Why Distinguish Religion, Legally Speaking?

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I. INTRODUCTION

Notwithstanding the global proliferation of legal instruments protecting religious freedom and various academic and political projects investigating and advocating for religious freedom today, I take it as an increasingly urgent and open question whether a sufficiently stable account of religion can be produced to underwrite these projects, given the compromised genealogy of the term and the wildly diverse social and cultural objects that have been and might be termed religious. This absence is particularly the case in the United States where, lacking a ministry of religious affairs whose work it is to determine what does and does not count as religion for legal and political purposes, the indeterminate presence of the word in the federal and state constitutions—not to mention countless statutes and administrative regulations—results in a kind of absurd lack of resolution.

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The two most recent religion cases decided by the U.S. Supreme Court, *Burwell v. Hobby Lobby Stores, Inc.* and *Wheaton College v. Burwell*, considering the scope of religious exemptions to the Affordable Care Act, only underline this state of affairs.[1]

Among other things, confusion about the appropriate referent for legal uses of the word *religion* highlights the gap between legal, academic, and popular, accounts of religion. Academic accounts increasingly take, as a point of departure, the linked and blurred history of "religion," whether considered linguistically, historically, or phenomenologically, in relation to what is termed secular.[2] Popular accounts increasingly reflect the bottom-up DIY quality of US religion. To grant rights to religion is not to recognize, in a neutral fashion, an acknowledged social fact but to prefer one religious or secular politics over another.[3]

Law professors commonly answer this critique by scholars of religion, as Andrew Koppelman does, with the comment that, after all, any ambiguity in definition only arises in a few cases.[4] Most of the time the reference is obvious, he says. Moreover, he insists, it has worked fine for all those for whom it should work.[5] But that is the problem—its very obviousness. The problems of exclusion are largely invisible. The reference is so obvious to many and so obviously inclusive of those who are deserving that there is no way to have a conversation about it without the conversation devolving into a question about whether the activity seeking protection is socially valuable or not. For example, it is embarrassing to have the dissenters in *Hobby Lobby* and *Wheaton College* protesting about how much they respect religion and religious freedom while plainly suggesting that what the plaintiffs are doing in these cases is not, in fact, religion—or at least not the right kind of religion.[6] On what ground is that exclusion being made? Where is it written that for-profit corporations and those who run them cannot have religious scruples?[7] Why do we continue to have confidence in our ability to make these distinctions?

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1. *See* Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751 (2014); Wheaton College v. Burwell, 134 S. Ct. 2806 (2014).

2. Among many others, two classics in this genre are TALAL ASAD, GENEALOGIES OF RELIGION: DISCIPLINE AND REASONS OF POWER IN CHRISTIANITY AND ISLAM (1993) and JONATHAN Z. SMITH, IMAGINING RELIGION: FROM BABYLON TO JONESTOWN (1988). *See also* WINNIFRED FALLERS SULLIVAN, THE IMPOSSIBILITY OF RELIGIOUS FREEDOM (2005); POLITICS OF RELIGIOUS FREEDOM (Winnifred Fallers Sullivan et al. eds., forthcoming 2015).

3. *See* ELIZABETH SHAKMAN HURD, BEYOND RELIGIOUS FREEDOM: THE NEW GLOBAL POLITICS OF RELIGION (forthcoming 2015).

4. ANDREW KOPPELMAN, DEFENDING AMERICAN RELIGIOUS NEUTRALITY 7, 45 (2013).

5. *See id.*

6. *See, e.g.*, *Wheaton College*, 134 S. Ct. at 2815.

7. *See* Winnifred Fallers Sullivan, *The Impossibility of Religious Freedom*, SOC. SCI. RES. COUNCIL IMMANENT FRAME BLOG (July 8, 2014, 12:33 PM), http://blogs.ssrc.org/tif

II. RELIGION TODAY

The question that framed the conference at which the papers collected here were presented, "Is Religion Outdated (as a Constitutional Category)?," can be understood descriptively or normatively. In other words, it could be understood to have asked whether religion is outdated as a constitutional category because our capacity to distinguish religion has become more difficult than was previously the case, or it could have been understood to have asked whether, prudentially speaking, we should continue to make the effort, whether or not it has become more or less difficult, because of our acknowledgment today of the inevitability of discriminating both against those who do not identify as religious and against those who participate in disfavored religion—sometimes termed immorality, barbarism, superstition, extremism, heresy, or though the use of a euphemism such as culture or personal preference.[8]

Descriptively speaking, there is a great deal of evidence that socially and culturally acknowledged religion in the United States today encompasses a much broader range of ideas, attitudes, and activities than was the case at the end of the eighteenth century when the First Amendment religion clauses were drafted. At that time, religion was used to denote mostly protestant Christian practices, although there were occasional gestures beyond—to Catholics and occasionally to Jews and Mahometans. Today, as a result of disestablishment, and as a result of fragmentation and change within Protestant churches, the invention of new religions, immigration, and inclusive efforts to recognize those practices that were present but mostly not recognized as religion at the end of eighteenth century—Native American, slave, and folk religion—there is far greater diversity. There is, further, a shift of religious authority away from institutions and leaders to the people. The stakes entailed in self-identifying as religious are shifting

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http://blogs.ssrc.org/tif/2014/07/08/impossibility-of-religious-freedom (reposted by Kristi McGuire, *Winnifred Fallers Sullivan on the Impossibility of Religious Freedom*, U. CHI. PRESS BLOG (July 8, 2014), http://pressblog.uchicago.edu/2014/07/08/winnifred-fallers-sullivan-on-the-impossibility-of-religious-freedom.html and by Nicholas Eckhart, *The Impossibility of Religious Freedom: Hobby Lobby, Wheaton College and the Challenge for Liberals*, SALON (July 10, 2014, 4:01 PM), http://www.salon.com/2014/07/10/the impossibility_of_religious_freedom_hobby_lobby_wheaton_college_and_the_challenge_for_liberals).

8. Also known as *adiaphora*, or things indifferent, in Christian theology. *See* Jakob de Roover, *Secular Law and the Realm of False Religion*, *in* AFTER SECULAR LAW 43 (Winnifred Fallers Sullivan et al. eds., 2011).

as well. Many are self-identifying as spiritual but not religious in an apparent attempt to distance themselves from what they see to be the tarnished legacy of "organized religion."[9] What we see today in the United States is a riotously plural religious field, one that is bursting at the seams and placing enormous burdens on the word. Can law take account of these changes?

At Indiana University we recently hosted a conference on the fiftieth anniversary of the *School District of Abington Township v. Schempp* decision, an anniversary that highlighted the lag time in adjusting our understanding of religion today.[10] For lawyers and legal scholars, *Schempp* is usually fit into a history of the constitutionality of bible reading in public schools.[11] For many in religious studies, however, *Schempp* is taken to mark the licensing of religious studies as a field acceptable to public universities.[12] Dicta in the opinion is often used by religion scholars to support the notion that a division can and should be made between teaching religion and teaching *about* religion.[13] Teaching about religion is understood to be both constitutionally sanctioned and intellectually appropriate at a secular academy, while teaching religion is not.[14] The division might seem a bit naïve today in our post-secular moment—and indeed the best work in the study of religion today does not observe the neatness of the *Schempp* distinction—but the distinction echoes a separationism that is deep in the American psyche. Notwithstanding the plentiful evidence that religion on the ground does not look the way separationists on each side of the divide see it, the *Schempp* myth is persistent. Not just in the defense of religious studies but also in other official discourses. The religious-secular divide does a lot of work for a lot of people. Why do we hang on to an outdated notion of religion? Some have suggested that our faith in religion belies a broader anxiety.

III. THE CHURCH

In the introduction to his new book, *An Inquiry into Modes of Existence*, Bruno Latour relates an encounter between French corporate executives

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9. WINNIFRED FALLERS SULLIVAN, A MINISTRY OF PRESENCE: CHAPLAINCY, SPIRITUAL CARE AND THE LAW (2014).

10. *See* Conference at Indiana Univ. Dep't of Religious Studies: 50 Years After *Schempp*: History, Institutions, Theory (Sept. 27–29, 2013), http://indiana.edu/~relstud/news/schempp.

11. *See* Sch. Dist. of Abington Twp. v. Schempp, 374 U.S. 203, 218–22 (1963).

12. *See* Sarah Imhoff, *The Creation Story, or How We Learned to Stop Worrying and Love* Schempp, 83 J. AM. ACAD. RELIGION (forthcoming 2015).

13. *Schempp*, 374 U.S. at 306.

14. *Id.*

and a climate scientist, suggesting a broad return to the institution across various domains:

> They're sitting around a table, some fifteen French industrialists responsible for sustainable development in various companies, facing a professor of climatology, a researcher from the Collège de France. It's the fall of 2010; a battle is raging about whether the current climate disturbances are of human origin or not. One of the industrialists asks the professor a question I find a little cavalier: "But why should I believe *you*, any more than the others?" I'm astonished. Why does he put them on the same footing, as if it were a simple difference of opinion between this climate specialist and those who are called climate skeptics (with a certain abuse of the fine word "skeptic")?[15]
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> I wonder how the professor is going to respond. Will he put the meddler in his place by reminding him that it's not a matter of belief but of fact? . . . But no, to my great surprise, he responds, after a long drawn-out sigh: "If people don't *trust the institution of science*, we're in serious trouble."[16]
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> . . . It is a little as though, responding to a catechumen who doubts the existence of God, a priest were to sketch out the organizational chart of the Vatican, the bureaucratic history of the Councils, and the countless glosses on treatises of canon law.[17]
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> . . . .
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> . . . Since Certainty had been commandeered by his enemies and the public was beginning to ask rude questions; since there was a great risk that science would be confused with opinion, he fell back on the means that seemed to be at hand: trust in an institution . . . .[18]

Latour evinces a similar return to the institution in *Rejoicing*, his very personal account of his yearning for a church he once belonged to.[19] *Rejoicing* describes his memories of his experiences as a young Catholic, the loss he feels today at no longer feeling at home in church, and the sorrow he feels that his children will not know that feeling. Religion, Latour suggests, without the institution of the church, like views on climate change without the institution of science, threaten to devolve into individual opinion.[20] As with the climate scientists, without institutions there is only

15. BRUNO LATOUR, AN INQUIRY INTO MODES OF EXISTENCE: AN ANTHROPOLOGY OF THE MODERNS 2 (Catherine Porter trans., Harvard Univ. Press 2013) (2012).
16. *Id.* at 3.
17. *Id.* at 4.
18. *Id.* at 5.
19. BRUNO LATOUR, REJOICING: OR THE TORMENTS OF RELIGIOUS SPEECH (Julie Rose trans., Polity Press 2013) (2002).
20. *Id.*

the unwinnable individual conversations about belief—about evolution—about the age of the earth—about whether the Bible is true and God exists.

Interestingly today, there is evidence that the Supreme Court, too, could be said to be moving back to institutions in defining religion for purposes of the First Amendment. It is very striking that the opinion of a unanimous Court in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* does not speak of the freedom of religion but of the freedom of "the church."[21] Speaking of the church, rather than of religion, enables the Court to avoid the question of whether or not God thinks Cheryl Perich should lose her job. It allows the Court to outsource questions of truth in matters of religion—and to focus, as Latour suggests, on institutional legitimacy and continuity. The last sentence of the Court's opinion in *Hosanna-Tabor* announces the dogma that binds the majority opinion.[22] Affirming for the first time the constitutional status of the ministerial exception, the Chief Justice declares that, "The church must be free to choose those who will guide it on its way."[23] Not that *persons* must be free to choose their own ministers but that *the* church must be free.[24]

What is the church? Christians mean different things at different times when they use the definite article in speaking of church—when they speak of *the* church. Sometimes they are referring to the church on the corner or a particular church organization, such as the Presbyterian Church USA—one of any number of churches. That is how the Court uses the phrase at various points in *Hosanna-Tabor*, such as when referring to Hosanna-Tabor in particular or when referring to the Church of England, and so on.[25] In academic and political contexts, the church may be opposed to "the state," vaguely throwing a circle around all religiously motivated activity. The Court in *Hosanna-Tabor* is not speaking in these ways in its last sentence. The Court is speaking theologically, and dogmatically, as it does several pages earlier in describing the purpose of the ministerial exception: "The exception . . . ensures that the authority to select and control who will minister to the faithful—a matter 'strictly ecclesiastical'—is

21. 132 S. Ct. 694, 710 (2012). *Hosanna-Tabor* considered the constitutionality of the dismissal of a schoolteacher, Cheryl Perich, by a Missouri Synod Lutheran elementary school in Michigan, found to be in violation of the Americans with Disabilities Act (ADA) by the EEOC. *See id.* at 701. The school defended, arguing that the ministerial exception was a defense to the charge. *Id.*

22. *Id.* at 710.

23. *Id.*

24. *Id.*

25. *See, e.g.*, *id.* at 698, 702.

the church's alone."[26] It is speaking the way the priest in Latour's example is speaking. It is an appeal to apostolic authority.

Theologically speaking, for Catholics, and many other Christians, *the* church refers to what might be termed "the mystical church," also known in Christian doctrine as the "body of Christ," that is, the communion of all Christian believers across space and time, alive and dead, unified through the Resurrection. Christians have differed about how the visible church on earth should be governed and have related in different ways with political authorities. They also have different ways of describing the unity of Christianity. The Roman Catholic Church understands itself to be a universal church, that is, as encompassing all Christians, both on heaven and on earth. For the Orthodox as well, the church is one, while manifested in different places. Protestants have had a range of theological readings of the church, derived in part from their new readings of the New Testament beginning in the sixteenth century, a range that is reflected in the range of ecclesiologies among American colonial proponents of religious freedom. But a distinguishing feature of the United States, arguably, is that after 1791, the unity of Christendom expressed as the church, whether in Roman Catholic, Orthodox, or Protestant guise, no longer had legal personality. It was the people who were then in charge.

Take Roger Williams, for example, the seventeenth-century founder of Rhode Island and hero to many a current religious defender of the rights of churches in the United States. For Williams, the church was to be found, if at all, in those local few "gathered in [Jesus Christ's] name" without any bureaucratic superstructure. At the end of his life, Roger Williams, skeptical of Christian claims of biblical authority to found churches and of the hypocrisies of what he derided as Christendom, belonged to no church. Williams has many present-day successors. Many confessing Christians today do not belong to or attend churches. One could even argue that it was Williams' skepticism about organized religion rather than any desire to protect religious institutions that most presages constitutional religious disestablishment. Williams, pious Christian though he was, thought political life in a diverse community could be organized without reference to religion—or to the church.[27]

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26. *Id.* at 709 (quoting Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church in N. Am., 344 U.S. 94, 119 (1952)).

27. *See* THE LETTERS OF ROGER WILLIAMS 1632–1682: NOW FIRST COLLECTED (John Russell Bartlett ed., 1874).

The majority opinion in the *Hosanna-Tabor* case, affirming the constitutional status of the ministerial exception as a right of the church, is supported by a curious mash-up of religious and political history. The villain of the piece is Henry VIII. Before the Act of Supremacy, we are told by Chief Justice Roberts, the church in England had been free, at least since 1215, thanks to King John and the Magna Carta. The church was free because King John had agreed that the church had the freedom of election to church offices. According to the Court, Henry VIII interrupted that freedom with his break from Rome. The church was then not free again until the Puritans and Quakers arrived in the New World. The freedom of the church, both in England during the time between King John and King Henry and in the English colonies after 1607 but particularly since ratification of the First Amendment, can be summed up, as the Court describes it, in the capacity of the church to select its own ministers free of political interference.[28] This same freedom did not belong to individual members of the church.

Profound differences in Roman Catholic, Reformation, and Anabaptist ecclesiologies and understandings of the freedom of Christians are finessed in this breezy historical account. Slipping back and forth between "religious organization," "religious institution," "religious group," and "church," as well as posing the relationship of each to an also hypostasized and ahistorical "state," the Court manages to avoid the enormously fraught issue of what the church is and who speaks in its name at various times and in various places. King John, Henry VIII, James Madison, and William Penn, members of very different churches, are all enlisted in this project and apparently understood to be speaking of the same special freedom for the church to select its own ministers.

Church history stops for the Chief Justice in 1791. After the truncated account of English church history, what is most striking in his opinion is the entire lack of acknowledgment of the remarkable changes to the churches —and to religion more generally—that occurred in the American colonies and in the new nation. Disestablishment, division, revivalism, populism, and immigration profoundly changed American religion. After 1791, official Americans, when speaking of American religion, arguably can no longer descriptively—or, arguably, constitutionally—speak, as the Court does, of the church and its rights. The church had been disestablished.

Precedent for the majority's reading of the rights of the church is also found in the church property cases. This is a complex line of cases, but one difficulty with using the church property cases as establishing the right of the church to choose its ministers is that, by definition in such

28. *See Hosanna-Tabor*, 132 S. Ct. at 702–03.

cases, there are at least two groups of people who lay claim to a right to define who is a minister and to choose their own minister. In each case, after the courts decided the issue, one group either did not get to select its own minister or had to abandon the church in question and found its own new congregation in order to do so. In each case, the Court sided with what it took to be the hierarchy. But the Court seems to see these cases as establishing the recognition of the rights of the church as an institution.

The Court in *Hosanna-Tabor* concludes this section of its decision with an announcement of the rule that "'the First Amendment commits [resolution of the property cases] exclusively to the highest ecclesiastical tribunals' of the Church."[29] Citing its decision in *Serbian Eastern Orthodox Diocese for United States and Canada v. Milivojevich*, a dispute over control of the American-Canadian Diocese of the Serbian Orthodox Church, the Court explains that the First Amendment "permits hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters."[30]

Evidence for the Court's transcendent ecclesiology, that is, its theory of the church and of church governance, can also be found in the way it distinguishes *Smith*. The Chief Justice explains that *Smith* is not controlling because the issue is not one of the right of religious individuals to a special exemption from neutral laws but of the right of the church itself:

> It is true that the ADA's prohibition on retaliation, like Oregon's prohibition on peyote use, is a valid and neutral law of general applicability. But a church's selection of its ministers is unlike an individual's ingestion of peyote. *Smith* involved government regulation of only outward physical acts. The present case, in contrast, concerns government interference with an internal church decision that affects the faith and mission of the church itself.[31]

It is worth looking at this paragraph very closely. What the Court says is that while the free exercise clause of the First Amendment provides no constitutional exemption from laws of general application for individual believers who engage in physical acts consistent with their religious beliefs—what many Christians term sacraments—the establishment clause

29. *Id.* at 705 (quoting Serbian E. Orthodox Diocese for United States and Can. v. Milivojevich, 426 U.S. 696, 720 (1976)).
30. *Id.* (quoting *Milivojevich*, 426 U. S. at 724).
31. *Id.* at 707 (referencing Emp't Div. v. Smith, 494 U.S. 872, 877 (1990)).

provides an exemption for the church from such laws because by interfering with church governance the Court is interfering with "the faith and mission of the church itself."[32]

Here the Court speaks of the doctrinal priority of the church and presumably, therefore, of the legal privilege of its current earthly would-be representatives. Acknowledging that the ADA would seem to be a law of general application from which religious actors would not be exempt, Roberts explains that *Smith* concerned the constitutional status of only outward physical acts.[33] The Court here seems to be saying, as Douglas Laycock did at oral argument while representing Hosanna-Tabor, that the church is prior to the sacraments because the church forms the consciences of individuals.[34] Preserving the hierarchical discipline and right to autonomy of the church is, the Court says, structural to the U.S. Constitution, as evident in the priority which disestablishment (read as a rejection of Henry VIII's rejection of the Pope in the Act of Supremacy —a restoration to the freedom of the church granted by King John) has to free exercise in the ordering of the religion clauses in the First Amendment itself while acts performed in obedience to the religious conscience of the individual must bow to secular law.[35] By reading its version of church history into the First Amendment, the Court is enabled to give priority to the rights of the institutional church through its evocation of the church. But that history also enables a denial of rights to other Christians as well as to non-Christians. Freedom from hierarchical church discipline arguably accorded to American Christians by the religion clauses is disregarded in favor of a strong assertion of the rights of the church.[36]

There is arguably no analogy to the church outside Christianity. While other religious communities speak of the body of the faithful in various ways, the Court's opinion would seem to suggest that its doctrine is tightly and very specifically bound to a specific and highly contested history of the Christian church and its assertions of its rights in the context of a particular reading of English history.[37] Founded in its understanding of the English church, the constitutional right articulated by the unanimous Court in this decision is the "freedom of a religious organization to select its ministers."[38]

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32. *See id.*
33. *See id.*
34. Transcript of Oral Argument at 55–56, *Hosanna-Tabor*, 132 S. Ct. 694.
35. *See Hosanna-Tabor*, 132 S. Ct. at 702.
36. Winnifred Fallers Sullivan, *"The Church,"* SOC. SCI. RES. COUNCIL IMMANENT FRAME BLOG (Jan. 31, 2012, 4:25 PM), http://blogs.ssrc.org/tif/2012/01/31/the-church.
37. *See Hosanna-Tabor*, 132 S. Ct. at 702.
38. *See id.* at 705.

While the majority opinion acknowledges that it might occasionally prove difficult to decide who qualifies as a minister for these purposes, it nowhere mentions the difficulties of determining what a religious organization is.[39] Justice Alito's concurring opinion, displaying a careful concern for the Christian exclusivism of the majority opinion, begins the project of expanding the discussion beyond the church.[40] "Minister," Alito states, is a term that is mostly limited to the Protestant churches. His solution to this problem is to define minister functionally and universally, assuming that such a role can be found in all religious traditions—and beyond.[41]

Alito, with the EEOC, sees the rights of religious organizations with respect to ideological control of their members as similar to that of all other voluntary associations, a right founded in the freedom of association expressed in the First Amendment, not in the rights of religion: "Religious groups are the archetype of associations formed for expressive purposes, and their fundamental rights surely include the freedom to choose who is qualified to serve as a voice for their faith."[42] This turn to the voluntariness of American religious life corresponds much more closely to what disestablished religion looks like in the United States today and to how most Americans understand their relationship to religious communities, that is, one not of top-down hierarchy but of bottom-up participation. It is also rooted in another reading of the history the majority tells, one that tells a story of the freedom of Christians and eventually of non-Christians as well. It is an understanding that sees Ms. Perich as the possessor of rights, not the church.

IV. CONCLUSION

Latour's account of the conversation between the French industrialists and the climate scientists can help us, I think, to see why the Supreme Court is anachronistically talking of the church today. Lay opinion about religion is too lacking in reliability to support exemptions, as Justice Scalia noted in *Smith*.[43] It is also dangerously antinomian.

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39. *Id.* at 707.
40. *See id.* at 713–14 (Alito, J., concurring).
41. *See id.* at 711–12.
42. *Id.* at 713.
43. *See* Emp't Div. v. Smith, 494 U.S. 872, 886 (1990).

The reappearance of the church in *Hosanna-Tabor* is the result, in part, of successful lobbying on the part of the church autonomy movement in American law, whose potted history the Court has apparently adopted. But I think that the explanation for the recent resurgence of the church and other corporate forms of religion in the United States law, including in the various challenges to the Affordable Care Act, lies in part in a realization that the battle between religion and secularism is being reduced to the same question: Why should I believe you more than any of the others? Like the French climate scientist, United States religious leaders have realized that their strength is in institutions, not in individuals. One might see the decision in *Hobby Lobby*, recognizing corporations as enjoying the protection of RFRA, as another endorsement of institutional religion, albeit of a more unconventional kind.[44]

Why does United States law continue to believe in the church when so few Americans do? Most Americans are torn. On the one hand, they belong with the climate skeptics and the religious individualists, suspicious of ceding freedom to would-be elites. Yet most Americans also, like the Court and the scientist, are worried about the risks of a dangerous decline of authority. The Court's decisions could be said to reflect this ambivalence.

Of course indeterminacy is also a characteristic of other constitutional words as well: speech, commerce, equal protection of the laws, and due process. Is religion different? I think so. For my part, I think religion presents a distinctive set of problems for law, for both historical and political reasons. Religion and the history of religion haunt secular law.[45] Liberal political orders define themselves in relation to a violent religious past. For my own part, I think it would be better not to have laws in the United States that attempt to divide a set of people, objects, and activities that are termed *religious* from a set of people, objects, and activities that are not. For any purpose. Such distinctions are incoherent and discriminatory under United States law, as countless opinions, statutes, and regulations attest. We do not know how to define religion, and the available evidence suggests that we should probably stop trying. Not because those practices that are gathered under the term *religion* are not important but because the religiousness or not of a particular activity cannot be determined

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44. *See* Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751, 2759 (2014).

45. *See, e.g.*, HUSSEIN ALI AGRAMA, QUESTIONING SECULARISM: ISLAM, SOVEREIGNTY, AND THE RULE OF LAW IN MODERN EGYPT (2012); DAVID M. ENGEL & JARUWAN ENGEL, TORT, CUSTOM, AND KARMA: GLOBALIZATION AND LEGAL CONSCIOUSNESS IN THAILAND (2010); PETER GOODRICH, OEDIPUS LEX: PSYCHOANALYSIS, HISTORY, LAW (1995); JANET JAKOBSEN & ANN PELLEGRINI, LOVE THE SIN: SEXUAL REGULATION AND THE LIMITS OF RELIGIOUS TOLERANCE (2003); Benjamin L. Berger, *Law's Religion: Rendering Culture*, 45 OSGOODE HALL L.J. 277 (2007).

with sufficient specificity and therefore should not matter in law. We will have to find out collective reassurance elsewhere.