

reviewed in this journal, it does not treat religion as an independent variable that has various effects on aspects of politics as dependent variable. In fact, it does not treat religion (or politics) as delineated social spheres — it would be hard for readers to recognize “religion” as a player in this book, if you mean religion in the taken-for-granted Western sense. Makley’s recognition and depiction of the multifarious and overlapping registers of religion and politics (and gender) in her focus on struggles over authority and identity should be applauded — it is both accurate to the context and forces us to see the connections between these various sources of authority.

In my eyes, the book has two primary drawbacks. First, the interwoven arguments are complex and thus hard to draw out easily. Second, the language and extensive use of linguistic anthropology make the text even denser. This is not a book suitable for undergraduates, or even beginning graduate students, except perhaps in the area of gender studies. Many others will find the tone and complex language frustrating and grating.

***The Political Origins of Religious Liberty.* By Anthony Gill. New York, NY: Cambridge University Press, 2008. xi + 263 pp. \$75.00 cloth, \$23.99 paper**

***Liberty of Conscience: In Defense of America’s Tradition of Religious Equality.* By Martha C. Nussbaum. New York, NY: Basic Books, 2008. 406 pp. \$28.95 cloth**

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In *The Political Origins of Religious Liberty*, Anthony Gill employs a rational choice framework to explain government decisions to regulate or deregulate religion in the American colonies, Latin America, and the former Soviet Union, while arguing that previous accounts have focused too heavily on philosophical ideas at the expense of providing a convincing account of the actual causes underlying the emergence (or denial) of religious freedom. In *Liberty of Conscience*, Martha Nussbaum joins the ranks of those who focus on the philosophical and legal traditions associated with freedom of conscience as she seeks to

provide a clear account of what she takes to be a commitment on the part of the United States to religious fairness. To the degree that Nussbaum offers a causal argument, it is largely an implicit one about the power of ideas and law's role in marking and advancing normative commitments, not only by setting limits on people's actions but by providing a powerful symbol of the regime's principles.

While Gill's sharp focus on causality illuminates some of the fuzziness of Nussbaum's own claims in that realm, her rich account of the United States' legal and philosophic tradition related to religious conscience highlights what Gill misses by focusing so closely on interest-based behavior, especially when it comes to negotiating some of the complex issues related to religious conscience and the protection of public welfare that he raises in his concluding chapter. While both authors tie religious conscience to fundamental questions about life's meaning, and Nussbaum in particular links it to a central aspect of individuals' identity, both works tend to emphasize the role and perspective of institutional elites more than democratic agency in explaining the origins and evolution of religious liberty.

Acknowledging that Mancur Olson suggested that cost-benefit analyses had little to say about religious groups and their behavior because ideas about the meaning of life and death are not subject to empirical evaluation, Gill joins Adam Smith in linking laws concerning religion with interest-based behavior: "Proselytizing religious firms are market-share maximizers; they seek to spread their brand of spiritual message to as many followers as possible" (p. 44, 231). These "firms" and the doctrines they seek to promulgate do not exist in a vacuum but interact with political actors who seek their own political survival as well as economic growth, social stability, and the maximization of government revenue. Gill proposes that hegemonic religions will prefer high levels of government regulation over religious minorities while the latter will prefer laws favoring greater religious liberty. Politicians, in turn, are more likely to deregulate the "religious market" when restrictions on religious liberty have high opportunity costs associated with political survival, government revenue, and/or economic growth.

While some may find it jarring to encounter religious groups described as "market-share maximizers," Gill's assumptions seem intuitively on-target and supported by the historical evidence that he presents: Dominant religions do tend to favor more restrictive policies toward religious minorities, and it certainly makes sense for religious minorities to

favor religious liberty. Concomitantly, these respective policies are more likely to be implemented if it serves politicians' own interests.

But if the conclusions are straightforward and unsurprising, does Gill's analysis offer much of anything new? It does, by offering an explanation for significant differences in religious liberty among countries with similar cultural backgrounds and religious traditions, as well as similar patterns of church-state relations in countries with radically different cultural traditions (p. x). Further, Gill counters "ideational" explanations that tend to link the rise of religious liberty with "modern thinking" (i.e., the Enlightenment) and secularization and a general decline in spirituality in more pluralistic and modern societies. Gill offers several critiques of this ideational approach, including that it fails to explain cross-national differences or potential reversals over time and downplays agency. He also suggests that religious liberty is associated with religious vitality rather than decline, although this aspect of his argument remains relatively undeveloped.

Ideas may matter, according to Gill, in shaping preferences, but political and economic interests of politicians probably matter more in determining what regulations religious groups will face. Again, this seems on some level intuitive. How many political actors are likely to contradict their interests in the name of doctrine, normative or otherwise? But then, how many theorists make such a claim? Few theorists and historians would deny that many in the nascent United States were attracted to religious toleration because it promised greater social stability and economic success in the face of growing pluralism. To suggest that the writings of Erasmus and More may have led the American Founders to "rethink" the proper relationship between church and state does not in itself suggest that other forces were not at work. Gill, however, seems to over-interpret the claim, constructing a straw man with which he does battle in a way that unfortunately flattens what is in many ways a provocative analysis. We lose the possibility of gaining a greater sense of how ideas and interests may frame or condition one another and instead are subjected to reiterated assertions of interests "predominating over" and "trumping" ideas and ideologies. One of the only acknowledgements of ideology as a causal factor that I noted in the book involved a somewhat flip reference in Gill's account of Stalin's purges. Noting the dictator's interest in consolidating power and eliminating rivals, Gill nonetheless takes the "rabidity" of antireligious evangelization during Stalin's crackdown on religion as evidence

that “pure ideas” inspired the Soviet bureaucracy (p. 183). Less extreme and/or positive interplay between interests and ideologies largely eludes his analysis.

Although some may wish for a slightly less doctrinaire use of rational choice, Gill’s well-researched account provides a solid framework for understanding the political and economic interests that may come into play regarding questions of religious liberty and helpfully points to the role that democratization can play in increasing religious pluralism and enhancing religious liberty. The latter dynamic leads him to end the book on an upbeat note: His framework suggests that religious liberty is likely to prevail, ultimately, because politicians’ interests are best served by not assuming the costs of regulating religion in the face of growing pluralism.

Nussbaum, on the other hand, seems less optimistic about religious liberty prevailing simply through the “invisible hand” workings of political and religious interests, particularly when it comes to religious minorities. While she argues that the United States enjoys a common (though often assailed) tradition of religious fairness, she also presents its growing religious diversity as holding the potential for divisiveness and fear, and the corresponding impulse to persecute and exclude. Hers is simultaneously a laudatory account of the United States’ tradition, holding it up (sometimes irritatingly) as a model that may be instructive to the rest of the world, and a warning that this tradition is once again under siege, this time by “arrogant secularism,” “aggressively insular forms of Christianity,” and misguided jurists bent upon abandoning sound constitutional frameworks that accommodate religious difference and protect religious equality.

Nussbaum provides here a normative account of religious conscience, focusing not so much on the causes of a regime’s adoption of religious equality *per se* but what that equality requires of government and the kinds of principles that guide that inquiry in the United States. On the other hand, she *is* representing the development of a particular tradition, and the story that she tells involves philosophy and law rather than the interplay of religious and political interests. Nussbaum captures what seems to be a shared sense within the American political tradition that religious beliefs differ from other preferences because, in reaching to central questions of life’s meaning, conscience constitutes the seat of an individual’s “imagination, emotion, thought, and will” (p. 37, 54). Her exploration of Roger Williams’ treatment of the imposition of orthodoxy as imprisonment and “soule rape” (*sic*), reaches evocatively to a

notion of conscience as vulnerable, requiring space to develop and susceptible to grave, damaging invasion.

Those familiar with her other work will be unsurprised to find that Nussbaum is skeptical of a *laissez-faire* approach to the protection and promotion of this faculty. She presents the courts as playing a central albeit piecemeal role in preserving the equal protection of religious conscience. Following the continuities and breaks in the Supreme Court's treatment of the Free Exercise and Establishment clauses, Nussbaum makes a strong case for accommodation of religious beliefs and practices, including exemptions from generally applicable laws, in order to prevent unequal burdens being borne by unnoticed or unpopular minorities. Acknowledging the apparent chaos of the Court's establishment cases, she defends its attention to context, then draws out an orienting commitment to equality within those cases, which she argues is best pursued through an analytic framework (developed most extensively by Justice O'Connor) that weighs whether the government's actions had the intention or the effect of endorsing religion.

In offering a lucid account of the pursuit of religious fairness in United States jurisprudence, Nussbaum offers telling critiques of, among others, Justice Scalia's attempt in *Employment Division v. Smith* to abandon the accommodationist stance established by *Sherbert v. Verner*, as well as the late Chief Justice Rehnquist's arguments that the government is permitted to prefer religion over non-religion, and Justice Thomas' claims that the Establishment clause does not apply to the states. At the same time, she avoids liberal orthodoxy, by employing her framework to defend Ohio's school voucher program and voicing concern regarding the Court's 2004 decision that upheld a Washington state law that denied a state scholarship to a student pursuing a degree in theology.

Nussbaum acknowledges the contingencies and setbacks associated with the legal realization of religious equality, and in doing so, calls attention to some of the social and political forces at work, from nativist suspicion toward the religion of immigrants to the threats Mormons posed to the interest of local politicians. Her tendency, however, in explaining violations of equality in the United States is to gesture broadly toward pride and fear. On the one hand, it seems helpful to consider the psychological underpinnings of the impulse to persecute. On the other, Nussbaum paints with a pretty broad brush that seems intuitively on target but lacks nuance and depth. When she suggests, for example,

that we seek to impose orthodoxy in response to “something about ourselves that is difficult to bear, some loneliness and harshness about human life that makes us feel small, afraid, and victimized” (40), readers may be tempted to return to Gill’s market-share maximizers for relief.

Nussbaum maintains that the United States’ “panics” over religious diversity have nonetheless left a positive legacy: “Americans achieved, gradually, a new depth of insight into their own founding document and its principles, articulating ever more precisely an analytical framework, based on its central ideas. . .” (357). This seems nicely reassuring, but how many Americans, aside from Supreme Court justices, and those who study their decisions, actually share this depth of insight? Ultimately, Nussbaum seeks to develop connections among Roger Williams’ ethical claims, United States constitutional jurisprudence, and even setbacks in its supposed commitment to religious equality to explain the American tradition, to offer it as a model, and to defend it from attack. “We” must remain “vigilant” (p. 11, 3). Does such dedication come from Puritan writings and constitutional law (or Nussbaum’s analysis of them) and/or some kind of collective guilt resulting from historical knowledge of the violation of rights? Is such vigilance confined to those who have access to, or care, about such things? And does that suffice? Nussbaum’s account of how ideas are disseminated and sustained is sparse, despite the claim that shared understanding of religious fairness is a “fixed star” of the United States’ political tradition.

Gill might well say that Nussbaum has pursued the philosophical at the expense of the political, but democratic politics is fairly peripheral in his work as well, even as his case studies suggest that democratization is key to religious liberty. He closes his book with hope for the advancement of religious liberty, “as long as there are people continually willing to fight for freedom” (228). Yet his analytic narrative doesn’t have much to say about that “fight” itself. The interplay of the (mostly economic) interests of religious and political elites occupies center stage in Gill’s account, with an occasional gesture toward electoral mobilization. Although he notes that religious liberty extends beyond separation of church and state, his attention to the accommodation of unpopular religious beliefs is limited. Gill focuses on interests and Nussbaum on principles, but both return to notions of public vigilance and commitment that seem in some ways disconnected — Gill might prefer the term *exogenous* — to the models they advance.