them—all huge areas of religious and philosophical debate—it is hard to say (or hard to say fairly and honestly) that they are “unhinged” from evidence and reasons. Rather, they are based on *reasonable but contestable assessments* of evidence and reasons; as such, for many, if not most, religious believers, these assessments remain to some extent fluid and are subject to factual and philosophical corroboration, reasoned argument, and disproof.

These two pages of the book (pp. 80–81), along with two earlier pages dismissing religious believers' crediting of scriptural accounts of historical events (pp. 40–41)—a point to which I turn presently—constitute the entirety of Leiter's engagement with the philosophical arguments for theism. This is a major weakness in the work. As noted above, this premise—an uninformed prejudice, really—is carried forward in nearly everything else Leiter has to say.⁴⁰ And yet Leiter's basis for all this is a bare, unexamined, undefended *assumption*, wrapped in a blanket of *ad hominem*s.

Consider Leiter's brief discussion of the position of many Christians that their religious convictions are supported not only by valid philosophical reasons (the competing philosophical arguments for theism generally) but also by evidence of a type that commonly forms the basis for reasoned judgment in human thought: testimonial evidence from believed reliable sources.⁴¹ In the case of Christianity, the testimonial evidence in question is contained in biblical texts claimed to provide reliable historical accounts of actual events.

To be sure, the reliability and integrity of biblical source texts, and their proper interpretation and understanding, are areas of vigorous academic and theological contention—a subject all its own. But Leiter dismisses any and all reliance on evidence from such sources as simply an illustration of religious irrationality: “[T]estimonial evidence is a kind of evidence,” he concedes, making it theoretically possible for “a Catholic [to] appeal to testimonial evidence, as recorded in the Bible, and elsewhere,” in support of belief in Jesus's resurrection.⁴² But testimonial evidence of this sort cannot possibly be credited, Leiter says:

Ancient testimonial evidence in favor of events that are inconsistent with all other scientific knowledge about how the world works is nowhere thought to constitute good evidence for belief in a particular proposition, and that is exactly the status of the putative evidence in support of the resurrection of Christ. . . . [T]hat the testimony is inconsistent with everything we have reason (evidence) to believe about what happens when human bodies expire . . . indicates that the ancient testimonial evidence deserves no credence at all. In that respect, devout Catholics who still persist in believing in the resurrection of Christ hold that belief insulated from reasons and evidence. (pp. 41–42)

As philosophical argument goes, this is remarkably shallow. Leiter assumes the correctness of a certain set of philosophical presuppositions about “how the world works”—some version or another of a strong “naturalism,” apparently entailing the further (unstated) premises of causal closure of the physical universe and the impossibility of non-natural interventions in the universe—and then takes those presuppositions as premises sufficient to warrant dismissal of any evidence claimed to support religious belief if such

40. See *supra* notes 10–11 and accompanying text.

41. See pp. 40–42.

42. Pp. 40–41. It is not at all clear why Leiter limits this observation to Catholics and not Christians generally.

evidence might lead to conclusions inconsistent with the assumed-correct philosophical paradigm. Put more starkly: Leiter assumes his own conclusion as his starting point. He summarily rules out of bounds any philosophical view—and thus any type of evidence supporting such a view, and any inferences derived from such a view—not consistent with the conclusions assumed in advance by his presupposed paradigm. This is either philosophically naïve—actually ignorant of opposing philosophical paradigms, so as not able even to contemplate them as possibilities (which I doubt is the case with Leiter)—or ideologically narrow-minded: *intolerant* of intellectual paradigms that compete with one’s own (which strikes me as more likely here).

Either alternative is unacceptable. The philosophical argument for the possibility of (what are conventionally called) “miracles”⁴³ is thoughtful and sophisticated, and has been well made by many distinguished philosophers and theologians. It is a logical corollary of theistic views respectfully appraised by some of the most distinguished secular-atheist philosophers writing today. The argument simply cannot so lightly be dismissed.⁴⁴

43. A perhaps more apt, but regrettably jargonistic, term is “non-natural events” or “naturally impossible” occurrences.

44. Explaining in full the philosophical argument for miracles is an epic task, addressed in major works, and one I cannot possibly undertake here other than in summary form, without straying far afield from my specific point: that Leiter fails to engage important intellectual arguments against his philosophical position and assumes his own conclusion as establishing the invalidity of the type of evidence that might support reasoned religious faith.

So as not myself to be guilty of the charge I level against Leiter, however, I offer an abbreviated treatment in this footnote (which the reader should feel free to ignore). The case for the philosophical possibility and theological propriety of miracles has been made by several distinguished philosophers in the modern and contemporary eras. For important works within the last century, see, for example, LEWIS, *supra* note 27; PLANTINGA, *supra* note 27; RICHARD SWINBURNE, *THE COHERENCE OF THEISM* (rev. ed. 1993); and RICHARD SWINBURNE, *THE CONCEPT OF MIRACLE* (1970). See also William Lane Craig, *The Problem of Miracles: A Historical and Philosophical Perspective*, in 6 *GOSPEL PERSPECTIVES* 9 (David Wenham & Craig Blomberg eds., 1986), available at <http://www.reasonablefaith.org/the-problem-of-miracles-a-historical-and-philosophical-perspective>.

The argument for the propriety of miracles defies easy distillation, but it is possible to state its core elements briefly, if incompletely. (The arguments overlap in certain respects and reinforce each other at certain points.)

(1) First and most importantly, if there is a Creator *God*, responsible for the existence and continuance of all physical reality, there is in principle no logical reason why that God cannot or may not intervene in that reality in ways that depart from the observed norm as viewed from the perspective of life within the physical universe. There is no reason to suppose that such a Creator *God* lacks either the capacity or moral right to alter things. The argument against the possibility of miracles thus presupposes either (a) the nonexistence of a Creator God or (b) limitations on that God’s capabilities with respect to intervention in Creation. (Some versions of the latter assumption thus turn out to be *theological* arguments about the nature or character of God: if God exists, he would not act in such fashion.) The argument over the possibility of miracles thus replicates, at a different level, arguments over the existence or attributes of God, and would appear not to add weight of its own. If God, then miracles are possible; if no God, then miracles are not possible.

(2) The possibility of “miracles” does not, in principle, conflict with a scientific (or naturalist) paradigm, properly conceived, because such a paradigm does not address, and cannot in its nature decide, the philosophical question of whether the universe is causally closed. As one philosopher puts it, “How could this question of the causal closure of the physical universe be

It is easy to understand where Leiter's prejudice in favor of science and Naturalism, as sufficient all-purpose explanations of "how the world works," comes from. It is the dominant intellectual paradigm of the modern age. Leiter, in common with all of us, is a creature of that modern age. It is hard to break free of paradigms within which one is immersed and to think outside them. It is especially hard if one's (limited) exposure to outside-the-Naturalism-box thinking has not been particularly enlightening, or has been put forward in less than intellectually impressive ways by intellectually unimpressive persons making bad arguments, and if one has formed the

addressed by scientific means?" PLANTINGA, *supra* note 27, at 79. The domain of science is limited: Science can only address scientific questions about how the physical universe can be expected to operate *absent* extrinsic causation or "divine interference." It cannot determine whether such extrinsic causation or interference, departing from or altering the usual rules, may occur. That is a question of philosophy or theology not subject to scientific method. As atheist scientist Stephen Jay Gould has artfully put it: "[S]cience simply cannot (by its legitimate methods) adjudicate the issue of God's possible superintendence of nature." Gould, *supra* note 35, at 119. For the identical reason, science cannot adjudicate the question whether God may intervene in nature in the form of miracles.

(3) There is no sound reason to suppose, a priori, that "miracles" (so-called) are a "violation" of Nature rather than, viewed from an enlarged perspective (which we may not be capable of attaining), *part of* the "natural" order. The most that can be said is that miracles are "naturally impossible" under our understandings of natural law; it cannot be said that they "violate" that natural law. LEWIS, *supra* note 27, at 60–63. This is less a philosophical argument for the possibility of miracles than a suggestion that the *perception* of a conflict between miracles and what we think we "know" about "how the world works," p. 41, may be a function of limited perspective.

(4) There is nothing, in principle, more improbable about "miracles" (naturally-impossible events), viewed *ex post*, than about many naturally-explainable occurrences. The occurrence of non-natural and natural events alike may be, *ex ante*, greatly improbable. This observation applies to many naturally-explainable occurrences that have in fact occurred, ranging from infinitely numerous extraordinarily improbable ordinary daily occurrences to *ex ante* incomprehensibly improbable dramatic facts, including the physical existence of the universe and the present natural order. Only if it is first *presupposed*, on philosophical grounds, that "miracles" cannot and do not occur does it become possible to rule out the occurrence of such events on grounds of their extreme improbability (or, as Leiter puts it, their presumed incompatibility with "how the world works"). If compared with the enormous *ex ante* improbability of physical reality existing as it is solely on the basis of materialist naturalism or enormously improbable alternative naturalistic explanations of historical occurrences, miracles are not so enormously improbable after all. See LEWIS, *supra* note 27, at 103–11; Alvin Plantinga, *A Secular Heresy*, NEW REPUBLIC, Dec. 6, 2012, at 36, available at <http://www.newrepublic.com/article/books-and-arts/magazine/110189/why-darwinist-materialism-wrong> (reviewing NAGEL, *MIND AND COSMOS*, *supra* note 35). Lewis notes, for example, that the perceived improbability of a miracle like Jesus's resurrection must be laid alongside the improbability of the historical facts—things like the reported eyewitness testimony, the willingness of early Christians to die for their convictions, and the rapid spread of Christianity despite its affront to the religious and social ethos of the place and time in question—being explained on any other theory. LEWIS, *supra* note 27, at 103–04 ("Collective hallucination, hypnotism of unconsenting spectators, widespread instantaneous conspiracy in lying by persons not otherwise known to be liars and not likely to gain by the lie—all these are known to be very improbable events: so improbable that, except for the special purpose of excluding a miracle, they are never suggested. But they are preferred to the admission of a miracle."); see also PLANTINGA, *supra* note 27, at 235 (noting the enormous *ex ante* statistical improbability of any specific series of Bridge hands being dealt—including the series of hands actually dealt).

preconception (based on a sampling of experience) that religious persons are generally unreasoning or anti-intellectual.

But a serious philosophical argument needs to move beyond that. That some religious persons may have a simple faith, rooted more in personal trust, feeling, or tradition than in deep philosophical reflection, cannot be denied.⁴⁵ Whether some religious beliefs indeed are irrational—or depend to some extent on non-rational or extra-rational warrants—is a broad, interesting, and important topic (and one of great and nearly constant dispute among religious groups, theologians, and serious philosophers). But the assertion that religious belief is, *as a rule, intrinsically* that which is not accountable to or defensible on the basis of reason and evidence—that religion is *defined* by this characteristic—is itself contrary to evidence and reason. It disregards serious scholarship and intellectual argument on the opposing side (by theists and by non-theists). It assumes its own premises and conclusions. It ignores or rules out contrary evidence. In short, Leiter’s treatment of religious belief and religious philosophy ironically displays precisely the type of pervasive anti-intellectual prejudices he unfairly attributes, across the board, to religion: it is impermeable to contrary evidence and conflicting reasoned argument.

The view, commonly held by many (but not all) secularists—intellectuals and non-intellectuals alike—that religious belief is in its very nature divorced from and impervious to rational argument and evidence turns out to be simply an uninformed prejudice, unreasoning and ignorant in its own way. Leiter falls badly victim to this prejudice. There is no evidence in his book of familiarity with—at least not at the level of serious intellectual engagement—sophisticated philosophical justifications of theism and its compatibility with science and reason. Thus, what Leiter describes as at the core of *defining* religion—and as therefore marking it as something not worth special toleration in law or politics—simply does not correspond well to religion at all, at least not as exemplified by the major (and most minor) faith traditions present in the United States, historically and today. Leiter stacks his own deck. Whether this is out of ignorance about religion, out of prejudice from bad personal experience, or by intelligent design (so to speak) does not matter. That religion draws a bad hand seems to have more to do with the dealer than the cards.

45. Nor ought it be disparaged. As many religious faith traditions note—surely correctly, if one first accepts the possibility or reality of a self-existent Creator *God*—the so-called sophistication of secular intellectual worldly philosophers, of any age, is as nothing (and sometimes reduces to mere foolishness), arrayed against the all-surpassing mind, wisdom, and will of *God*, who, if He is, surely is not bounded by mere human intellectual conceptions or rationality. See, e.g., 1 *Corinthians* 1:20 (New International Version) (Paul asking, “Where is the wise man? Where is the scholar? Where is the philosopher of this age? Has not God made foolish the wisdom of the world?”); *Romans* 11:34–35 (similar); *Ecclesiastes* 1:1–2:26 (“the Philosopher” equating human pursuit of wisdom and knowledge to vainly “chasing the wind”); *Matthew* 18:1–4 (Jesus extolling the simple faith of children); cf. PASCAL, *supra* note 24, No. 418, at 122 (“If there is a God, he is infinitely beyond our comprehension . . .”). Ironically, religious “anti-intellectualism” itself may be an intellectually justifiable position.

C. *The Rationality of Religious Liberty*

The men who framed the First Amendment, and the society that adopted it, did not share this peculiarly modern, elite prejudice. They believed that it was entirely reasonable for society to credit the philosophical premises supporting religious conviction.⁴⁶ They believed that religious belief, and its free exercise, was of fundamental importance, because religious conviction corresponds to, or can correspond to, something *real*. They further accepted the premise that, if religious beliefs are true, they are of supreme importance and rightfully trump the ordinary commands of government. The framers weighed the evidence and placed their bets on the possibility of true religious conviction and the consequent value of religious liberty.⁴⁷ They were skeptical about human perceptions of God's will and commands, and they were more skeptical yet about mere human authority (governmental and otherwise) in matters of religion. But they were far less skeptical about the rationality of religious belief as a general proposition.⁴⁸

This was an eminently rational stance, and it remains so. Indeed it is doubly rational: it is rational because belief in God is itself rational (if conceded not an unavoidable or inevitable conclusion); and it is rational because—even for a nonbeliever—it is appropriate at least to recognize and respect the rationality and reasonableness of those who hold theistic religious beliefs, even if one is not persuaded of the validity of those beliefs. The framers of the First Amendment must be acquitted of the charge (or innuendo) of irrationality.

It is further rational for society to recognize—given acceptance of the possibility and rationality of theistic religious belief—that the conflict posed for persons of religious faith required by the state to act at odds with their sincere *religious* convictions is intrinsically different from the conflict posed by state commands at odds with merely personal, nonreligious conscientious views. In the former case, the religious believer is (accepting the premises on which religious freedom rests) caught between the conflicting commands of dueling sovereigns—God and Man, “church” and “state.” This is a true “conflict of laws” situation; and for the religious believer, the commands of

46. See Paulsen, *Making Sense of Religious Freedom*, *supra* note 2, at 1615 (“[T]he framers did not share the view that religious faith is a species of irrationality.”).

47. See *supra* note 24 (discussing the rationality of a “wager” on religious liberty, fashioned after Pascal’s reasoning in support of the rationality of religious conviction); see also Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 HARV. L. REV. 1409 (1990) (detailing the religious origins of the American movement for religious liberty).

48. See Paulsen, *Making Sense of Religious Freedom*, *supra* note 2, at 1609 (“[T]he founding generation singled out religion for special protection because of broad agreement . . . that government could not be trusted not to interfere with something so substantively important.”). In the memorable phrase of Mark DeWolfe Howe: “Though it would be possible . . . that men who were deeply skeptical in religious matters should demand a constitutional prohibition against abridgments of religious liberty, surely it is more probable that the demand should come from those who themselves were believers.” MARK DEWOLFE HOWE, *THE GARDEN AND THE WILDERNESS* 15 (1965).

God categorically must have priority.⁴⁹ In the case of nonreligious secular conscience, however, the conflict is different. The secularist or atheist is not caught between conflicting commands of dueling sovereigns external to himself. He does not believe in a God over him; rather, he is in effect “god for himself,” the ultimate source of his own secular conscience. And that is a much different thing—unless one has first assumed that religious beliefs do not and cannot correspond to anything real, in which case religious conscience really would be the same as any other subjective personal belief. Exempting all acts based on subjective, *non*-religious individual conscience truly would make every man “a law unto himself.”⁵⁰

The case for toleration of religion, and for affirmatively protecting free exercise, is exceptionally and uniquely strong, given proper philosophical and epistemological starting points. Why tolerate religion? If religious belief is rational and reasonable—a topic for the ages—then the true objects of religious faith and the true commands of religion are immeasurably worthy of the most diligent protection by civil society; and protection of the freedom of inquiry into such matters, concerning the most important of all things, is surely among the highest moral duties of the state. The reason for religious liberty is that it is reasonable and rational to believe in the reasonableness and rationality of theistic religious conviction, and for the state to treat such convictions accordingly.

CONCLUSION: WHY TOLERATE SECULARISM?

The religious argument for religious liberty has yet further implications. If the justification for religious liberty—in the strong, affirmative sense of vigorous protection of the right to free exercise of faith convictions—ultimately depends on religious philosophical premises about the possibility and priority of religious truth, do those same premises justify religious liberty in the *negative* sense of the freedom *not* to exercise religion? To pose the reverse of Leiter’s question: From the perspective of religious conviction, why tolerate *secularism*, especially where it manifests in the form of an intense ideological opposition to religion? Might there not be a parallel (or contrapositive) proposition to Leiter’s, from the standpoint of sincere, committed religious faith: If categorical *rejection* of religious premises leads one to question the propriety even of tolerating religion, does *acceptance* of religious premises similarly tend to render secularism, as a prevailing social ideology, very nearly intolerable? Is there any fully convincing reason for a society that (largely) holds agreed religious convictions and treasures them as truth to tolerate either secularism or (perhaps even more threatening) religious beliefs at variance with society’s shared religious truths?

49. Paulsen, *The Priority of God*, *supra* note 2. Leiter describes this characteristic of religion accurately: the dictates of genuine religious conviction are indeed categorical commands. (Or they should be: one must observe that few religious believers are as rigorous in adherence to faith as this description would seem to dictate.)

50. See *Emp’t Div. v. Smith*, 494 U.S. 872, 885 (1990) (quoting *Reynolds v. United States*, 98 U.S. 145, 167 (1879)) (internal quotation marks omitted).

This is not twenty-first-century America's issue. The West's days of religious establishments and official coercion of religious conviction are (thankfully) long-since past. One reads today John Locke's *A Letter Concerning Toleration*,⁵¹ inspired and brilliant as it is (and still correct in its core insights), with a slight sense of its quaintness. The idea that sincere religious belief could be produced by coercion strikes us as ludicrous, the case for freedom from compulsion obvious.

But this is only a tribute to the triumph—in the West, at least—of what is, at its roots, really a distinctively Enlightenment-Christian argument for religious liberty. It is an argument that, intriguingly, itself rests on certain rational-philosophical *religious* premises about *true* religious beliefs only coming about from reasoned conviction produced by free inquiry and persuasion, never by compulsion. That is the essence of Locke's argument for toleration.⁵² It is the rationale loudly echoed in the most intellectually rich arguments for negative religious liberty—freedom of religious disbelief and non-exercise—in the American founding generation.⁵³ It is never an argument for what might be called “freedom *from* religion.” It is, rather, an argument for freedom *for* religion in the sense of freely-formed religious convictions being a necessary condition of true religious faith. It is an argument against state authority to compel religious belief, not because religion is doubtful but because state authority is. In short, the Lockean-American argument for extending religious toleration to nonbelievers is not grounded in any skepticism about the existence of religious truth. Quite the contrary, it is grounded in a philosophical belief in religious truth and the corollary religious-philosophical belief that such truth can only be arrived at through personal freedom.⁵⁴ Religious freedom in this aspect, too, is an instrumental value in service of the ultimate value of religious truth.

The belief that religious freedom serves religious truth is itself something of an article of faith. It is a distinctively Western, Judeo-Christian, Enlightenment-inflected view. It was not always the Christian view, of course; and it is certainly not the view of all world religious traditions today. Many societies today are struggling mightily (and not all very successfully) with what they view as the very serious question of whether to tolerate secularism (and competing religious views). Unless one believes not only in the possibility of religious truth but also that freedom of the mind—and the

51. JOHN LOCKE, *A LETTER CONCERNING TOLERATION* (James H. Tully ed., Hackett Publ'g Co. 1983) (1689).

52. *Id.* at 26 (“All the Life and Power of true Religion consists in the inward and full perswasion of the mind; and Faith is not Faith without believing.”).

53. A prominent example is James Madison's *Memorial and Remonstrance Against Religious Assessments*. See MADISON, *supra* note 25, at 299 (reciting the idea that true religious faith can be “directed only by reason and conviction, not by force or violence” (quoting VA. DECLARATION OF RIGHTS, § 16 (1776)) (internal quotation marks omitted)).

54. This idea is not new to the Enlightenment or modern era but has its roots in the earliest Christian scriptural texts of the first century. Jesus calls his followers, but does not coerce or compel them. Some follow readily, *see, e.g., Mark* 1:16–20, while he allows others to go their own way, *see, e.g., John* 6:60–67; *Luke* 9:57–62; *Mark* 10:17–23; *Matthew* 10:5–14.

necessary toleration of “intolerable” beliefs that that entails—is the necessary precondition of discovery of religious truth and sincerity in its exercise, one will want to coerce orthodoxy and suppress dissent. Religious freedom will tend to be undervalued by those who do not share these premises, be they pre-modern Islamist fundamentalists or post-modern secularist extremists.⁵⁵

Is America’s constitutional faith in religious freedom—a stance the roots of which lie deep in the soil of Western, and specifically Christian, religious faith in the importance of freedom to arriving at sincere religious conviction and true faith in actual religious truths—justified? That, I submit, is ultimately a more compelling question than Brian Leiter’s. *Why Tolerate Religion?* succeeds mostly in demonstrating the fairly obvious: that, from the perspective of thoroughgoing religious disbelief, religious liberty as a special category of affirmative liberty makes no sense. That is a true but almost trivial point. The more serious question for our age is whether, viewed from the perspective of religious belief grounded in reason, religious freedom as a positive and a negative liberty can continue to prevail against its secularist and religious opponents.

55. It is a mistake, I think, to believe that religious freedom is ideologically neutral. It reflects Enlightenment and Christian values, which certainly are not shared by all religious belief systems. Nor are they shared by all secularist belief systems. Cf. Stanley Fish, *The Trouble with Tolerance*, CHRON. HIGHER EDUC., Nov. 10, 2006, at B8 (provocatively describing Enlightenment “tolerance” as “an engine of exclusion and a technology of regulation”).

