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Truth and Consequences: Mitt Romney, Proposition 8, and Public Reason

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It is not an unreasonable prejudice for people who care about true religion to take their concern about Mormonism into account in considering the candidacy of Mr. Romney. Would a Mormon as president of the United States give greater credibility and prestige to Mormonism? The answer is almost certainly yes. Would a Mormon as president of the United States help advance the missionary goals of what many view as a false religion? The answer is almost certainly yes. Is it legitimate for Americans to take these questions into account in voting for a presidential nominee or candidate? The answer is certainly yes.

— Richard John Neuhaus

The Church’s teachings and position on this moral issue are unequivocal. Marriage between a man and a woman is ordained of God, and the formation of families is central to the Creator’s plan for His children. Children are entitled to be born within this bond of marriage. [ ] We ask that you do all you can to support the proposed constitutional
amendment by donating of your means and time to assure that marriage in California is legally defined as being between a man and a woman. Our best efforts are required to preserve the sacred institution of marriage.

— First Presidency of The Church of Jesus Christ of Latter-day Saints

It is not just religious but also cultural pluralism that upsets our current world situation and simultaneously renders it so full of promise.

— Gianni Vattimo

Abstract

Although formal religious tests for federal office are constitutionally prohibited, they have long been fact of political life in presidential elections. John Kennedy remains the only non-Protestant ever elected President, and the major political parties have only nominated three others for president, all Democrats. The “Judeo-Christian tradition” notwithstanding, no major party has ever nominated a Jew for president—let alone a Buddhist, Hindu, Mormon, Muslim, or unbeliever.

Against this electoral history, it was perhaps predictable that mainstream Christian commentators would feel free to legitimate religious attacks on Mitt Romney during the Republican presidential primaries on the ground that Mormonism is a “false” religion. Ironically, however, the Mormon church periodically intervenes in initiative and ratification campaigns to defend “true” or “divine” principles that it believes ought to be enforced by law and reflected in public policy. How upset are folks entitled to get when their church is labeled “false” in an electoral campaign, if the church itself regularly participates in such campaigns on the basis of religious truth and falsity?

My purpose in this Essay is to examine the deployment of religious truth-claims in electoral politics, through the lenses of Gov. Romney’s unsuccessful campaign for the Republican nomination and the LDS church’s participation in the successful Proposition 8 campaign to ban same-sex marriage in California. I will argue that in contemporary electoral politics, attacks on the truth of a religion make little sense in light of the pluralism and postmodernism that now


DOPO LA CRISTIANITÀ: PER UN CRISTIANESIMO NON RELIGIOSO 39 (Garzanti, 2002) (author’s translation).
characterize the contemporary United States, but are a likely consequence when the religion itself introduces such truth-claims into electoral politics.

I begin with the failure of Enlightenment to eclipse belief over the last several centuries, and the ongoing and paradoxical dissolution of traditional modes of belief despite that failure. Postmodern pluralism has precluded belief from re-assuming the pre-Enlightenment dominance that Christianity once enjoyed, and is encouraging a different understanding of truth, not as a static relation between what believers think and how the world “really” is, but as a dynamic function of dialogue and interpretation by believers in the world.

The multiplicity, indeterminacy, customization, and ubiquity of contemporary religious truth-claims now prevent any religion from plausibly asserting in public contexts that its claims are true to the exclusion of all others. In a plural and postmodern culture like that of the United States, the introduction of religious truth-claims into electoral campaigns presents distinct disadvantages and dangers to liberal democracy, particularly when done from the right. I illustrate the deleterious effects of such claims, and the corresponding virtues of public reason, by reference to the attacks on Romney’s Mormonism during the Republican primaries and the Mormon church’s support of Proposition 8. I close with some observations about the necessary priority of pluralism to truth in electoral politics.

Contents

I. INTRODUCTION: ON BELONGING TO A FALSE RELIGION .........................................................
II. THE PARADOX OF CONTEMPORARY BELIEF ........................................................................
III. PLURALISM, POSTMODERNISM, AND THE DEVOLUTION OF BELIEF ...............................

A. Multiplicity ...........................................................................................................................
B. Indeterminacy .......................................................................................................................
C. Customization .....................................................................................................................
D. Ubiquity .................................................................................................................................
E. Virtual Belief ........................................................................................................................

IV. THE POSTMODERN CONDITION OF BELIEF .................................................................

A. Weak Thought and Strong Belief ......................................................................................
B. Contemporary Asymmetry on the Right .............................................................................

V. RELIGIOUS TRUTH AND PUBLIC REASON IN ELECTORAL POLITICS ..........................

A. Mitt Romney and the “Mormon Question” ........................................................................
B. The LDS Church and Proposition 8 ....................................................................................

VI. CONCLUSION: PLURALISM OVER TRUTH ...........................................................................
I. INTRODUCTION: ON BELONGING TO A FALSE RELIGION

I learned early in life that Mormons are different. I was the only Mormon in each of my elementary school classes in New Jersey and my middle-school classes in southern California, and one of perhaps 20 Mormon students in my 2,800-student California high school. Growing up outside of the interior West gave me a strong sense of religious difference, and particularly my religious difference.

A strong consciousness of religion pervaded my elementary school. I knew the religion and denominational affiliation of every one of my classmates. We had released-time church school every Wednesday for the last hour of the school day, when everyone loaded up on the church-school buses except the Jews, the Quakers, and me.

For most of my time in elementary school, the day started with a devotional Bible reading and a prayer—mostly the Lord’s prayer from the New Testament, which all the Christian kids seem to have memorized, and which they recited in a way that bore faint resemblance to how I was taught to pray. I lived in fear that one day I would be exposed as the kid who didn’t know how to say the Lord’s Prayer. It never occurred to me that my Catholic and Protestant schoolteachers would never have called on the Mormon kid to pray, just as they never called on the Jewish kids to pray (although at least they got to read from Genesis). In any event, this personal threat from orthodox Christian prayer vanished in the fifth grade, right about the time that “antidisestablishmentarianism” started showing up in class spelling bees.¹

I moved with my family to southern California in the sixth grade. In contrast to New Jersey, where everyone belonged to a church and we all knew each other’s religion, California was a

place where lots of kids weren’t religious at all, and no one brought up religion in school. So I went from a place where belief was common and public (and mine was strange), to a place where belief was uncommon and private (and mine was still strange).

After high school, most of my experiences reinforced my consciousness of religious difference in general, and my religious difference in particular. I served as a Mormon missionary in northern Italy. I was the only Mormon in my law school class, and I practiced law at a large firm that employed few Mormons, and none in my practice group. My first law teaching position sent me into a stronghold of evangelical Christianity in the rural South.

So my life had prepared me well to understand what Father Neuhaus was saying when he minimized and defended criticism of Governor Romney’s Mormonism as mere opposition to a “false” religion. Although formal religious tests for federal office are constitutionally prohibited, they are a fact of political life in presidential elections. John Kennedy remains the only nonProtestant ever elected President, and the major political parties have only nominated three other nonProtestants for presidential office, all Catholics. The “Judeo-Christian tradition”

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2 U.S. CONST., art. VI, cl.3 (1787) (“[N]o religious Test shall ever be required as a Qualification to any Office or public trust under the United States.”); see also Torcaso v. Watkins, 367 U.S. 488 (1961) (applying the norm of the Religious Test Clause to state offices and public trusts through the Establishment Clause).


4 Besides Kennedy, the Democratic Party has nominated two Roman Catholics, Al Smith and John Kerry, and a Greek Orthodox Christian, Michael Dukakis. The Republican Party has never nominated a nonProtestant for President, see David Mascii, Religion and Politics, 14 CQ RESEARCHER 637, 647 (July 30, 2004), although Abraham Lincoln and Dwight Eisenhower came close, see Abraham Lincoln, Handbill Replying to Charges of Infidelity (July 31, 1946) (“That I am not a member of any Christian church, is true; but I have never denied the truth of the Scriptures; and I have never spoken with intentional disrespect of religion in general, or of any denomination of Christians in particular.”), in COLLECTED WORKS OF ABRAHAM LINCOLN 382, 382 (Rutgers University Press, Roly P. Basler ed.1953); The Religious Affiliation of U.S.
notwithstanding, no major party has ever nominated a Jew for president—let alone a Buddhist, Hindu, Mormon, Muslim, or unbeliever.

Against this electoral history, it was perhaps predictable that a mainstream Christian commentator would feel free to legitimate religious attacks on Romney as the reasonable reaction of people “who care about true religion.”

This genteel apology for religious prejudice

President Dwight D. Eisenhower, <http://www.adherents.com/people/pe/Dwight_Eisenhower.html> (last visited Jan. 8, 2009) (reporting that Eisenhower was raised by Jehovah’s Witness parents, though he was born a Mennonite and was baptized a Presbyterian shortly after taking office).


I was earlier taken to task for writing that someone who declines to vote for Mr. Romney because he is a Mormon is not necessarily guilty of the civic sin of intolerance. I then explained that, in making that argument, I was not agreeing with those who oppose him because he is a Mormon. Rather, I would simply note the undeniable fact that a substantial number of Americans, mainly evangelical Christians, believe that the Church of Jesus Christ of Latter-day Saints is a false religion, and that a Mormon in the White House would give a substantial boost to that religion, with the consequence of imperiling the salvation of souls. We may not agree with that view, but to deride it as bigotry is itself a form of bigotry.

Id.

Neuhaus’s comments were only one of many religious criticisms of presidential hopefuls during the 2008 primary and general elections. See, e.g., Waveney Ann Moore, TV Preacher under IRS Scrutiny, ST. PETERSBURG TIMES, June 25, 2008, at 3B (reporting IRS investigation of tax-exempt status of televangelist Bill Keller’s organization based on sermons arguing that “a vote for Romney is a vote for Satan,” and that then-Sen. Obama is not a genuine Christian); Larry Rohter, Evangelical Leader Attacks Obama on Religious Views, N.Y. TIMES, June 25, 2008 (reporting James Dobson’s accusation that then-Sen. Obama was “deliberately distorting the traditional understanding of the Bible to fit his own world view, his own confused theology”), available at <http://nytimes.com/2008/06/25/us/politics/25dobson.html> (last visited July 8, 2008); see also David Kirkpatrick, The Evangelical Crackup, NY TIMES MAG., Oct. 28, 2007, at 38, 66 (reporting James Dobson’s 2006 suggestion that “evangelicals would have a hard

-6-
is merely the rhetoric of contemporary antiMormonism, employed by well-mannered Christians
to label Mormon candidates unacceptable without seeming too vulgar.\textsuperscript{6}

Ironically, a comparable rhetoric of religious truth and falsity is common among Mormons.
A central narrative of Mormonism is that it is the “only true church,”\textsuperscript{7} and Mormons frequently
witness to each other and to potential converts that the church and its doctrines, teachings, and
practices are exclusively true. More to the point, the church periodically intervenes in state
initiative and ratification campaigns to defend “true” or “divine” principles that it believes ought
to be enforced by law and reflected in public policy. The church’s mobilization against
ratification of the Equal Rights Amendment in the 1970s and legalization of same-sex marriage
since the early 1990s are notable examples. How upset are folks entitled to get when their
religious beliefs are labeled “false” in electoral campaigns, if they themselves intervene in such
campaigns on the basis of religious truth and falsity?

My purpose in this Essay is to examine the deployment of religious truth-claims in electoral
politics, through the lenses of Gov. Romney’s unsuccessful campaign for the Republican
presidential nomination and the LDS church’s participation in the successful initiative campaign
to ban same-sex marriage in California. What does it mean to attack an electoral candidate’s
religious beliefs as “false,” or to defend a restrictive social practice as “true”? What do “true”
time voting for Mitt Romney because he is a Mormon”).

(referring to the “soft bigotry” implicit in contemporary criticisms of the LDS church), \textit{available
at} <http://www.nytimes.com/2008/01/06/magazine/06mormonism-
t.html?fta=y&pagewanted=all> (last visited Nov. 15, 2008).

\textsuperscript{7} See, \textit{e.g.}, \textit{The Doctrine and Covenants of the Church of Jesus Christ of Latter-day Saints} 1:30
(1971) (orig. pub. 1835) (declaring that the LDS church is the “only true and living church upon
the face of the whole earth”); \textit{see also} Joseph Smith - History 1:14 (relating vision in which
Joseph was told that the Christian churches of his day were “wrong” and “corrupt”).
and “false” even mean in contemporary political life? Does a religion’s intervention in electoral politics on the basis of truth or falsity justify attacks on the truth or falsity of that religion?⁸

I will argue that in contemporary electoral politics, attacks on the truth of a religion make little sense in light of the religious pluralism and postmodern sensibilities that characterize the contemporary United States. Such attacks function less as claims about reality than as veiled accusations—usually by religious conservatives—that the candidate is unacceptably “other.”

I begin with the failure of Enlightenment to eclipse belief over the last several centuries,⁹ and the ongoing and paradoxical dissolution of traditional modes of belief despite that failure.¹⁰ Postmodern pluralism has precluded belief from re-assuming the pre-Enlightenment dominance that Christianity once enjoyed, and is encouraging a different understanding of truth, not as a static relation between what believers think and how the world “really” is, but as a dynamic function of dialogue and interpretation by believers in the world.¹¹ The multiplicity, indeterminacy, construction, and ubiquity of contemporary religious truth-claims now prevent any religion from plausibly asserting in public contexts that its claims are true to the exclusion of all others.¹² In a radically plural culture like the United States, the introduction of religious truth-

⁸ As a definition of “truth,” I generally assume throughout this Essay a naive correspondence theory which holds that a proposition or belief is “true” only if it corresponds to some physical or metaphysical reality. See, e.g., The Correspondence Theory of Truth, STAN. ENCYCL. PHIL. §1 (July 25, 2005), <http://plato.stanford.edu/entries/truth-correspondence> (last visited Dec. 8, 2008). Although this theory of truth is the least likely to be credited by contemporary philosophers, it is undoubtedly still what most Americans understand by “truth.”

⁹ See Part II-A.

¹⁰ See Part II-B.

¹¹ See Part III.

¹² See Parts III-A to -E.
claims into electoral campaigns presents distinct disadvantages and dangers to liberal democracy, particularly when it is done from the right. I will close with some observations about the value of an ethic of public reason for participation in electoral politics, using as examples the attacks on Romney’s Mormonism during his unsuccessful bid for the 2008 Republican presidential nomination, and the participation of The Church of Jesus Christ of Latter-day Saints, more commonly known as the LDS or Mormon church, in the successful initiative campaign to prohibit legal recognition of same-sex marriages in California. I will close with some observations about the priority of pluralism to truth in electoral politics.

II. THE PARADOX OF CONTEMPORARY BELIEF

For many years, sociologists and other western academics argued that the advance of secular knowledge would inevitably trigger the decline and eventual demise of religious belief. It is old news that this “secularization hypothesis” proved to be false in the United States, where

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13 See Part IV-A.
14 See Part IV-B.
15 See Part V.
16 See Part V-A.
17 See Part V-B.
18 See Part VI.
belief remains widespread and influential.\textsuperscript{21} Although the number of unbelievers in the United States has steadily increased to between 10\% and 15\% of the population,\textsuperscript{22} an overwhelming majority of Americans still describe themselves as believers.\textsuperscript{23}

The endurance of belief in the United States has forged agreement among the secular left and the religious right that religion is again on the rise. The collapse of secularization has yielded a succession of comically dire polemics by secular intellectuals against the persistence of belief,\textsuperscript{24} while cultural conservatives have trumpeted this same persistence with barely disguised glee.\textsuperscript{25}

\footnotesize{[hereinafter Berger, \textit{Secularization}].}


\textsuperscript{23} The major recent in-depth surveys of American belief are \textit{Baylor Institute for the Study of Religion, American Piety in the 21\textsuperscript{st} Century} (2006) [hereinafter Baylor Survey]; \textit{Graduate Center of the City Univ. of N.Y., American Religious Identification Survey} (2001) [hereinafter CUNY Survey]; Pew Survey, \textit{supra} note #. Roger Hendrix and I exhaustively reviewed the CUNY and Baylor surveys along with other statistical data on American belief preferences in Gedicks & Hendrix, \textit{supra} note #, at 284-88. A useful synthesis of data from the Baylor Survey is Roden Stark, \textit{What Americans Really Believe} (Baylor University Press, 2008).

\textsuperscript{24} See, \textit{e.g.}, Richard Dawkins, \textit{The God Delusion} (Bantam, 2006); Sam Harris, \textit{The End of Faith} (W.W. Norton, 2005); Christopher Hitchens, \textit{God is Not Great} (Twelve, 2007); Kevin Phillips, \textit{American Theocracy} (Viking, 2006).

The reality of American belief differs considerably from both the despair of the left and the hubris of the right. The secularization hypothesis was pushing against a certain kind of religious metaphysical thinking—the traditional Christian supposition that religion represents to its followers an objectively true cosmic reality. One might call this the “metaphysics of transcendence,” a phrase that captures the traditional self-understanding of denominational Christianity that its task is to provide its members with access to the means of salvation provided by the singular God and truth and reality that exist beyond temporal life.

The triumph of transcendence does not necessarily follow from the failure of secularization, however. In particular, the demise of secularism has not been accompanied by a return to dominance of traditional denominational belief. To the contrary, when the secularization hypothesis began predicting religion’s impending demise, traditional belief was already losing its hold on North America and western Europe. Although the secularization hypothesis turned out to be wrong, the erosion of denominational belief has not halted.

For example, large numbers of self-identified mainline Protestant believers have rejected the divinity of Jesus and his literal resurrection, which once constituted the theological core of Christianity.26 Overall church attendance is in decline,27 and has probably been overstated for decades.28 Similarly, American Catholics might now seem to belong to a denomination entirely

27 [Gallup polls showing steady decline from mid-40s in the 1960s to mid-30s today].
28 Stanley Presser & Linda Stinson, Data Collection Mode and Social Desirability Bias in Self-Reported Religious Attendance, 63 AM. SOC. REV. 137 (1998) (finding that the apparent social
separate from the one led by the Pope. Even setting aside declining attendance at mass and the
dramatic shortage of priests in the United States, the number of Catholics who accept the
Church’s teachings on sexuality and the “natural family” is overwhelmed by the number who
don’t. Even among American Mormons, whose church was once known as the fastest growing
religion in the United States, membership growth in the United States has stagnated, The
desirability of church attendance inflates self-reports of church attendance figures, and that
substantially fewer than 30% of American attend church weekly, compare to self-reported
percentages ranging from the high 30s to the low 40s).

Dr. Stark contends that the overstatement is substantially less than 10%. See Stark, supra note #, at 17.

29 Catholic News Agency, “Bishops to analyze Mass attendance, recent data on U.S. Catholic Church” (June 12, 2008) (reporting that about 25% of American Catholics attend mass each
week, and that such attendance is higher among older Catholics), available at
http://www.catholicnewsagency.com/new.php?n=12919 (last visited Nov. 15, 2008); Kent
Garber, What to Do About the Priest Shortage, U.S. NEWS & WORLD REP. (Apr. 18, 2008)
(reporting decline in diocesan priests from just over 36,000 in 1975 to less than 28,000 in 2007,
and decline in overall “religious” priests (a category including members of religious orders) from
nearly 59,000 in 1975 to about 41,500 in 2007), available at
Apostolate, “Self-Reported Mass Attendance by U.S. Catholics Unchanged in Last Five Years”
(Jan. 10, 2005) (reporting decline in self-reported attendance at mass by American Catholics
from peak of 75% in late 1950s to low of 31% in 2004), available at
<http://cara.georgetown.edu/AttendPR.pdf> (last visited Nov. 15, 2008).

30 Leslie Woodcock Tentler, Catholics and Contraception (Cornell University Press, 2004); [add survey data].

31 Independent survey evidence shows that the number of Americans who leave the LDS church
each year is approximately equal to the number who join it. E.g., CUNY SURVEY, supra note #, Ex. 7, at 25 (data showing that net LDS membership growth in the U.S. was flat in 2001); Pew
SURVEY, supra note #, at 26 (data showing that net LDS membership in the U.S. declined
slightly in 2007); see also Peggy Fletcher Stack, LDS Church’s worldwide growth slows down;
Mormon myth: The belief that the church is the fastest-growing faith in the world doesn’t hold
up; Church growth slower than believed, SALT LAKE TRIB., July 26, 2005 [hereinafter Stack,
Worldwide Growth], available at
<http://www.baylor.edu/pr/bitn/news.php?action=story&story=34943> (last visited Dec. 19,
(2008); Peggy Fletcher Stack, Unintended consequence of church’s ‘raising the bar’, Salt Lake
LDS church itself claims “steady growth” based on its own interpretation of its records. “Church Statistics Reflect Steady Growth” (Apr. 11, 2007), available at <http://newsroom.lds.org/ldsnewsroom/eng/news-releases> (last visited Nov. 8, 2008). and activity rates are declining, especially among new converts and young adults. Among all American believers, seventy-six million (or about one-third) of American adults report never attending services. Overwhelming majorities of American believers (and remarkably, more than half of evangelical teens) do not accept the idea of “absolute truth,” believing instead that what is morally true depends on the circumstances, and that the truths taught by all religions can be equally valid.

These days, what matters to a substantial number of American believers is less the cosmic

32 See Stack, Worldwide Growth, supra note # (reporting research estimate that between 40% and 50% of Latter-day Saints in the U.S., Canada, and the Pacific Islands are regular participants in worship services and other church activities, and that about one-third of all Latter-day Saints are regular participants).


truth of their religious beliefs, and more the meaning of those beliefs in their individual lives. Belief in the United States has settled into the insightful (if unflattering) observation offered by Wil Herberg more than half a century ago: What is important in the United States is the act of belief, not its object or content. (Or, as President Eisenhower less artfully put it, American government “makes no sense unless it is founded in a deeply felt religious faith—and I don’t care what it is.”) In philosophical terms, the religious metaphysics of transcendence is being replaced by a post-metaphysics of immanence. This new approach to belief, often simply called “spirituality,” does not focus on the omnipotent monotheistic God who stands outside of history in judgment of humanity. Its focus, rather, is the personal meaning constructed of belief by each believer—which may not apply, or apply in the same way, to anyone else. Instead of focusing on an object of worship connected to metaphysical accounts of universal truth and independent reality, this version of belief consists in a subject who constructs a personal truth and reality that make little claim on anyone else.

Spirituality is a kind of postmodern deism, an updated version of the eighteenth century belief that a supreme being or force set the world in motion, but does not intervene in its

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36 See ALAN WOLFE, THE TRANSFORMATION OF AMERICAN RELIGION (2003); French, supra note #, at 162-65; Warner, supra note #, at 1075-76, 1078-79.


38 See HERBERG, supra note #, at 97.

39 For a description of the spirituality movement in the United States, see Frederick Mark Gedicks, Spirituality, Fundamentalism, Liberty: Religion at the End of Modernity, 54 DEPAUL L. REV. 1197, 1215-19 (2005) [hereinafter Gedicks, End of Modernity]. See also TAYLOR, supra note #, at ** (“A way of putting our present condition is to say that many people are happy living for goals which are purely immanent; they live in a way that takes no account of the transcendent.”); French, supra note #, at 165-67 (describing “grocery cart” or “cafeteria-style” belief).
affairs. Spirituality likewise acknowledges a vague “higher power,” but allocates to it a diminished claim on the day-to-day life of those who believe in it. This “just barely belief” has a distinguished pedigree—it represented, for example, the belief of many of the founders, including iconic ones like Washington and Jefferson. A form of it was also common in the late nineteenth century in the United States, especially among university educators. It seems to have returned with the ambiguous failure of secularization.

III. PLURALISM, POSTMODERNISM, AND THE DEVOLUTION OF BELIEF

At the outset of the twenty-first century, then, a substantial number of believers in the United States have shed the traditional truth-claims of religion, in favor of a postmodern focus on religion’s personal meaning. This phenomenon is the consequence of a centuries-long devolution of belief that began with the shift from the age of Christendom in the Middle Ages, when Catholic Christianity so permeated society that unbelief was hardly conceivable, to Enlightenment, whose displacement of Christian belief with reason, science, and technology made the unbelieving life a plausible and persuasive alternative to belief. Two currents of


41 See, e.g., Warner, *supra* note #, at 1049, 1050 (noting that only about 10% of the population belonged to a church at the time of the Revolution, and that deism and skepticism were prevalent among the founders).


43 Gedicks, *End of Modernity, supra* note #, at 1200, 1202. This is also a pervasive theme in *Taylor, supra* note # at 1, 19-20, 25, 41, 84, 135-49 passim.
Enlightenment thought undermined belief: an understanding of the physical and natural sciences as the only reliable means of ascertaining the true character of the world, and a related expectation that reason would free humanity from the transcendent authority of religion.\footnote{44}{Gianni Vattimo, Belief 28-29 (Stanford University Press, Luca D’Isanto & David Webb trans. 1999) [hereinafter Vattimo, Belief]; Gedicks, End of Modernity, supra note #, at 1199-200, 1202; Immanuel Kant, An Answer to the Question: “What is Enlightenment?”, in Kant’s Political Writings 54 (Hans Reiss ed. H.B. Nisbet trans. 1970).}

Enlightenment, in its turn, has been undermined by postmodernism: Even in the physical and natural sciences, the subjectivity of investigation colors the purportedly objective truths that scientific investigation uncovers,\footnote{45}{See Gedicks, End of Modernity, supra note #, at 1203-06; Gianni Vattimo, Toward a Nonreligious Christianity [hereinafter Vattimo, Nonreligious Christianity], in John D. Caputo & Gianni Vattimo, After the Death of God 27, 29 (New York: Columbia University Press, Jeffrey W. Robbins ed. 2007); e.g., Ronald Crease, The Play of Nature (Indiana University Press, 1993); Thomas Kuhn, The Structure of Scientific Revolutions (University of Chicago Press, 1962).} while science and reason have fallen well short of delivering the full human emancipation they once promised.\footnote{46}{See Vattimo, Belief, supra note #, at 28-29; Gedicks, End of Modernity, supra note #, at 1204-05, 1206.}

We now find ourselves in a post-metaphysical era that is eroding the popular conception that truth exists independent of human beings, and replacing it with the idea that truth is produced by the response of human beings to the situations in which they find themselves. This is “the postmodern condition” that now characterizes the West: The end of a single universal explanation of the world of which human beings must necessarily take account, and the

\footnotetext{44}{Gianni Vattimo, Belief 28-29 (Stanford University Press, Luca D’Isanto & David Webb trans. 1999) [hereinafter Vattimo, Belief]; Gedicks, End of Modernity, supra note #, at 1199-200, 1202; Immanuel Kant, An Answer to the Question: “What is Enlightenment?”, in Kant’s Political Writings 54 (Hans Reiss ed. H.B. Nisbet trans. 1970).}

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\footnotetext{46}{See Vattimo, Belief, supra note #, at 28-29; Gedicks, End of Modernity, supra note #, at 1204-05, 1206.}
inevitability of innumerable contingent accounts whose influence on humanity depends on attractiveness, persuasion, and individual choice.  

The demise of Enlightenment was a mixed blessing for religion. It permitted religion to “return” from the epistemological exile into which it was sent by secularization, but this return has been fraught with paradox. On the one hand, the displacement of Enlightenment by postmodernity precludes the exclusion of belief simply because it does not conform to a scientific or rationalist epistemology.  

But on the other hand, religion cannot return with the privileges that Christianity enjoyed under Christendom, or that science and reason enjoyed under


Italian philosopher Gianni Vattimo urges that the loss of metanarratives described by Lyotard is the best meaning of the so-called “death of God.” See, e.g., VATTIMO, AFTER CHRISTIANITY, supra note #, at 3 (“God is dead” means nothing more than the fact that there is no ultimate foundation.”); Gianni Vattimo, Dialetta, differenza, pensiero debole [hereinafter Vattimo, Pensiero Debole] (“[T]he announcement that God is dead [signifies] that the strong structures of metaphysics–archai, Grünande, first proofs and ultimate destinies–were only forms of reassurance of thought in epochs in which technology and social organization lacked the capacity, that now exists, to live in a horizon that is more open, less ‘magically’ guaranteed.”) (author’s translation), in IL PENSIERO DEBOLE 12, 18 (Milano: Feltrinelli, Gianni Vattimo & Pier Aldo Rovatti 7th ed. 1990).

48 Gedicks, End of Modernity, supra note #, at 1206; cf. VATTIMO, AFTER CHRISTIANITY, supra note #, at 86, 88.

[T]he decline of the great metanarratives—i.e., of the systematic philosophies that had claimed to grasp the true structure of reality, the laws of history, and the method for acquiring knowledge about the only “truth”—has put an end, too, to the strong reasons for philosophical atheism. [] The idea of demythification has been demythified as well, because critical reason has discovered (following Nietzsche) the mythical and ideological nature of claiming a truth that would be free from ideology and myth.

Id.; VATTIMO, BELIEF, supra note #, at 92 (observing that “the dissolution of metaphysical reason, of its claim to grasp true Being once and for all, allows me also to accept a measure of ‘myth’ in my life, which need not necessarily be translated in rational terms”); Vattimo, Interpretation, supra note #, at 46 (observing that the “mass media . . . make the idea of a ‘unique’ world picture impossible”).

-17-
Enlightenment. 49 Like all other postmodern narratives, religion cannot plausibly claim to be the one truth, but only one truth among many. 50 Four attributes of contemporary religious truth confirm this devolution of belief. In stark contrast to the universal God and truth and reality of Christendom, contemporary gods, truths, and realities are multiple, indeterminate, individually customized, and ubiquitous.

A. Multiplicity

Contemporary religious truths are multiple. One can barely count the sheer number of religious truth-claims that have some American currency— that is, truths in which significant numbers believe, even if these numbers are not large in an absolute sense. There are several hundred different religions, denominations, and sects represented among believers in the United States, 51 not to mention multiple shades of unbelief. 52 Moreover, the well-documented effects of the postmodern spirituality movement, such as the blurring of traditional denominational lines in contemporary churches and the mixing and matching of denominational doctrines and

49 Gedicks, *End of Modernity*, supra note #, at 1207.

50 *VATTIMO, AFTER CHRISTIANITY*, supra note #, at 18-19; Gedicks, *End of Modernity*, supra note #, at 1207.


Scholars have pointed to immigration reforms in the 1960s, which liberalized strict limitations on Asian immigration, as a particular catalyst for the growth of contemporary religious diversity in the United States. See, e.g., Diana L. Eck, *Prospects for Pluralism: Voice and Vision in the Study of Religion*, **J. AM. ACAD. RELIG.** 1, 8 (2007); French, *supra* note #, at 144-47.

practices, guarantee innumerable permutations of the formal denominational categories of American religious affiliations and beliefs. In short, contemporary religious pluralism surely dwarfs whatever modest varieties of belief were apparent during Christendom.

B. Indeterminacy

Contemporary religious truths are indeterminate. It is impossible in the current age to demonstrate decisively the accuracy of any particular religious account of God and truth and reality to someone who doesn’t already believe it. This is a consequence of Enlightenment’s epistemological limitations: Not everything that is meaningful to human beings can be subjected to a rationalist or scientific epistemology. People are converted to new faiths, and persist in believing in old ones, but this conversion and persistence are not methodological—that is, they are not the result of applying a neutral procedure that can be repeated with predictably identical results for each such repetition regardless of who repeats it. The “truth” of religious truth, in other words, cannot be demonstrated scientifically or rationally. Unlike belief in the Middle Ages, when theologians and philosophers took seriously the task of demonstrating the universal metaphysical truth of Christianity, claims that a contemporary account of reality is universally, absolutely, and exclusively true are taken seriously largely within communities of already like-minded believers.

C. Customization

See Gedicks, End of Modernity, supra note #, at 1216-17; Gedicks & Hendrix, Uncivil Religion, supra note #, at 286-87.

Warner, supra note #, at 1068 (“While in medieval Europe there was only “the” Church, religion in America has taken many forms, denominational and congregational among them.”).

Contemporary religious truths are increasingly constructed by their believers. Contemporary belief focuses on meaningfulness to the believer—who belief causes a person think she is, or what it makes a person feel about himself. Sociologists and others have noted the popularity of “cafeteria-style” belief—believers who pick and choose religious beliefs and practices from among different and even conflicting conceptions of God and truth and reality. Whether and what one believes today is so much more a question of what one would like to believe, or find useful to believe, or be happy to believe.

Christendom again provides a useful contrast. During the Middle Ages, people had little choice about what to believe, if they even perceived the possibility of something other than the single and universal Christian reality. The social situation into which people were born bounded what little choice they could exercise about belief. That one could construct his or her own god and truth and reality was literally inconceivable. By contrast, “who one is” today, if not entirely a matter of personal choice, is clearly not bounded by a plenary account of reality.

D. Ubiquity

Finally, and most important, information about religious truths is ubiquitous. Thanks to the digital telecommunications revolution, information about the vast array of indeterminate and personally constructed religious truths is easily and everywhere accessible. The raw material

56 See Gedicks, End of Modernity, supra note #, at 1219.

57 See, e.g., Warner, supra note #, at 1079.

58 See TAYLOR, supra note #, at 45, 163-64, 192.

59 See TAYLOR, supra note #, at 165.

60 See, e.g., Eck, supra note #, at 5-6 (describing the widespread information available in Boston about India and Hinduism as the result of digitization and globalization).
of contemporary religious belief—the information that describes all the possibilities of gods and truths and realities—is available to anyone with a computer and an Internet connection. The Internet and the World Wide Web allow even the superficially curious to obtain information about other religious worlds.\footnote{See \textit{VATTIMO, AFTER CHRISTIANITY}, supra note #, at 76-77 (noting that telecommunications technology has facilitated a reorientation of the European mentality towards alterity, fantasy, and novelty).}

Markets require information to function, and markets of religious beliefs are no different. Five hundred years ago, information about the various possibilities of even Christian belief was circulated, if at all, only among clerics and social elites. The notion of a “marketplace of ideas” could not function as even a metaphorical description of the currency of religious truths if there were little accessible information of what those truths might be. The explosion of information today enables religious marketplaces to function.\footnote{See Gedicks \& Hendrix, \textit{Digital Reproduction}, supra note #, at 145-54.}

E. \textit{Virtual Belief}

The whimsically named “Belief-O-Matic” is a perfect example of a contemporary cultural phenomenon that combines and illustrates the multiple, indeterminate, customized, and ubiquitous nature of religious truth in the digital age. A feature of the high-traffic Beliefnet website,\footnote{See <http://www.beliefnet.com> (last visited Aug. 23, 2008).} Belief-O-Matic is a self-administered survey of one’s personal theology that promises

to accurately match the respondent’s spiritual inclinations to the most likely of the hundreds of contemporary possibilities. With free-ranging theological choices, wilful ignorance of theological proofs, customized combinations of beliefs and practices, and digital ease of access, Belief-O-Matic has all the trappings of postmodern religious belief.

IV. THE POSTMODERN CONDITION OF BELIEF

When “God” and “truth” and “reality” become “gods” and “truths” and “realities,” when they are multiple, indeterminate, customized, and ubiquitous, they point to a thinner, diluted sense of what human life “is.” Italian philosopher Gianni Vattimo calls our current age one of “weak thought,” because many now doubt the truth of universal or “strong” accounts of reality. Thought in a postmodern condition is “weak” precisely because thinking can no longer present itself as the accurate reflection of objective structures, but only as an unprovable interpretation of people like you find, and walk, a spiritual path that will bring comfort, hope, clarity, strength, and happiness. Whether you're exploring your own faith or other spiritual traditions, we provide you inspiring devotional tools, access to the best spiritual teachers and clergy in the world, thought-provoking commentary, and a supportive community. Beliefnet is the largest spiritual web site. We are independent and not affiliated with any spiritual organization or movement. Our only agenda is to help you meet your spiritual needs.


65 See VATTIMO, BELIEF, supra note #, at 36 (noting the “weakening of strong structures” in the contemporary world, “of the claimed peremptoriness of the real that is given ‘there, outside,’ like a wall against which one beats one’s head”); Vattimo, Pensiero debole, supra note #, at 22 (suggesting the “need ‘to leave behind being as the foundation,’” and recognize the “weak thought beyond metaphysics”) (quoting Heidegger) (author’s translation).
the world.  

The confident metaphysics of Christendom and Enlightenment presented a single, strong, and unified account of the truth; by contrast, postmodernity supplies only marketplaces of truth in which mere possibilities or interpretations of truth compete for adherents.

In such circumstances, it is not possible to reach consensus on any single account of God and truth and reality that would authoritatively define the “is” of human life for all or even most of a society. The more plausible choices that one has, in other words, the less likely it is than any single one can recommend itself as the only true one. In the face of multiplicity, plurality, customization, and ubiquity, reality declines from a self-existent cosmic fact to which one must unavoidably submit, to a personal aesthetic chosen to meet one’s individual needs and preferences.

Contemporary thought is “weak” because, as Vattimo trenchantly observes, a

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66 VATTIMO, BELIEF, supra note #, at 45; accord. id. at 60 (arguing that the Gospel can no longer be understood as a message with a self-declaring meaning; “salvation takes place through interpretation”); Vattimo, Pensiero Debole, supra note #, at 26 (“The truth is the result of interpretation . . . because it is only in the interpretive process, understood primarily in reference to the Aristotelian sense of hermeneia, expression, formulation, that the truth is constituted.”) (author’s translation); Vattimo, Interpretation, supra note #, at 44 (“The existential analytic (section 1 of Being and Time) makes us aware that knowledge is always interpretation and nothing but this.”); Vattimo, Nonreligious Christianity, supra note #, at 28 (“[T]here is no experience of truth that is not interpretive.”).

67 PEW SURVEY, supra note #, at 5-6; Warner, supra note #, at 1050-58; see French, supra note #, at 182-83 (describing the commodification and marketing of religion); Frederick Mark Gedicks & Roger Hendrix, Religious Experience in the Age of Digital Reproduction, 79 ST. JOHN’S L. REV. 127, 158-59 (2005) [hereinafter Gedicks & Hendrix, Digital Reproduction] (describing the flexibility necessary for religion to thrive in a digitized market economy).

68 See Berger, Sociology of Religion, supra note #, at 449 (“Modernity pluralizes the life world of individuals and consequently undermines all taken-for-granted certainties.”).

69 See Gedicks & Hendrix, Digital Reproduction, supra note #, at 133.

The digital revolution has served up direct access to a virtually unlimited array of information and images in North America, western Europe, and the rest of the online world, stimulating individuals to an awareness of spiritual choices and possibilities that were unimaginable only a generation ago. At the same time, postmodernism has
reality that is no longer understood as “the stable presence of things . . . that the mind can mirror objectively,” but instead as the mere consequence of subjective interpretations and choices, is “a diminished reality.”

A. Weak Thought and Strong Belief

There is nothing in postmodernism that precludes people from believing in “strong thought”—that is, universal accounts of God and truth and reality. Expressions of such beliefs are common in private settings—in church, among family, with friends. There may be a certain discourtesy, however, in expressing broadly and publically that such accounts are universally applicable and absolutely true. In elections held by radically pluralistic societies where no religious truth can plausibly maintain its sole validity to the exclusion of all others, publically claiming the exclusive truth for one’s own beliefs (and, by implication, calling everyone else’s false) functions as a kind of name-calling.

Asserting religious truth-claims in electoral politics, then, is at least bad manners. Etiquette functions precisely to avoid disclosures that harm oneself and others without any underlined the implausibility of achieving social consensus on reality and truth in the face of widespread and persistent religious difference. The coincidence of epistemological uncertainty with direct individual access to vast global fields of information empowers individuals to choose for themselves from among the innumerable versions of the real and the truth now available to them.

Id.

70 VATTIMO, AFTER CHRISTIANITY, supra note #, at 50; accord id. at 51 (defining the “weakening of Being” as the reduction of reality “to the conflict or play of interpretations”).

offsetting benefit. (What’s the point of telling me that you didn’t like that wedding gift?) As we should have learned in kindergarten, name-calling ends in hurt feelings, lost friends, and fights. An etiquette that excludes religious truth-claims from electoral politics, therefore, can be understood as a rule that underwrites civil and productive political discourse.

Public expression of “strong political thought,” however, is more than just a breach of etiquette. Strong thought also enables violent action. As Justice Holmes famously observed, persecution has a compelling logic when the truth of one’s cause is beyond doubt. Consider in this regard a remarkable anecdote related by sociologist Alan Wolfe in the publicity ramp-up to Saddleback Church’s town hall debate between Senators McCain and Obama during the 2008 election. Wolfe relates that at a past panel discussion that included Wolfe and Saddleback’s pastor, the best-selling evangelical author Rick Warren, “a woman stood up, proclaimed her Judaism, and asked Warren if she was going to burn in hell.” After a pause, Warren answered, “Yes,” to which the audience responded with “audible gasps.” Evangelicals are not anti-Semites, but it is still not hard to appreciate the potential relation between a Christian theology that condemns Jews and non-Christians to eternal punishment, and persecution of Jews and non-Christians. Certainly much of the literal violence in the contemporary world is enabled by strong

72 Abrams v. United States, 250 U.S. 616, *** (1919) (Holmes, J., dissenting) (“If you have no doubt of your premises or your power and want a certain result with all of your heart, you naturally express your wishes in law and sweep away all opposition.”).

73 Warren is the author of The Purpose-Driven Life, which has sold tens of millions of copies.

religious thought that diminishes the worth of those against whom that violence is directed.

Strong religious thought that is sanctioned by law can inflict a more metaphorical but no less real violence even in liberal democracies. Legal enforcement of the “natural,” “traditional,” or “nuclear” family, for example, denies to women the power to choose the economic security and self-fulfillment of work by insisting on their physical presence in the home and their economic dependence upon husbands, while refusing them control over reproduction.\(^75\)

Inscribing the natural family in law also precludes gays and lesbians from choosing the benefits and protections of marriage, because what is natural to them departs from a supposed norm of nature that is actually dictated by the state.

When understood as universal and absolute, truth supplies an almost irresistible premise for its imposition on adherents and nonadherents alike. After all, if a belief corresponds to how the world really is, it is valid for believers and unbelievers alike; therefore, why shouldn’t the law impose it upon everyone?\(^76\)

One problem (of many) posed by such thinking in a pluralistic postmodern society like the United States is that there is no consensus about how the world

\(^{75}\) See, e.g., Bradwell v. Illinois,  83 U.S. (16 Wall.) 130,  (1873) (Bradley, J., concurring) (defending state’s refusal to admit qualified women to the bar).

\[^{76}\] Vattimo, Interpretation, supra note #, at 48.
really is, and thus there can be no warrant for imposing beliefs on others simply on the basis of their truth. People are and must be free to believe in strong thought in a liberal democracy, but democracy also requires that such belief be accompanied by a certain humility about enacting it into law and forcibly imposing it on those who do not share it.\textsuperscript{77}

\textbf{B. Contemporary Asymmetry on the Right}

Strong thought is not just a temptation for the religious right. Parts of the secular left that are nostalgic for secularization (or clueless about its demise) are as dogmatic as some believers in insisting on the exclusive truth of their views.\textsuperscript{78} Strong religious thought undeniably lies at the origin of much contemporary terrorism and violence, but it is a powerful myopia that cannot recognize the strong secular thought that is also at work in the violence of history, especially recent history.

Although strong thought is a temptation for both the religious right and the secular left, current threats to liberal democratic values come more from the former than the latter. In the postmodern world, religion can indeed participate fully in the marketplace of ideas, even the political marketplace, so long as it returns as a truth rather than the truth. The secular left takes this epistemological agnosticism for granted. Not so the religious right; many conservative faiths not only believe that theirs is the truth that excludes all others, they feel the additional need to work for the incorporation of that truth into law and policy. Thus, as Professor Modak-Truran has observed, the failure of secularization has created an opening for the return of less

\textsuperscript{77} VATTIMO, \textit{After Christianity}, \textit{supra} note #, at 78.

separationist paradigms of church-state relations.\textsuperscript{79} This opening is obviously not large enough for the return of any form of Christendom; no mainstream religious group supports a relationship of church and state that approximates what existed between Catholicism and the feudal societies of the Middle Ages. But many religious conservatives seem comfortable with a relationship in which Christianity would be governmentally preferred, and the political equality of religious dissenters replaced with their mere toleration by a Christian government.\textsuperscript{80}

For example, the ambiguous boundaries of the “Judeo-Christian tradition” mask a classic toleration of non-Christians. Judeo-Christianity offers itself as a benignly inclusive umbrella of “civil religion” that seems to shelter the religious and moral sensibilities of nearly all Americans. But its symbols and practices, such as invocations of God in the Pledge of Allegiance and on coins and banknotes, government-sponsored displays of the Christmas nativity and the Ten Commandments, and government-sponsored prayer, symbolize a much narrower conservative Christian conception of church and state. On the one hand, Judeo-Christianity is presented as if it includes every Christian and Jew in the United States. Sometimes its adherents even expand it to include Muslims, as in references to a supposed American “Abrahamic” or monotheistic tradition.\textsuperscript{81} This inclusive, expansive presentation of Judeo-Christianity is particularly effective in building coalitions for electoral initiatives on values issues, for it reaches out to conservative minority faiths as if common cause were true belonging.

\textsuperscript{79} Modak-Truran, \textit{supra} note #, at 191.


\textsuperscript{81} 10-C Cases, Scalia, J., dissenting
In fact, however, the Judeo-Christianity is freighted with conservative Christian meaning. Judeo-Christian symbols have been appropriated by conservative Christians as symbols of their normative preeminence in the United States. 82 When government adopts these symbols as its own, it does not send a message of religious equality or inclusion. For example, Muslims are monotheists, but that has not prevented attacks on Islam when its adherents run for political office. 83 Similarly, Mormons believe in the resurrection and saving power of Jesus Christ, but that did not save Gov. Romney from similar attacks on his Mormonism. That one can intellectually fit Islam into a supposed Abrahamic tradition, or Mormonism into a supposed Judeo-Christian one, does not normalize these religions in electoral politics. When it comes to who is eligible to wield government power, the Judeo-Christian tradition shrinks, excluding Muslims and Mormons, Jehovah’s Witnesses and Christian Scientists, and even the Jews who give the Judeo-Christian tradition its veneer of inclusivity.

Indeed, Jews figured this out long ago. They know from history that they cannot easily fit and do not truly belong to a culture dominated by conservative Christianity, Judeo-Christianity notwithstanding. 84 A separationist and secular public culture is usually more hospitable to nonChristian minorities than one controlled by conservative Christians, however benignly and inclusively Judeo-Christian culture might present itself. As Karl Marx observed, the political

82 Gedicks & Hendrix, Uncivil Religion, supra note #, at 292-99.
83 See, e.g. [Keith Ellision; cf. accusations that Obama is really Muslim].
84 E.g., Suzanna Sherry, Religion and the Public Square: Making Democracy Safe for Religious Minorities, 47 DePaul L. Rev. 499, 504-06 (1998) (observing that only Christians can authentically subscribe to the Judeo-Christian tradition); Mark Silk, Notes on the Judeo-Christian Tradition in America, 36 Am. Q. 65, 69-70 (1984) (same); Mark V. Tushnet, the Conception of Tradition in Constitutional Hagiography, 29 Wm. & MARY L. Rev. 93, 94 n.6 (1987) (same).
and cultural dominance of Christianity enables it to control society implicitly, without making exclusionary sectarian arguments, merely by encouraging profession of “religion in general, any kind of religion.”

Mormons have yet to figure this out. They worked hard for their inclusion in the Christian mainstream, and thought they had succeeded. Many were surprised, if not shocked, by the blatant, unembarrassed, public rejection of Romney’s faith by many conservative Christian voters during the 2008 Republican primaries. Like most Mormons, Romney was under the illusion that he fell underneath the umbrella of Judeo-Christianity, until it became clear that many of those who police the boundaries of that tradition were willing to vote for almost anyone before a Mormon. As one of my BYU colleagues put it, reflecting on the demise of the Romney candidacy, we Mormons “didn’t know we were Jews.”

85 Karl Marx, On the Jewish Question (1844), in 3 Karl Marx & Frederick Engels, Collected Works 146, 159 (Progress, 1975).

86 Harris Poll, Many U.S. Adults are Uncomfortable Voting for a Mormon in the 2008 Presidential Race, HARRISINTERACTIVE (Apr. 11, 2007), at tab. 3 (45% of adults would definitely or probably not vote for a Mormon for president), available at <http://www.harrisinteractive.com/harris_poll/index.asp?PID=747> (last visited Nov. 11, 2008); [Mike Allen, A Mormon as President?, TIME Mag., Nov. 26, 2006 (Bloomberg and L.A. Times poll finding that 35% of registered voters would not consider voting for a Mormon for President), available at <http://www.time.com/time/printout/0,8816,1562941,00.html> (last visited July 4, 2008); Linda Feldman, Mitt Romney: Proudly, Quietly Mormon, CHRISTIAN SCIENCE MONITOR, Aug. 9, 2007 (Newsweek poll found that 27% of the electorate, and 40% of Republicans, would not vote for a Mormon for president), available at <http://www.time.com/time/printout/0,8816,1562941,00.html> (last visited July 4, 2008); David Hill, Romney Must Revisit Beliefs, July 7, 2008, <TheHill.com> (“A 2000 national survey by Ellison Research of 518 Protestant ministers found that 63 percent would vote for a Jewish candidate and 64 percent would vote for a Catholic but 76 percent confessed that they would be less inclined to vote for a Mormon candidate”)]; see also Feldman, supra, reporting “anti-Mormon candidates” from “rival campaigns,” and voters who “confronted Romney with hostile questions” and “refused to shake his hand”).

In fairness to conservative Christians, a number supported Romney. Moreover, Romney’s liberal past as a senatorial candidate and elected governor in Massachusetts undoubtedly contributed to his rejection by Christian conservatives.
Like the conservative denominations that exclude Mormons from the Christian mainstream, the LDS church opposes same-sex marriage and abortion rights, it preaches a traditional conception of the heterosexual family, and its members and leaders tend to be politically and culturally conservative.\textsuperscript{87} But it mattered little to those who attacked Romney’s Mormonism that Mormons agree with them on values issues. Conservative Christians are happy to have Mormon support on these issues, but this is an alliance of convenience that should not be mistaken for acceptance of Latter-day Saints as authentic participants in the Judeo-Christian tradition. When the LDS church is treated more respectfully by the \textit{New York Times} than by the conservative Christian Republicans,\textsuperscript{88} that communicates all that one needs to know about the narrowness of Judeo-Christianity.

V. \textsc{Religious Truth and Public Reason in Electoral Politics}

Numerous liberal theorists have argued that an ethic of “public reason” should govern the role that religion and belief play in electoral politics and public policymaking.\textsuperscript{89} They maintain

\textsuperscript{87}Father Neuhaus, of course, was Roman Catholic and publically opposed same-sex marriage and abortion, as does his church. Discomfort with Mormonism among the orthodox Christian denominations is strongest among evangelical Protestants who are among the most committed opponents of same-sex marriage and abortion.

\textsuperscript{88}Compare [Feldman NYT Mag essay] \textit{with} [Huckabee’s Jesus & Satan are brothers]

that the improbability that a radically plural society can reach consensus about the ultimate end or meaning of life counsels exclusion of such matters from politics and policymaking.⁹⁰ Accordingly, the ethic of public reason seeks to exclude religious and other appeals to comprehensive doctrines or philosophies of life from politics and policymaking,⁹¹ in favor of arguments framed in language and concepts that are acceptable to and understandable by citizens regardless of their beliefs about ultimate life-ends or meanings.⁹²

John Rawls, for example, argued that a virtuous citizen in a just and well-ordered pluralistic democracy should publically argue for goals touching on constitutional fundamentals or basic justice only in terms that one might reasonably expect others to endorse even when such others do not share one’s own deep beliefs about life.⁹³ It follows that the virtuous citizen should not appeal to comprehensive religious and philosophical doctrines, or even to disputed empirical theories such as general equilibrium economics.⁹⁴ Rather, one should rely “only on presently

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⁹⁰ See, e.g., GREENAWALT, supra note #, at 508; Rawls, Public Reason Revisited, supra note #, at 766; Macedo, Liberal Civic Education, supra note #, at 473, 474.

⁹¹ See GREENAWALT, supra note #, at 510 (“The most appealing category of claims that do not count as ones of public reason are those based on comprehensive views, overarching philosophies.”); Rawls, Political Liberalism, supra note #, at 226 (“There is no reason why any citizen or association of citizens, should have the right to use state power to decide constitutional essentials as that person’s, or association’s, comprehensive doctrine directs.”).

⁹² See, e.g., GREENAWALT, supra note #, at 498; Rawls, Political Liberalism, supra note #, at 218, 226, 241, 243; Audi, supra note #, at 276; Macedo, Liberal Civic Education, supra note #, at 473-75, 477-78.

⁹³ Rawls, Political Liberalism, supra note #, at 218.

⁹⁴ Rawls, Political Liberalism, supra note #, 218, 224-25; Rawls, Public Reason Revisited, supra note #, at 775, 780.

It is worth emphasizing that Rawls’s version of public reason excludes all comprehensive doctrines from politics, secular as well as religious. See Rawls, Public Reason Revisited, supra note #, at 766 (“Central to the idea of public reason is that it neither criticizes nor attacks any
accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not controversial." In matters of political fundamentals, arguments based on a comprehensive doctrine are not to be used except to the extent that they can be formulated as public reasons.

Public reason has its own limits. It does not apply to all of public life, but only to certain slices—electoral politics, judicial decision making, public policymaking, and political advocacy. It thus does not apply to all of public culture, but only to government officials, to political candidates and their supporters, and to voters casting ballots in elections about constitutional fundamentals or matters of basic justice. Public reason is, moreover, an ethical

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comprehensive doctrine, religious or nonreligious, except insofar as that doctrine is incompatible with the essentials of public reason and a democratic polity.”); accord Macedo, Liberal Civic Education, supra note #, at 480 (“Political liberals will . . . deny political power to any—including secular humanists—who would shape basic rights and principles of justice in light of their view of the whole truth.”). Other versions are more focused on excluding religious comprehensive doctrines. See, e.g., Audi, supra note #; Walzer, supra note #.

95 RAWLS, POLITICAL LIBERALISM, supra note #, at 224.

96 RAWLS, POLITICAL LIBERALISM, supra note #, at 247.

Elsewhere, Rawls suggested that comprehensive doctrines may be introduced into political and policymaking discourse so long as public reasons are give to support the policies indicated by the comprehensive doctrines. See Rawls, Public Reason Revisited, supra note #, at 776, 783-84; e.g., id. at 786 (“[C]itizens of faith who cite the Gospel parable of the Good Samaritan do not stop there, but go on to give a public justification for this parable’s conclusions in terms of political values.”).

97 RAWLS, POLITICAL LIBERALISM, supra note #, at 215.

98 GREENAWALT, supra note #, at 499; see RAWLS, POLITICAL LIBERALISM, supra note #, at 215 (“Another feature of public reason is that its limits do not apply to our personal deliberations and reflections about political questions, or to the reasoning about them by members of associations such as churches and universities . . . .”); Walzer, supra note #, at 633 (arguing that with respect to conceptions of the good, “no realization can be definitive. On the religious or ideological side of the line, the good society can have an absolute form; on the political side, it is always provisional”).

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ideal, not a legal rule, a measure of good civic conduct to which citizens in a liberal society should aspire, not an enforceable law or statute. As Stephen Macedo has observed, “[a]cknowledging the political authority of public reasons is one mark of a virtuous citizen, but people are entirely within their rights not to be virtuous, here as elsewhere.” Citizens are thus free to ignore the constraints of public reason without fear of state retribution.

Two episodes from the 2008 electoral season illustrate the wisdom of public reason’s ethical limits on claims of religious truth in the electoral politics of a pluralist and postmodern society like the United States, and the cost of abandoning those limits: the attacks on Governor Romney during the Republican presidential primaries for his membership in the LDS church, and that church’s intervention in the Proposition 8 initiative campaign to repeal legal recognition of same-sex marriages in California.

A. Mitt Romney and the “Mormon Question”

The pluralism of the postmodern world precludes decisive demonstrations of truth and falsity. Perhaps for this reason, religious arguments in electoral campaigns are commonly framed in terms of real-world consequences rather than other-world truths. This suggests a useful distinction: Religious beliefs that have public policy implications are proper subjects of political discussion because they are susceptible to criticism or defense based on public reason, while beliefs that have no such implications are both irrelevant and difficult to discuss in terms of public reason.

99 GREENAWALT, supra note #, at 498, 499; RAWLS, POLITICAL LIBERALISM, supra note #, at 213, 217, 253; Macedo, Transformative Constitutionalism, supra note #, at 71.

100 Macedo, Liberal Civic Education, supra note #, at 475.

101 See, e.g., Kenneth Anderson, Mormons, Muslims and Multiculturalism: The Deeply Dispiriting Romney-Huckabee Showdown, WEEKLY STD., Dec. 24, 2007, at 18, ** (suggesting
For example, during his campaign for the 1960 Democratic presidential nomination, President Kennedy faced questions about the extent to which the Roman Catholic hierarchy might influence his exercise of presidential powers. Kennedy successfully answered with a consistent emphasis on the separation of church and state, culminating in his now-famous Houston speech to Southern Baptist clergy, combined with a personal narrative that framed him as politically independent. Romney faced similar questions about his relationship with the Mormon hierarchy should he be elected President, and he responded with similar arguments about his religious and political independence.102

Unfortunately for Romney, the principal issue for his candidacy was his mere membership in a minority religion outside of the Christian mainstream, not his susceptibility to control by that religion.103 How was Romney to answer accusations like Father Neuhaus’s, whose point was not that Buddhism’s belief in nonviolence is relevant to evaluating a Buddhist candidate for public office, but not its belief in reincarnation).


Let me assure you that no authorities of my church, or of any other church for that matter, will ever exert influence on presidential decisions. Their authority is theirs, within the province of church affairs, and it ends where the affairs of the nation begin.

As Governor, I tried to do the right as best I knew, serving the law and answering to the Constitution. I did not confuse the particular teachings of my church with the obligations of the office and of the Constitution—of course, I would not do so as President. I will put no doctrine of any church above the plain duties of the office and the sovereign authority of the law.

Id.

103 Paul Horwitz, Religion and American Politics: Three Views of the Cathedral 30 (unpub ms. Oct. 1, 2008) (“[F]ew if any of the criticisms of Romney suggested that he would follow his church’s bidding in any way that would steer him away from the conservative path favored by many GOP primary voters. Rather, it was his faith in and of itself—its history, its doctrines, its sheer strangeness—that disturbed this voters.”), available
(or not just) that Romney’s religious leaders would exercise an inappropriate influence on his exercise of constitutional powers, or that his religious beliefs might lead to undesirable public policies, but that those beliefs are “false”? Certainly there are no proofs to be had. It is difficult to imagine how one would show an empirical correspondence of one’s beliefs to a metaphysical reality in an environment in which there are radically diverse understandings of the nature of such reality, including the belief that no metaphysical reality exists. Reason and rationality are of little help as well; again, it is hard to argue that the claims of Mormonism—visions of God, angelic visitations, gold scriptures, an embodied God—are unreasonable compared to such traditional Christian claims as the virgin birth, the miracles of the saints, the real presence, and, indeed, the resurrection itself. As they always ever have, religious “reason” and “rationality” in the realm of electoral politics test more for familiarity than they do for truth. Resting on private faith and personal spiritual experience, religious truth-claims are simply not justifiable by public reasons.

Because accusations that a candidate’s religion is false are not susceptible to discussion in terms of public reasons, their deployment in politics and policymaking functions as a kind of

For an illuminating exchange on whether Mormons should be considered Christians, see Bruce D. Porter & Gerald D. McDermott, Is Mormonism Christian?, FIRST THINGS, Oct. 2008, at 35. For Mormons like Porter, the question is rhetorical: Since Mormons believe in the resurrection and saving power of Christ, they are properly called Christians. For orthodox Christians like McDermott, the question is historical and theological: Since Mormons reject central Christian doctrines like the Trinity, believe in nonbiblical scriptures, and are not part of the historical Christian tradition, it is theologically and historically inaccurate to call them Christians. Father Neuhaus himself was sensitive to this distinction. See, e.g., Neuhaus, Mitt Romney, supra note # (“Mormonism is not part of historic Christianity as defined by Scripture and the early councils of the Church, but neither is it explicable apart from Christianity. A different question is whether many Mormons are Christians, and I believe the answer is yes.”).
epistemological name-calling. How can a candidate for public office respond to an accusation that his or her religion is false? Romney’s strategy was to subtly oscillate his rhetoric between the implicit suggestion that his Mormonism is acceptable (and thus politically irrelevant) because it falls within the American Judeo-Christian tradition (and thus is “true enough,” if not actually “true”), and the equally implicit concession that Mormonism is outside the Judeo-Christian tradition (and, therefore, “false”), but still acceptable (and again politically irrelevant) because of the American tradition of tolerating religious minorities.\(^{(105)}\)

So Romney’s speech is replete with the suggestion that, Mormon or not, his religious beliefs are pretty much like everyone else’s.\(^{(106)}\) He declares his faith in Jesus Christ as Savior,\(^{(107)}\) and his

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\(^{(104)}\) Cf. Horwitz, supra note #, at 44 (noting Romney’s contention “that he is at least religious enough to do the job of President, a statement that by implication questions whether people who stand outside the Judeo-Christian tradition would be fit for office”).

\(^{(105)}\) Cf. Anderson, supra note #, at 23 (arguing that Romney advocated a kind of “conservative multi-culturalism” by suggesting that subjecting any religion to the “public scrutiny of reason is an act of intolerance akin to racism”).

The so-called American “tradition” of religious toleration is recognizable only by comparison to the thin regime of toleration in Britain and its virtual absence on the Continent when the American colonies were founded. There is, moreover, a perverse irony in the appeal to this “tradition” by a Mormon whose religious forebears were successively expelled by state governments in Missouri and Illinois, and who abated relentless federal persecution in Utah only by abandoning a central tenet of their faith, as (more irony) Father Neuhaus pointed out. See Neuhaus, Mitt Romney, supra note #.

In any event, the purported American “tradition” of tolerating religious minorities is, shall we say, not deeply rooted.


My faith is grounded on these truths. You can witness them in Ann and my marriage and in our family. We are a long way from perfect and we have surely stumbled along the way, but our aspirations, our values, are the self-same as those from the other faiths that

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commitment to “America’s common creed” (which turns out to be the Eisenhower-esque view of belief in a theologically unspecified “God”){align:108}, and he attacks unbelief and secularism{align:109}, and he

stand upon this common foundation. And these convictions will indeed inform my presidency.

Id.

107 See Romney, supra note #, ¶15 (“There is one fundamental question about which I often am asked. What do I believe about Jesus Christ? I believe that Jesus Christ is the Son of God and the Savior of mankind.”).

108 See Romney, supra note #, ¶ 18.

It is important to recognize that while differences in theology exist between the churches in America, we share a common creed of moral convictions. And where the affairs of our nation are concerned, it’s usually a sound rule to focus on the latter–on the great moral principles that urge us all on a common course.

Id.; accord id., ¶ 17.

I believe that every faith I have encountered draws its adherents closer to God. And in every faith I have come to know, there are features I wish were my own. [] As I travel across the country and see our towns and cities, I am always reminded by the many houses of worship with their steeples, all pointing to heaven, reminding us of the source of life’s blessings.

Id.; see also id., ¶¶ 36-38 (recounting how American revolutionary Samuel Adams resolved sectarian arguments about the theologically correct manner to pray for divine protection from the British, by declaring that “he would hear a prayer from anyone of piety and good character, so long as they were a patriot”).

109 See Romney, supra note #, ¶¶ 6 & 7.

There are some who may feel that religion is not a matter to be seriously considered in the context of the weighty threats that face us. If so, they are at odds with the nation’s founders, for they, when our nation faced it’s greatest peril, sought the blessings of the Creator. And further, they discovered the essential connection between the survival of a free land and the protection of religious freedom. In John Adams’ words: “We have no government armed with power capable of contending with human passions unbridled by morality and religion . . . .” Our Constitution was made for a moral and religious people.

Freedom requires religion just as religion requires freedom. [] Freedom and religion endure together, or perish alone.
finally ends by endorsing the American civil religion.\textsuperscript{110}

But all this is carefully balanced by subtle concession embedded in the middle of the speech, acknowledging that Mormonism is, actually, different from the quintessentially “American” faiths that form the Judeo-Christian tradition:

My church’s beliefs about Christ may not all be the same as those of other faiths. Each religion has its own unique doctrines and history. These are not bases for criticism but rather a test of our tolerance. Religious tolerance would be a shallow principle indeed if it were

\textit{Id.; accord id. ¶ 19.}

[I]n recent years, the notion of the separation of church and state has been taken by some well beyond its original meaning. They seek to remove from the public domain any acknowledgment of God. Religion is seen as merely a private affair with no place in public life. It is as if they are intent on establishing a new religion in America – the religion of secularism. They are wrong.

\textit{Id.; see also id. ¶32 (“I have visited many of the magnificent cathedrals in Europe. They are so inspired . . . so grand . . . so empty. Raised up over generations, long ago, so many of the cathedrals now stand as the postcard backdrop to societies just too busy or too ‘enlightened’ to venture inside and kneel in prayer.”).}

\textsuperscript{110} See Romney, \textit{supra} note #, ¶¶ 20-22.

We are a nation “Under God” and in God, we do indeed trust.

We should acknowledge the Creator as did the Founders – in ceremony and word. He should remain on our currency, in our pledge, in the teaching of our history, and during the holiday season, nativity scenes and menorahs should be welcome in our public places. Our greatness would not long endure without judges who respect the foundation of faith upon which our Constitution rests. I will take care to separate the affairs of government from any religion, but I will not separate us from “the God who gave us liberty.”

Nor would I separate us from our religious heritage.

\textit{Id.}
reserved only for faiths with which we agree.\textsuperscript{111} Notwithstanding his repeated suggestion that Mormonism is within the American religious mainstream, it is precisely Romney’s fear that Mormon beliefs are indeed outside this mainstream that triggers his appeal to the tolerance of the Judeo-Christian majority. This contradiction captures the impossible situation into which candidates of minority faiths are placed by attacks on their truth: They must either insist that they belong within a mainstream that has already rejected them, or they must beg for mainstream toleration.\textsuperscript{112} Neither is a winning strategy.

B. \textit{The LDS Church and Proposition 8}

On June 29, 2008, the President and the other members of the First Presidency of the LDS church released a letter over their signatures addressed to members of the church in California, urging them to do everything possible in the way of donating money and volunteering time in support of a proposed amendment to the California constitution that proposed to withdraw recognition of same-sex marriages in California.\textsuperscript{113} This letter was read over the pulpit in every

\begin{itemize}
\item \textsuperscript{111} See Romney, \textit{supra} note #, at ¶ 15.
\item \textsuperscript{112} Cf. Horwitz, \textit{supra} note #, at 39.
\item Devout Mormon office-holders seeking to command the allegiance of broader political constituencies thus face a quandary. Their values are surely “quintessentially American,” and those values stem from deep reserves in their faith; and yet, to most mainline Christians, their particular religious beliefs are surely a “heterodox” form of Christianity, and public discussion of their beliefs is as likely to lead to political rejection as it is to understanding.
\item Addressed directly to church members in California, the letter directly asked members to “do all you can to support the proposed constitutional amendment by donating of your means and time to assure that marriage in California is legally defined as being between a man and a woman.” Letter from Thomas S. Monson, Henry B. Eyring & Dieter Uchtdorf dated June 29, 2008, at ¶4 [hereinafter First Presidency Letter], \textit{available at} <http://newsroom.lds.org/ldsnewsroom/eng/commentary/california-and-same-sex>.
\end{itemize}
LDS congregation in California, and was highly publicized among congregations outside of the state. Proposition 8, as the proposed amendment was known, ultimately passed with about 52% of the vote cast, and currently prohibits California from performing same-sex marriages and recognizing same-sex marriages performed in other states. (The question whether the Proposition also prohibits recognition of same-sex marriages performed in California they were legal, as it appears to, is currently being litigated.) The resources mobilized by the LDS church against Proposition 8 are generally acknowledged as having been the decisive factor in its defeat.

Although the LDS church does not participate in partisan political elections, it has long taken an active part in referendum elections and ratification campaigns related to “moral issues,” such as legalization of gambling or abortion, government action that undermines

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115 See, e.g., Jesse McKinley & Kirk Johnson, Mormons Tipped Scale in Ban on Gay Marriage, N.Y. TIMES, Nov. 15, 2008, at A1 (reporting on the “extraordinary role Mormons played in helping to pass [Proposition 8] with money, institutional support and dedicated volunteers,” and highlighting the $5 million raised “in a matter of days” with LDS support at a crucial point in the Proposition 8 campaign); see also Prop. 8 battle, supra note # (reporting that Proposition 8 opponents “have credited LDS members with having given the Yes on 8 camp an edge in donations and volunteers”).


117 See id. (reserving “the right as an institution to address, in a nonpartisan way, issues that [the church] believes have significant community or moral consequences or that directly affect the
traditional gender roles,\textsuperscript{119} and government recognition of same-sex marriage.\textsuperscript{120} To those unfamiliar with the LDS church, the significance and likely effect of the First Presidency’s letter probably passed unnoticed, at least at first. The distinctive theology of the LDS church, its history of persecution at the hands of state and federal authorities, and its continued minority status in the United States have created a remarkable degree of social cohesion among active Latter-day Saints. Part of the church’s historical self-understanding, moreover, includes the belief that persecution was caused as much from internal dissension and disloyalty as from outside forces. For both of these reasons, active Mormons display an extraordinary degree of obedience and deference to the wishes and preferences of the male leaders of the church’s governing priesthood hierarchy.

Accordingly, it was entirely predictable that the First Presidency’s urging of church members “to do all that you can” to support passage of Proposition 8 would trigger a massive flood of financial donations and volunteer work by church members in support of the Proposition within and without California.\textsuperscript{121} In fact, while the church itself donated less than $300,000 of interests of the Church”\textsuperscript{118}).

\textsuperscript{118} [quote from General Handbook].

\textsuperscript{119} See, e.g., [church mobilization of members against ratification of the Equal Rights Amendment].

\textsuperscript{120} See, e.g., [church mobilization in support of initiatives in Alaska, Arizona, California (in 1999), Florida, Hawaii, Nevada, and Oregon prohibiting state recognition of same-sex marriages].

\textsuperscript{121} See, e.g., Peggy Fletcher Stack, Prop 8 divides LDS Church faithful: Church’s campaign against gay marriage is its most vigorous effort since 1970s, S.L. TRIB., Oct. 24, 2008.

Many California members consider [support of Proposition 8] a directive from God and have pressured others to participate. Some leaders and members see it as a test of faith and loyalty. [Some California church leaders] have even asked members to stand or raise
the estimated of $40 million raised in support of Proposition 8, individual members of the LDS church are thought to have supplied approximately half of this amount,\textsuperscript{122} in addition to supplying huge amounts of volunteer campaign labor.\textsuperscript{123} Accordingly, it is fair to attribute the donations of money and time by church members to the church itself, at least for the purpose of analyzing the rhetoric of the church in terms of public reason, and comparing this rhetoric to the rhetoric leveled at Governor Romney.

\textsuperscript{122} McKinley \& Johnson, supra note #, at A*; see also Prop. 8 battle, supra note # (reporting that Latter-day Saints had donated about 43% of the nearly $20 million raised by pro-8 forces as of Oct. 9, 2008).

\textsuperscript{123} See, e.g., McKinley \& Johnson, supra note #, at A* (reporting that “Mormons made up 80 percent to 90 percent of the early volunteers who walked door-to-door in election precincts,” and that many California Mormon wards, “not unlike Roman Catholic parishes, were assigned two zip codes to cover”); Stack, Prop 8 divides, supra note #.

Glen Lawrence, writing in the online Meridian Magazine, compared [LDS] opponents of Proposition 8 to those who sided with Lucifer against Jesus in the pre-mortal existence. Others have questioned such members’ faith and religious commitment, accusing them of undermining the prophet.

\textit{Id.}

LDS leaders have tapped every resource [in support of Proposition 8], including the church’s built-in phone trees, e-mail lists and members’ willingness to volunteer and donate money. \textsuperscript{[12]} California church leaders have prompted members to sign up volunteers, raise money, pass out brochures produced by outsiders and distribute lawn signs and bumper stickers. Bishops have devoted whole Sunday school classes and the weekly Relief Society and priesthood meetings to outlining arguments against same-sex marriage. Some have pointedly asked members for hefty financial donations, based on tithing.

\textit{Id.}; Prop. 8 battle, supra note # (reporting that in a California satellite broadcast in early October, LDS church leaders asked each of its 770,000 members in California to donate four hours a week during each of the four weeks remaining in the campaign, and that members outside of California were asked to call friends and family in California to urge support for Proposition 8).
Although the pro-8 coalition with which the church and its members were allied employed consequentialist arguments against same-sex marriage, the church itself relied heavily on sectarian arguments drawn from LDS theology in support of the Proposition. The church set up its own website in support of Proposition 8, entitled, “The Divine Institution of Marriage.” The church’s most detailed argument in support of Proposition 8 began with the flat theological claim that “[m]arriage is sacred, ordained of God,” and was immediately followed by a condemnation of same-sex marriage based on a detailed demonstration of its inconsistency with core elements of LDS theology. For example, the church invoked against same-sex marriage the critical role played by heterosexual marriage in the LDS conception of the afterlife, as well as “essential” and “God-given” differences between the sexes. (The latter point was also the lynchpin of the church’s opposition to the Equal Rights Amendment in the 1970s.) Only after these theological truth-claims do points about social consequences make their appearance.


125 “The Divine Institution of Marriage,” supra note #, at 1, 2.

126 Id. at 2 (“[M]arriage between a man and a woman is ordained of God and . . . the family is central to the Creator’s plan for the eternal destiny of His children. [M]arriage between a man and a woman is essential to His eternal plan.”) (quoting The First Presidency and Council of the Twelve Apostles of The Church of Jesus Christ of Latter-day Saints, “The Family: A Proclamation to the World,” at 1 (Sept. 23, 1995), available at <http://www.lds.org/library/display/0.4945.161-1-11-1.00.html> (last visited Nov. 17, 2008)); “The Divine Institution of Marriage,” supra note #, at 2 (referring to the “sacred nature of marriage”); id. at 6 (referring to “distortions” of the “God-given meaning” of marriage).

127 “The Divine Institution of Marriage,” supra note #, at 2 (“Gender is an essential characteristic of individual premortal, mortal, and eternal identity and purpose.”) (quoting “The Family,” supra note #; Gen. 1:27 (King James)); id. (referring to “inherent differences between the genders”); see also “The Divine Institution of Marriage,” supra note #, at 6 (“When marriage is undermined by gender confusion . . ., the rising generation of children and youth will find it increasingly difficult to develop their natural identity as a man or a woman.”).

128 The church also argued that allowing same-sex marriage would entail adverse consequences
As the campaign reached its climax in the weeks before the election, LDS church leaders continually mixed its public reasons for opposing same-sex marriage with its theological ones, publicly emphasizing that the most important stakes in the repeal of same-sex marriage were theological.\(^{129}\) The questionable and controversial nature of some of the public reasons advanced by Latter-day Saints against Proposition 8 only served to highlight the apparent priority of their theological reasons.\(^{130}\)


\(^{129}\) E.g., Press Rel. & Video Excerpts, “Church Readies Members on Proposition 8” (Oct. 8, 2008) (Elder Quentin R. Cook, declaring as the first reason for opposing same-sex marriage that it is “contrary to God’s plan,” in addition to condemning acceptance of “wrongful behavior” and “sin” and urging pro-8 activism to protect the “sacred institution of marriage”), available at <http://newsroom.lds.org/ldsnewsroom/eng/news-releases-stories/church-readies-members-on-proposition-8> (last visited Mar. 4, 2009); [video - canned interview on LDS church website] (LDS Apostle David Bednar declaring that traditional heterosexual marriage is “ordained of God,” and part of “the Father’s plan, the great plan of happiness,” “that’s what it’s all about” regarding Proposition 8) (LDS Apostle David Bednar in response to question why he personally felt so strongly about supporting Proposition 8); see, e.g., Matthai Kuruvila, Conservative Christians lead push for Prop. 8, S.F. CHRON., Oct. 15, 2008 (“[L]et me be clear that at the heart of this issue is the central doctrine of eternal marriage and its place in our Father’s plan.”) (quoting LDS Apostle Russell Ballard).

\(^{130}\) A Protect Marriage Coalition document widely circulated among Latter-day Saints in the weeks preceding the vote warned that if Proposition 8 were to fail, public school children would be forcibly taught same-sex marriage, churches would lose their tax exempt status if they refused to solemnize same-sex marriages in their chapels and sanctuaries, religious adoption agencies would lose the power to prefer heterosexual adoptive parents, religious universities would be required to provide married student housing for same-sex couples, and sermons about the wrongfulness of same-sex marriage would be criminalized as hate speech. Guy Murray, “Six Consequences the Coalition Has Identified If Proposition 8 Fails” (Sept. 14, 2008), <http://protectingmarriage.wordpress.com/2008/09/14/six-consequences-the-coalition-has-identified-if-proposition-8-fails/> (last visited Mar. 5, 2009); Some of these claims were adopted by the LDS church and its leaders in opposing Proposition 8. See supra note # (making public education argument) & note # (making tax exemption and hate speech arguments). All of the claims were emphatically rejected by most constitutional law experts, see, e.g., Morris A.
So perhaps one can have sympathy for Gov. Romney only to a certain point. Those who intervene in the political marketplace on the basis of religious truth cannot complain when they are attacked on the same basis. Accordingly, an important qualification to the conclusion that attacks on the truth-claims of candidate religions are out of place in contemporary politics, if not altogether meaningless, must be that such religions must not themselves be intervening in politics on the basis of their truth-claims. A candidate cannot complain about attacks on the truth-claims of his or her religion when that religion is those religious truth-claims to justify its own intervention in electoral debates.

As liberal theorists have emphasized, this is an ethical and not a legal matter.\footnote{See supra notes # & accompanying text.} Speech Clause doctrine makes clear that religious individuals and institutions are free to express their views on political and policy issues however they please, subject only to the prohibitions on partisan expression imposed as a condition to tax exempt status, and applicable fundraising and reporting requirements. Certainly there is no plausible current theory of the freedom of speech that would generally permit the punishment or silencing of public attacks on the truth-claims of

Thurston, “A Commentary on the Document, ‘Six Consequences . . . if Proposition 8 Fails’” (n.d.) (concluding that the arguments are “either untrue or misleading”), available at <http://www.hrc.org/issues/religion/11304.htm> (last visited Mar. 5, 2009); Joint Statement of California Constitutional Law Professors (n.d.) (showing that “the claim that Proposition 8 is necessary to protect the tax exemptions of churches that refuse to solemnize or recognize marriages between same-sex couples is . . . false,” that “[n]o church’s tax-exempt status will be affected by its decision whether to solemnize marriages between same-sex couples,” and that “[e]xisting California law already provides parents with an absolute right to review all materials provided as part of a school’s comprehensive sexual health education program and to have their children excused from participation”), available at. Frank D Russo, Constitutional Law Professors Reject Arguments Made by California Proposition 8 Proponens, <http://www.californiaprogressreport.com/2008/10/constitutional_1.html> (last visited Mar. 4, 2009). But see, e.g., Blake Ostler, “Prop 8 comment (that is now a Prop 8 post) (Oct. 20, 2008), New Cool Thang, <http://www.newcoolthang.com/index.php/2008/10/prop-8-comment-they-would-not-print/569/> (last visited Mar. 5, 2009).
candidates or their religions, or the use of those truth-claims to bolster one’s position in an political or policy contest.\footnote{132}

The point, rather, is that “free” speech isn’t really free, as Stanley Fish once observed.\footnote{133} Once a religion becomes known for intervention in electoral politics on the basis of its religious claims of truth–claims that may not be shared by many or most other Americans, or that may be controversial even when they have majority support–it cannot complain when it and its members are attacked on the ground that its truth-claims are false. That is the unavoidable cost of competing in a pluralistic, postmodern marketplace for religious truth with claims about an exclusive truth whose validity cannot be demonstrated to those who do not already accept them.

* * *

It seems unlikely that truth-claims in political elections will contribute much to a dialogue that is already considerably debased. Without a means of proving such claims to those who do not already agree, attacks on candidate religions cannot function as actual arguments. They constitute, rather, implicit (and sometimes explicit) markers of popular acceptance or rejection, like “real America,” or “unAmerican.” Romney spent little time in his speech trying to prove the unprovable, that he is, “in fact” and “really,” a “true” Christian. His speech sought to show, \footnote{132 Such attacks would of course be subject to the well-established limitations on freedom of speech that permit the punishment of defamatory expression spoken with knowledge of or reckless disregard for its falsity, New York Times v. Sullivan, 376 U.S. 254 (1964), obscene expression, \textit{see, e.g.}, Miller v. California, 413 U.S. 15 (1973), or expression that genuinely threatens or is likely to provoke immediate violence, \textit{see, e.g.}, Virginia v. Black, 538 U.S. 343 (2003). These exceedingly modest doctrinal constraints do not materially inhibit robust public criticism of the religious truth-claims of candidate religions.}

\footnote{133 \textsc{Stanley Fish}, \textit{There’s No Such Thing as Free Speech (and It’s a Good Thing, Too)} (Oxford, 1994).}
simultaneously and ironically, that his faith was quintessentially American and that its unAmericanness shouldn’t matter.

As markers of acceptance, truth-claims are perilous political weapons for religious minorities, since they can always be turned against them by religious majorities who have presumptive electoral power. Religious minorities attacked on the basis of truth and falsity are left with only the two choices Gov. Romney had, and neither is likely to be a winning electoral argument. Instead, it is precisely in religious pluralism that minorities should place their trust.

Religious groups turn to truth claims as a response to perceived threats from religious pluralism. For majoritarian religions, pluralism is indeed a threat; it upsets presumptions to cultural and political power that often rest on little more than unreflective conventional wisdom. For religious minorities, however, pluralism is the guarantee of space for religious liberty, because a pluralist society that is genuinely democratic is less likely to turn on the politically powerless in the name of truth. ¹³⁴ A politically just democracy, as Rawls pointed out, requires that we “give up forever the hope of changing the constitution so as to establish our religion’s hegemony, or of qualifying our obligations so as to ensure its influence and success.”¹³⁵

 Asked by a friend if he believes in God, Italian philosopher Gianni Vattimo replied that he “believes that he believes,” that he “hopes to believe.” This recalls Herberg’s prescient description of Judeo-Christianity, and the ironic postmodern focus of contemporary American spirituality on immanence rather than transcendence. This sort of modest, even humble, search for personal truth enriches the individual without doing violence to her neighbors. I would

¹³⁴ This was, of course, the heart of Madison’s argument about tyrannical majorities and entrenched factions. See The Federalist 10 & 51.

¹³⁵ Rawls, Public Reason Revisited, supra note #, at 782.
suggest that it is the attitude that believers, even believers in strong thought, but especially minority believers, should aim for in electoral politics. That postmodernism and pluralism might be pushing American believers to adopt this kind of posture is cause for hope.