

Taking Rites Seriously: Law, Politics, and the Reasonableness of Faith (notes)
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1. Faith, Reason, and the Law
 - A. Turning two different answers to the same question into two different subjects.
 1. My Texas Tech story
 2. The case of unborn human life.
 - a) Comments by Justice Brennan and Justice Sotomayor
 - b) Sherry Colb's argument:

Religious freedom is an essential right in this country. Religion and religious organizations have often provided compassion and support to those in need. Observant members of religious groups have a fundamental constitutional right to practice their respective religions – a right enumerated explicitly in the First Amendment. ... But as strongly as our Constitution protects religion, it forbids our government from becoming a religious one ... [T]he idea that full-fledged human life begins at conception – is a religious notion, and it is one to which some, but not all, religions subscribe.

The idea of “ensoulment” is, of course, a purely religious concept. The notion that life begins at conception is counterintuitive if understood in secular terms.

In a secular world, because an embryo lacks the capacity to think, to experience joy, and to suffer pain or distress, it accordingly lacks legal entitlements that could possibly trump or even equal the interest in saving lives and curing disease through research. A secular perspective, then, would unequivocally approve of stem cell research. ...

Only a religious view would equate a clump of undifferentiated cells the size of a pinprick with a fully formed human being – deeming both equivalent “life.” Proceeding on the basis of this equation, ... wrongfully imposes a religious perspective on all citizens, regardless of their religious belief or lack thereof. (“A Creeping Theocracy: How The U.S. Government Uses Its Power to Enforce Religious Principles,” *FindLaw's Writ* (Nov. 21, 2001), <https://supreme.findlaw.com/legal-commentary/a-creeping-theocracy.html> (accessed April 10, 2022))
3. What's wrong with this analysis?
 - a) It equates a “secular” perspective as synonymous with *the* rational perspective, as if there could not be more than one reasonable secular perspective.
 - b) It does not carefully distinguish the relationship between faith and reason for the religiously motivated citizen.
 - c) It ignores the actual arguments offered by prolife advocates.

- II. Is Religious Liberty Really Special?: Liturgical Practices and Sacred Objects
 - A. Turning two different subjects into one manageable subject.
 - 1. The challenge to religion's specialness
 - 2. What made religion special for the Founders and the Courts: (1) sacred liturgy, (2) a transcendent source of being, and (3) obedience to the divine.
 - 3. The cases:
 - a) The Headscarf Case
 - b) The Kirpan Case
 - c) The Baker Case
 - B. Conclusion: As unbelief continues to grow in Western democracies, there will likely be an increasing number of citizens in those nations who do not see religious identity as a normal and integral aspect of human existence, as virtually all non-Westerners do and as the American Founders and their successors did. For some of these skeptical compatriots, if religion is indeed special, it is only special in the same way that astrology and superstition are special: it is irrational and thus unworthy of affirmative respect. That does not portend to a very promising future for religious liberty. For this reason, advocates of religious liberty not only have to make a case for its specialness, but also for its normality and reasonableness.