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## Recognizing America's "Religious Nones" and Their Influence on Political and Legal Norms

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## NOTE

### Recognizing America's "Religious Nones" and Their Influence on Political and Legal Norms

Samuel Seeds\*

"The relationship between the state and organized religion in civil democratic societies is inherently complicated. There is inevitable tension between state organs and religious institutions." <sup>1</sup>

#### INTRODUCTION

The purpose of this Note is two-fold. First and foremost, this Note was written to develop the conversation concerning the rise of the Religious Nones<sup>2</sup> in the United States, as there is very little thought or recognition given to Nones in legal academia. The majority of scholarship only gives a paragraph or two on the subject of Nones, despite the fact that Nones have been growing since the 1990s.<sup>3</sup> Second, this Note was written to shed light on the direct impact that Religious Nones are having on American society, specifically the link between the rise of the Nones and the gradual excising of politics and laws attributed to religious moral tradition.

However, it is also important to define what this Note is not. This Note does not enter the conversation concerning whether religious liberties are in danger;<sup>4</sup> rather, this Note suggests that the legal norms that receive support based solely upon religious and faith-based grounds are going to be challenged for their lack of secularity and, conversely, presence of religious motivation.

This Note also suggests that the rise of the Moral Majority, or Religious Right, has impressed religious fundamentalism onto American legal doctrine and political platforms, and will, therefore, be challenged by the Nones in future political and legal arenas. It is not the case that America will no longer possess the status of a pluralist

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1 AMOS N. GUIORA, FREEDOM FROM RELIGION: RIGHTS AND NATIONAL SECURITY 94 (2d ed. 2013).

2 The nomenclature of the Religious Nones arises from shorthand "to refer to people who self-identify as atheists or agnostics as well as those who say their religion is 'nothing in particular.'" See Michael Lipka, *A Closer Look at America's Rapidly Growing Religious 'Nones'*, PEW RESEARCH CENTER: FACT TANK (May 13, 2015).

3 See *infra* text accompanying note 88. It should be stated that this Note is not picking up the discussion concerning the tension between true nonbelievers, such as Atheists or Agnostics, and the public recognition and tolerance of Christian influence. Such discussion can be seen in the work of Caroline Mala Corbin and Nelson Tebbe. See generally Caroline Mala Corbin, *Nonbelievers and Government Speech*, 97 IOWA L. REV. 347 (2012); Nelson Tebbe, *Nonbelievers*, 97 VA. L. REV. 1111 (2011).

4 See generally Daniel O. Conkle, *The Path of American Religious Liberty: From the Original Theology to Formal Neutrality and an Uncertain Future*, 75 IND. L.J. 1 (2000) (arguing that the anticipated and furthered support of formal neutrality with regard to the treatment of religion, as opposed to special treatment, may have detrimental effects on religious liberties).

nation, nor is it the case that the increasing None population will threaten the continuance of religious freedom. What is changing is the public's tolerance for basing legal norms on religious moral tradition.

In Part I of this Note, I examine a brief, but certainly not exhaustive, overview of how America's religious freedom is derived from the early notion of "tolerance," the debate surrounding the definitional problem of whether America is a "Christian" or "Secular" nation and how a compromise of "soft" secularism might be a viable alternative. This portion of the Note is designed to lay a foundation for the early entanglement of Church and State in America, to show the debate that gave rise to the Religious Right, and to show how the seldom-discussed alternative of soft secularism—if deemed to be the true category of American socio-political religiosity—is what Nones prefer because of the acceptance of individual religion coupled with political secularism. Part II of this Note is devoted to explaining who the Nones are, from basic demographics to their origins as a social counter-movement to the Religious Right, and what the Nones generally "believe," for lack of a better word. Finally, Part III is devoted to explaining the impact that Nones have already had in the political and legal worlds and to hazard a prediction at what portions of law they may influence next.

It is my hope that centering a dialogue around Nones as a causative factor will shed light on changes that America's political and legal realms have seen in the past few years.

## I. RELIGIOUS LIBERTY, PLURALISM, AND "SOFT" SECULARISM IN AMERICA

The United States of America is lauded as a nation with a history of religious freedom codified by the Constitution. Religious liberty has always been ardently protected. However, when it comes to the discussion of whether America is a "Christian" or a "Secular" nation, the conversation could not be more divisive.<sup>5</sup>

### A. *America's Evolution From Toleration to Religious Liberty.*

A young, colonial America would stutter and start when newly freed from the religious subjugation of the English Theocratic Monarchy but would eventually find its way to forging true religious liberty and, in fact, encouraging the exploration, understanding, or indifference of the religions of others.<sup>6</sup>

After being religiously oppressed by the Crown and having made their pilgrimage to America, it was in the early eighteenth century that American "dissenting groups," or those who did not subscribe to state-sponsored church, were

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5 See generally John Fea & Jacques Berlinerblau, *America: A Christian Nation or a Secular Nation?*, in *SECULARISM ON THE EDGE: RETHINKING CHURCH-STATE RELATIONS IN THE UNITED STATES, FRANCE, AND ISRAEL* (Jacques Berlinerblau, Sarah Fainberg, & Aurora Nou eds., 2014).

6 See CHRISTOPHER J. BENEKE, *BEYOND TOLERATION: THE RELIGIOUS ORIGINS OF AMERICAN PLURALISM* 6 (2006).

given “the right to worship privately and to direct their tax payments toward the support of their own ministers.”<sup>7</sup> This became known as “toleration” and gave a minor reprieve to minority religious groups<sup>8</sup> concerning financial burdens and criminal punishments, but still required either a formal petition or state certification to preach dissenting doctrine.<sup>9</sup> However, as the American Revolution neared, many groups sought greater religious equality.<sup>10</sup>

The demands of the insular groups were heard, and religious integration began moving America toward interdenominational agreement and cooperation.<sup>11</sup> Beginning just prior to the American Revolution, approximately the 1760s, and continuing through the 1780s, greater religious liberty began to form among the American colonies, as “state governments either could not or would not maintain the discriminatory policies that continued to characterize European societies.”<sup>12</sup> Discourse surrounding religious ideology switched from the biased and “thinly-veiled disdain” under toleration and became “more egalitarian” towards religious differences.<sup>13</sup> The first notion of similar treatment across some religious lines was officially codified on December 15, 1791, when the First Amendment was ratified as a part of the Bill of Rights.<sup>14</sup>

Shortly after the First Amendment’s ratification, American society began to move toward true pluralism with a serious openness and willingness to have conversations about “encouraging cooperative endeavors between different religious groups.”<sup>15</sup> Christopher Beneke posits that the existence of mutual respect (even if given “begrudgingly” or “insincerely”) created the foundation for a presumption of equal worth to alternative religious ideals—“[A]s people acquired greater freedom to define their own religious experiences, their liberty to criticize other people’s diminished[, a] pluralistic society required nothing less.”<sup>16</sup> Although religious liberty came into America “unevenly,” it demanded reciprocity, recognition, and for each religious group to possess the right to full public expression and all modes of worship.<sup>17</sup>

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7 *Id.* at 5–6.

8 At this point in time, essentially all recognized religious factions were Christian denominations, for example, Catholics, Anglicans, Baptists, and other protestant denominations.

9 *See* BENEKE, *supra* note 6.

10 *See Id.* at 11–12, 114. Other, non-Christian religious groups, including West African and Native American religions, only had traces persist beyond the eighteenth century, and other religions, such as Judaism, Buddhism, and Hinduism, would suffer resistance until the nineteenth or twentieth centuries. *Id.* at 11–12.

11 *See id.* at 81, 88.

12 *Id.* at 6.

13 *See id.*

14 U.S. CONST. amend. I. It should be noted, however, that much of the Protestant, colonial United States was extremely anti-Catholic, even suggesting that Catholicism is “adverse to liberty.” LYMAN BEECHER, PLEA FOR THE WEST 61 (1835).

15 *See* BENEKE, *supra* note 6, at 6–7.

16 *Id.* at 9–10.

17 *See id.* at 114–115.

Though it would be incorrect to state that America has maintained perfect equality through religious pluralism up through the twenty-first century,<sup>18</sup> it is clear that "because Americans have generally proved so ready to conceive of themselves as both ecumenical servants of the republic *and* devotees of particular churches, they have been able to make religious pluralism central to their national identity."<sup>19</sup> This means that, despite occasional conflict, Americans have recently come to see the United States as a pluralistic society, ready to accept new religions (or lack thereof) as being valuable perspectives.<sup>20</sup>

In this modern America, it would appear that the same principles are upheld through what is known as the ongoing notion of "spiritual cosmopolitanism," or "a *religious* interests in *religious* others."<sup>21</sup> Modern youth, Matthew Hedstrom states, have adopted what was originally the basis for toleration—which also became the basis for acceptance of diverse forms of Christianity, and the eventual acceptance of non-Christian religions—and recognize that many religious perspectives are valuable, that many religions may contain Truth, and that one may adopt and practice more than one of these religions.<sup>22</sup>

Contemporary American religious diversity is described by Stephen J. Stein, who provides a comprehensive explanation of the evolution of American religion, specifically referring to an "accelerating growth of religious diversity," where the scope of religious diversity in America is greater than ever.<sup>23</sup> According to Stein, no longer will one be able to rely on denominational descriptors to accurately describe political stance, so further stipulations of "religious liberal" or religious conservative will be necessary for such issues as abortion, homosexual rights, and family values.<sup>24</sup> Further, the terms "religion" and "spiritual" have become convoluted, and monotheism, specifically the Judeo-Christian tradition, is no longer seen as the be-all and end-all of social morality.<sup>25</sup> Simply put, American religious diversity has

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18 Repeatedly throughout history, American society has looked poorly upon specific religions, despite its claim of continued religious freedom. For example, consider the strife of Catholic or Jewish communities through the nineteenth and twentieth centuries in America and Muslim practitioners since the rise of terror attacks or the radicalized Islamic State. *See* discussion in footnotes 10 and 14, *supra*.

19 BENEKE, *supra* note 6, at 221–222.

20 *But see* Conkle, *supra* note 4, at 4–5. It must be stated that, until recently, Protestant Christianity, to the exclusion of all other religions and Christian sects, held primacy both in social and political arenas in American history; it "informed and refined the American understanding of religious liberty" and completely "permeated American life." *Id.* *See also*, discussion associated with footnote 36.

21 Matthew S. Hedstrom, *Rise of the Nones*, in FAITH IN THE NEW MILLENNIUM: THE FUTURE OF RELIGION AND AMERICAN POLITICS 260 (Matthew Avery Sutton & Darren Dochuk eds. 2016).

22 *See id.* at 261.

23 *See* Stephen J. Stein, *Religion/Religions in the United States: Changing Perspectives and Prospects*, 75 IND. L.J. 37, 41–49 (2000).

24 *See id.* at 57–58.

25 *See id.* at 58–59; *see also* Frederick Mark Gedicks & Roger Hendrix, *Uncivil Religion: Judeo-Christianity and the Ten Commandments*, 110 W. VA. L. REV. 275, 284 (2007) ("Judeo-Christianity can no longer plausibly claim to capture the beliefs of nearly all Americans.").

grown to a level of complexity not previously seen, effectively challenging denominational terms and even the fundamental descriptor of “religious.”<sup>26</sup>

### B. *So, is America “Christian” or “Secular”?*

The argument about whether America is a “Christian Nation” or a “Secular Nation” may feel like an age-old conflict, but this question only arose in the 1960s and 1970s, in large part because the “Christian Right” and the “Moral Majority” became politically active.<sup>27</sup> In order to mete out the question of “Christian” or “Secular,” it is import to first recognize the inherent problems with using the word “secular” (used in its truest sense “secular” refers to political secularism without implicating personal religion) and second, recognize that religion has only recently become a tool in political leveraging by the political right.

Since the founding and independence of the United States, the adoption of a state-sponsored religion has been staved off by adopting, instead, what is known as America’s “civil religion.” Although based upon the principles of virtue informed by Protestant Christianity, Christianity was never expressly adopted by the State. Early in American history, religious groups, after being given equality through the religious integration movements, began to exert influence on politics as coalitions.<sup>28</sup> In response to the fear of a state-sponsored religion, political leaders such as James Madison calmed the nerves of the colonists, who remembered religious faction violence by stating that the groups would not be competing for state power, but would act as a mutual check on one another.<sup>29</sup> However, religious political leaders continued to invoke the necessity of belief in a higher being to ensure civil stability, regardless of the nature of the belief or from which denomination the belief arose.<sup>30</sup>

Therefore, as a compromise, after the American Revolution, it was deemed important to refer to America as “religious,” without further specification, and only through general monotheistic means, as any further defining of the religion (Christian, Protestant, Calvinist, etc.) would “fray the bonds of union” between the religious factions. This is based on the “nineteenth-century conviction that religion, in and of itself, preserves order,” and “[w]ithout religion, there would be no morality, no honesty, and no trust.”<sup>31</sup>

Around the same time period, a portion of mainstream Christianity was challenged for its exclusiveness, where the narrow-mindedness of those who despised

26 See generally Courtney Miller, “*Spiritual but not Religious*”: Rethinking the Legal Definition of Religion, 102 VA. L. REV. 833 (2016) (displaying the complexity of trying to provide a modern definition of “religion”).

27 See Fea & Berlinerblau, *supra* note 5, at 19–20.

28 See BENEKE, *supra* note 6, at 91 (explaining that during assembly election in Pennsylvania in 1764, Quakers, Herrnhuters, Mennonites, and Schwenkfelders formed one party, while English of the High Church, Presbyterians, German Lutherans, and the German Reformed formed a second party—creating coalitions across religious lines that were previously unheard of). Further, other religious groups, such as Presbyterians and Anglicans, had been involved with politics since the 1740s. *Id.* at 93.

29 See *id.* at 91.

30 See *id.* at 160.

31 *Id.* at 159–160.

non-Christian sects, such as the Deists and Universalists, eventually became socially unpopular when measured against the open-mindedness of considering an issue from multiple perspectives (or denominations). This new, socially popular, and accepting mindset led to the late eighteenth-century culture of indifference to the religions of others, creating the semblance of social acceptance amongst religious factions.<sup>32</sup> The American population seemed to adopt a "civil religion," encompassing a commitment to private worship and the enactment of God's will through nonsectarian public policies," that advanced a "scheme of national religious government that would have advanced shared moral principles, while leaving each group 'sovereign' in its particular beliefs."<sup>33</sup> What resulted was that explicit religious doctrine moved to the background; it became far more important to Americans that they shared fundamental political principles with their neighbor, resulting in a "preference for piety of theology," and a "disdain for restrictive creed."<sup>34</sup>

America held this "civil religion" to be near and dear, and although it is clear that it was not based in a specified religious sect, it was largely informed by the Protestant Christian tradition.<sup>35</sup> In early United States history, eight of every ten Americans attended some form of religious service,<sup>36</sup> so when it came to defining the country's values, many found common and agreeable ground upon which to build the nation in fundamental, but generally applicable, religious values. According to Vetterli and Bryner, "The Bible was the primary source of the idea of virtue. . . . [P]ublic virtue was the application of [Christian] principles by a Christian people to the society in which they lived."<sup>37</sup> This virtue, the underlying current of the civil religion, was informed by Puritanical ideals of morality and religion, and it was held that private, religious virtue should precede and inform public virtue, meaning that although the civil religion was not named as Christian, it was built upon the pervasive Christian tradition in America.<sup>38</sup> In fact, the omnipresence of Christianity is likely why the status of the nation as Christian or secular was never questioned—there simply was not a large enough population to make such a challenge. The Supreme Court remarked on this omnipresence, going as far as to state that that "this is a Christian nation" because of such prevalence of Christianity.<sup>39</sup>

Notably, James Madison and Thomas Jefferson, among others, stood stalwart for the adoption of express, non-denominational Christian principles into government. Madison's reasoning was strongly stated in his "Memorial and Remonstrance," where he asked, "Who, . . . does not see that the same authority which

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32 See *id.* at 169–171.

33 *Id.* at 159–160.

34 See *id.* 164–180.

35 RICHARD VETTERLI & GARY BRYNER, *IN SEARCH OF THE REPUBLIC: PUBLIC VIRTUE AND THE ROOTS OF AMERICAN GOVERNMENT* 47 (1996).

36 See BENEKE, *supra* note 6, at 8.

37 See VETTERLI & BRYNER, *supra* note 35, at 50–51.

38 *Id.* at 58–59.

39 *Church of the Holy Trinity v. United States*, 143 U.S. 457, 471 (1892) (noting that the presence of the appeals to the Almighty in oaths of office, the use of legislative prayer at all governmental levels, the laws that observe the Sabbath, and presence of public Christian organizations all indicate the overwhelming prevalence of Christianity in the United States).

can establish Christianity in exclusion of all other religions may establish with the same ease any particular sect?”<sup>40</sup> Jefferson, in his Letter to the Danbury Baptist, stated that “religion is a matter which lies solely between Man & his God, . . . [and] that the legitimate power of government reach actions only, not opinions.”<sup>41</sup> Jefferson further remarked on the First Amendment stating that it “build[s] a wall of separation between Church & State.”<sup>42</sup> This line of thought led to the fundamental notion that “the essence of civil society is the primacy of civil law rather than religious law,” and that “civil society cannot endure if religious law is supreme to state law.”<sup>43</sup>

Those who argue that America is a secular nation posit that the leading arguments for America being a “Christian Nation” rely upon the supposed original intent of the Constitution,<sup>44</sup> but ignore other important documents that suggest or state otherwise.<sup>45</sup> For one example, the Declaration of Independence may refer to inalienable rights derived from natural law and God, but there is a distinct absence of any statement declaring that America is a Christian nation.<sup>46</sup> Incredibly, one can look to contradicting documents that state both that America is a stated secular nation (Treaty of Tripoli) and, simultaneously, that it will promote religion (Northwest Ordinance).<sup>47</sup>

With the foregoing in mind, it is clear that it is difficult to provide a blanket conclusion as to the “religiosity” of America. On the one hand, Framers such as James Madison and Thomas Jefferson suggested that America was to avoid the establishment of religion or blending of church and state, but, on the other hand, Protestant Christianity “[was] intrinsically connected to the political culture of the new nation” because of the pervasiveness and predominance of the sect in Colonial American culture and how the sect informed the principles of virtue upon which the “civil religion” was based.<sup>48</sup>

### C. *A Promising Compromise: The Argument for Soft Secularism in America.*

Amidst the confusion associated with determining whether America is Christian or Secular is the definitional issue of what “secular” means in this context. Charles Taylor defines secularism as “[a] move from a society where belief in God is unchallenged and indeed unproblematic to one in which it is understood to be one

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40 BENEKE, *supra* note 6, at 164.

41 Library of Congress, Jefferson’s Letter to the Danbury Baptists, INFORMATION BULLETIN (last visited Jan. 1, 2018), <https://www.loc.gov/loc/lcib/9806/danpre.html>.

42 *Id.*

43 GUIORA, *supra* note 1, at 15.

44 See Fea & Berlinerblau, *supra* note 5, at 20–22, (arguing that the Constitution is facially silent on the matter, so to use the document would require implicating the original meaning and intention of the Framers).

45 See *id.* at 20.

46 See *id.* at 20–21.

47 See *id.* at 23–25.

48 See Conkle, *supra* note 4, at 3–4.

option among others, and frequently not the easiest to embrace.”<sup>49</sup> Jacques Berlinerblau defines secularism as “[a] political philosophy which . . . is preoccupied with, and often deeply suspicious of, any and all relations between government and religion.”<sup>50</sup> And, finally, defining secularism in the legal arena seems to be credited to Justice Black’s opinion in *Everson v. Board of Education* in 1947 when he stated that there exists a “wall of separation” between church and state that is “high and impregnable,” despite the fact that, prior to 1947, that could not be quite true (e.g., Congress’s allowance of military chaplains, legislative prayer, etc.).<sup>51</sup> None of these definitions recognize the complexity of American religion and politics as separate entities rather each one “creates a false dichotomy” of American origins as either a nation of Christians or a nation of atheists.<sup>52</sup>

Phil Zuckerman defines something *secular* as nonbelief, either intentional or unintentional, but defines *secularism* as an “ideology, political movement, social movement” that possesses a particular agenda toward actively changing society.<sup>53</sup> By making this distinction, Zuckerman accounts for the fact that one may be individually religious while being politically secular. This notion is filled out by Barry Kosmin when he defines secular revolution as being either “hard” or “soft,” where “hard” is seen as a movement toward state atheism and “soft” is a movement toward state pluralism.<sup>54</sup> The latter best represents the colonial “liberal’ revolution that tend[ed] to produce a more moderate, constitutional ‘soft secularism’” that was “characterized by indifference or neutrality toward religion or encouragement of religious pluralism.”<sup>55</sup> Soft secularism, Kosmin states, is most apparent in states where there is deep “respect for ‘the past’ and the ‘national heritage.’”<sup>56</sup> Soft secularism is a political philosophy that results in depriving religious leaders of political power but maintaining a benign attitude toward their religious beliefs. This notion has been consistently backed by religious liberals, the Baptists prior to the 1970s,<sup>57</sup> atheists, and agnostics.<sup>58</sup>

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49 CHARLES TAYLOR, *A SECULAR AGE* 3 (2007).

50 JACQUES BERLINERBLAU, *HOW TO BE SECULAR: A CALL TO ARMS FOR RELIGIOUS FREEDOM* at xvi (2012).

51 *See id.* at 22–23; *see also* *Everson v. Board of Education*, 330 U.S. 1, 15–16 (1947), (*citing* *Reynolds v. United States*, 98 U.S. 145, 164 (1878) (“The whole American people which declared that their legislature should ‘make no law respecting an establishment of religion or prohibiting the free exercise thereof,’ thus building a wall of separation between church and State.”)).

52 *See* Erika B. Seamon, *The Dangers of Conflating Secular People and Secularism: A Response to Fea, Kosmin, Zuckerman, and Berlinerblau*, in *SECULARISM ON THE EDGE: RETHINKING CHURCH-STATE RELATIONS IN THE UNITED STATES, FRANCE, AND ISRAEL* 74 (2014).

53 *See* Phil Zuckerman & Jacques Berlinerblau, *Secular America: Nones, Atheists, and the Unaffiliated*, in *SECULARISM ON THE EDGE: RETHINKING CHURCH-STATE RELATIONS IN THE UNITED STATES, FRANCE, AND ISRAEL* 56 (2014).

54 *See* Barry A. Kosmin, *The Vitality of Soft Secularism in the United States and the Challenge Posed by the Growth of the Nones*, in *SECULARISM ON THE EDGE: RETHINKING CHURCH-STATE RELATIONS IN THE UNITED STATES, FRANCE, AND ISRAEL* 35 (2014).

55 *Id.* at 37.

56 *Id.*

57 In the 1970s, Baptists, who had previously backed the premise of soft secularism, joined the Moral Majority as a response to political and legal decisions, such as *Roe v. Wade*. *See id.* at 39.

58 *See id.*

While it may be initially surprising that religious liberals and Baptists originally supported the premise of soft secularism, it is important to remember that Americans are “heir[s] to the Protestant heritage of the Reformation, whereby religious individualism and autonomy predated any concept of political autonomy.”<sup>59</sup> This religious individualism harkens back to the initial formulation of toleration and religious liberty in the eighteenth century when Americans realized that they needed a secular state and public life as “a neutral playing field” to keep any one religious sect from controlling in American public policy, despite the pervasiveness of Protestant Christianity.<sup>60</sup> We see this in the “atheological legacy rooted in the liberal Protestantism of the eighteenth and nineteenth centuries,” as well as Unitarianism that was championed by Thomas Jefferson and other “Enlightenment rationalists.”<sup>61</sup>

While this “soft secularism” or “political secularism” may be construed as the instatement of atheism as a State policy—whereby atheism is negatively stigmatized in American society—that generalization would be incorrect.<sup>62</sup> Instead, it is the notion that governmental, legal, and political leaders can have religious value backgrounds while maintaining political secularism.<sup>63</sup> Erika Seamon posits that extreme generalizations are made about both the religious and the secular leaders of our nation, whereby the religious are assumed to desire the creation of an established religion—civil or doctrinal—and that the secular are assumed desire acute hostility or disregard for religion.<sup>64</sup> However, conflating an individual’s beliefs as a presumption on his or her perspective of the relationship with the government is problematic because it “ignores growing groups of people in America who do not fit [into either category],” and ignores those who subscribe to the notion of soft or political secularism.<sup>65</sup>

It is in this “ignored” space where the Nones fit. They may be religious, they are certainly political, but neither categorization seems to fit. This is why Seamon advocates for a position of Interfaith Space, where the views that are highlighted and recognized are those of the individually and independently faithful, yet pursue political secularism. Further, associating views of personal faith as inherently locking in views of separationism is dangerous and limits the necessary conversation surrounding personal faith and political secularism.<sup>66</sup> Using a system employing something similar to an Interfaith Space would allow for soft secularism, the removal

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59 *Id.*

60 *See id.* at 40.

61 *See* Hedstrom, *supra* note 21, at 257.

62 *See* Zuckerman & Berlinerblau, *supra* note 53, at 58–59.

63 *See id.* at 65. Zuckerman and Berlinerblau take this notion one step further by challenging the notion that religion is good for society, and necessary for functioning civil order, effectively dismissing the premise set by Edmund Burke and Alexis de Tocqueville and reinforced by contemporaries such as Newt Gingrich, Bill O’Reilly, and Michelle Bachmann. They look at the nations who are most religious and see they have high murder rates (Colombia, El Salvador, the Philippines), while the secular nations have some of the lowest murder rates (Japan, Scandinavia). Essentially, they argue that the notion that religion breeds social order should be rejected. *Id.* at 59–61.

64 *See* Seamon, *supra* note 52, at 72. Seamon attributes this dichotomy to the rise of the Religious Right and the Right’s demonizing of the word “secular,” creating a notion of presumptive distrust between the two camps. *See id.* at 72–74.

65 *See id.* at 74–77.

66 *See id.* at 77–78.

of religiously-integrated political groups, and the development of politically secular law.

## II. DEFINING AMERICA'S RELIGIOUS NONES

As currently provided by legal scholarship, there is very little offered to describe and extrapolate on the phenomenon of the increase in the None demographic. Further, most articles place Nones in the position of bystanders or symptoms of subtle changes of political and legal religiosity rather than a causative force. It is important to see this group as the latter, as the Nones stand for a distinct change in public perception of law based upon religious morals, which may be a driving force behind the change on legal perspectives seen in anti-sodomy laws, same-sex marriage, and abortion, and could have a future impact on such legal issues as legislative prayer and the presence of military chaplains.

### A. Basic "None" Demographics.

Religious Nones now make up approximately 23% of the United States adult population, rising from 16% in 2007, and 2.7% in 1957 (see figure below).<sup>67</sup> This increase has occurred in every region of the United States (albeit more aggressively in geographically secular regions, such as the Northeast and the West Coast), and in every socioeconomic and racial group.<sup>68</sup> Nones are generally younger, with 35% of them being Millennials and only 28% accounting for both Baby Boomers and the Silent Generation.<sup>69</sup> Though they register as Independent,<sup>70</sup> they vote left,<sup>1</sup> as the Democratic Party has taken a majority of the unaffiliated voters in the 2000, 2004, and 2008 presidential elections—more specifically, Nones vote three-to-one Democratic on social issues.<sup>71</sup>

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67 Lipka, *supra* note 2; see also Kosmin, *supra* note 54, at 42.

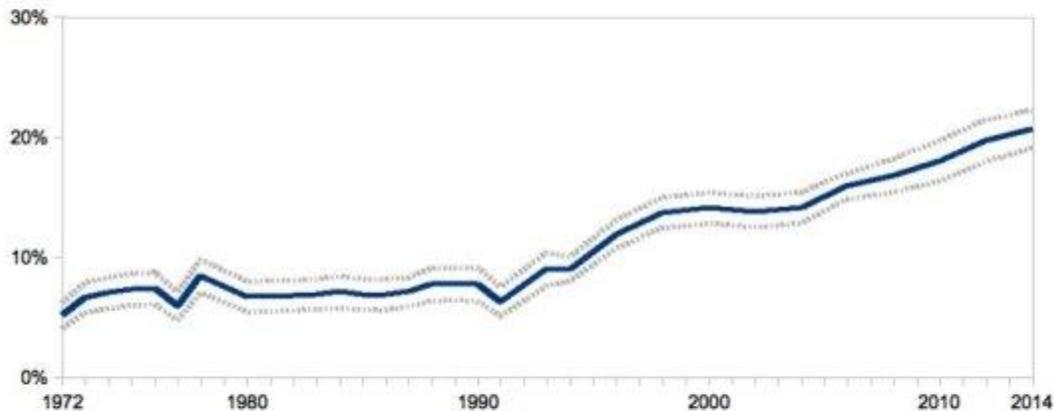
68 See Kosmin, *supra* note 54, at 42.

69 See Zuckerman & Berlinerblau, *supra* note 53, at 51–52.

70 Approximately 49% of Nones were registered Independent in 2008. See Kosmin, *supra* note 54, at 47.

71 See Zuckerman & Berlinerblau, *supra* note 53, at 52; Hedstrom, *supra* note 21, at 250, 256.

### Percentage of Americans who say their religious preference is "none"



Solid blue line represents the percentage each year.  
Dotted gray line is the upper/lower bounds of the 95 percent confidence interval (the average plus/minus the margin of error).  
Source: General Social Survey

Corner of Church & State <http://tobingrant.religionnews.com/>

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While many of the Nones are former Christians who left their sect for a multitude of reasons and are now atheist or agnostic in orientation (but not self-designation),<sup>73</sup> still other Nones are religious, with a large number of Nones falling into an “Interfaith Space” where individuals are involved in religious, spiritual, and nonreligious worldviews simultaneously, therefore not fitting into a traditional, one-dimensional religious category.<sup>74</sup> As much as 60% of the None population are members of a religious congregation, while only a minority associate with overtly secular groups.<sup>75</sup> Several Nones, around 11%, were raised without religion, which is dramatically greater than the 2% of Nones twenty years ago.<sup>76</sup>

The relationship between higher education and status as a None, or believer, is unclear—some argue that more education only means less belief in only fundamentalism, while others argue that education reduces religiosity in general.<sup>77</sup>

That being said, the first time a president acknowledged the changed religious make-up of Americans to include the religiously unaffiliated was in 2009, when President Obama stated in his inaugural address that the United States is “a nation of Christians and Muslims, Jews and Hindus, and non-believers.”<sup>78</sup>

72 Tobin Grant, *7.5 Million Americans Have ‘Lost their Religion’ Since 2012*, HUFFINGTON POST, March 13, 2015, [http://www.huffingtonpost.com/2015/03/13/americans-no-religion\\_n\\_6864536.html](http://www.huffingtonpost.com/2015/03/13/americans-no-religion_n_6864536.html) (last updated Mar. 16, 2015).

73 See Zuckerman & Berlinerblau, *supra* note 53, at 52.

74 See Seamon, *supra* note 52, at 75.

75 See Kosmin, *supra* note 54, at 45.

76 See Seamon, *supra* note 52, at 68–69.

77 See *id.* at 54–55; *contra see* Kosmin, *supra* note 54, at 45.

78 See Hedstrom, *supra* note 21, at 250–51.

### B. *Where Did the Nones Come From?*

It would be most accurate to suggest that the Religious Nones arose from a reaction to the political influence of religiously oriented groups known as the Christian Right and the Moral Majority.

In the 1960s, "secularism" meant that political actors could be religious, but their religion could not interfere with their ability to serve the public. However, the combination of the Supreme Court decisions of *Engel v. Vitale*,<sup>79</sup> *School District of Abington Township v. Schempp*,<sup>80</sup> and *Roe v. Wade*,<sup>81</sup> as well as the Immigrant Act of 1965<sup>82</sup> and corruption of the Nixon administration (1972-1974),<sup>83</sup> the social and political conditions were provided to allow for the rise of the Moral Majority and the Christian Right.<sup>84</sup>

Prior to this time, the "civil religion" of America "employed biblical rhetoric and a broad if vague monotheism as a basis for thinking and talking about common values and national purpose."<sup>85</sup> However, "when the Religious Right began agitating against abortion, feminism, and gay rights, liberals began to identify organized Christianity with conservative politics."<sup>86</sup> Since the 1970s, the Christian Right has continued to use politics to advance their own religious doctrine.<sup>87</sup>

While the label "spiritual but not religious" may have emerged in the 1990s, the rise of Religious Nones (who are often associated with the "spiritual but not religious" label) should be attributed to "a natural reaction to the political activism of the Religious Right since the 1980s" and specifically to "[t]he politicization of religion and triumphalism of conservative and evangelical Christians who wish to incorporate their belief and practice into the polity in recognizable ways has produced a social and political reaction on the other side."<sup>88</sup> For example, when the term "Judeo-Christianity" was used in 2004 by the Bush campaign to seize the evangelical vote, the Nones may have perceived "Judeo-Christianity" to no longer signify an inclusive "civil religion" but a message similar to historical tolerance and justified on a narrow, sectarian basis.<sup>89</sup>

Essentially, during the turn of the century, the Nones, disenchanted by the infusion of religion and politics, began to realize that "[l]eaving organized religion is

79 *Engel v. Vitale*, 370 U.S. 421 (1962) (removing prayer in public schools).

80 *School District of Abington Township v. Schempp*, 374 U.S. 203 (1963) (removing mandatory Bible readings from school curricula).

81 *Roe v. Wade*, 410 U.S. 113 (1973) (authorizing a woman's choice to abortion).

82 Immigration and Nationality Act, amendments., 79 Stat. 911, 89 P.L. 236 (1965).

83 *See generally Watergate: The Scandal That Brought Down Richard Nixon*, WATERGATE.INFO, watergate.info (last visited Jan. 13, 2017).

84 *See* Fea & Berlinerblau, *supra* note 5, at 29–30.

85 *See id.* at 251.

86 *See* Hedstrom, *supra* note 21, at 255.

87 *See id.*

88 Kosmin, *supra* note 54, at 42, 44. In the late 1990s and early 2000s, there was a paradigm shift, where a growing portion of the public began to label themselves as "spiritual but not religious" and began to feel alienated by the association of Christianity with conservative politics. *See* Hedstrom, *supra* note 21, at 253–256.

89 *See* Hedstrom, *supra*, note 21, at 253.

a viable religious option for young Americans today because they affirm, with their liberal religious predecessors, that truth is not exclusive to any one faith tradition, and certainly not to be found in religion's creeds or rituals."<sup>90</sup>

### C. What do Nones "Believe"?

Berlinerblau and Fea hold that faith does not belong in politics and government, that it is an individual pursuit, and that the religious and the secular should work together toward common good, stating, "We don't need to have a Christian nation in order to live faithfully in the world," and can still "work together to make the world a better place."<sup>91</sup> To this end, Nones "are not strongly anti-religious. They're just relatively indifferent. They just don't care about religion . . . . Most of them were raised religious, but they're no longer religious."<sup>92</sup> In other words, Nones are living "benignly indifferent to religion in general."<sup>93</sup>

Instead, the Nones are an "affinity group," a unit that believes the same beliefs but are not a "cohesive, self-conscious constituency."<sup>94</sup> This means that they do not organize or operate as a unit, rather they seem to merely agree on many of the same issues.<sup>95</sup> In fact, Kosmin argues that not only are the Nones merely an "affinity group," but that they also lack centralized leadership and proper political branding and marketing that would allow for the group to unify under a distinct banner.<sup>96</sup>

While Nones may be politically secular, believing that "religious background is less important" in politics, it is also clear that many of them are still shades of spiritual or religious, with 70% of them believing in God or some sort of higher power.<sup>97</sup> Clearly, "unaffiliated does not mean 'without religion.'"<sup>98</sup> Many engage in "free-range faith" where any given None participates in a multitude of religious tradition, simply not adhering to a singular one, while maintaining a reverence for Christian Scripture.<sup>99</sup> This new "free-range faith" tracks closely with the phenomena of modernization and individualization of religious beliefs described by Professor Daniel Conkle.<sup>100</sup> In fact, Conkle states that modern "[r]eligious or spiritual believers

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90 See *id.* at 265.

91 Fea & Berlinerblau, *supra* note 5, at 31–32.

92 Zuckerman & Berlinerblau, *supra* note 53, at 52.

93 See *id.* at 53.

94 See Kosmin, *supra* note 54, at 44.

95 See *id.*

96 See *id.* at 44–46. The branding that Kosmin recommends is promoting soft secularism as the "true history" of American civil religion by focusing on the statements, or lack thereof, concerning religion and government in the Declaration of Independence and the Constitutional Convention. See *id.* at 46.

97 See Elizabeth Drescher, *The Gospel According to the 'Nones'*, AMERICA MAGAZINE, June 8–15, 2015, <http://www.americamagazine.org/issue/gospel-according-nones> (last visited Jan. 12, 2017); see also Rabbi Eric H. Yoffie, *Religion Has Nothing to Fear From the 'Nones'*, THE HUFFINGTON POST, Apr. 8, 2013, [http://www.huffingtonpost.com/rabbi-eric-h-yoffie/religion-has-nothing-to-fear-from-the-nones\\_b\\_3033881.html](http://www.huffingtonpost.com/rabbi-eric-h-yoffie/religion-has-nothing-to-fear-from-the-nones_b_3033881.html) (last updated June 8, 2013).

98 See *id.*

99 See Drescher, *supra* note 97.

100 See Daniel O. Conkle, *Religious Truth, Pluralism, and Secularization: The Shaking Foundations of American Religious Liberty*, 32 CARDOZO L. REV. 1755, 1774–76 (2011).

holding individualized belief structures . . . tend to reject or distrust traditional religious theology and doctrines altogether . . . they are likely to reject any distinctive constitutional or legal protection for religious beliefs or practices as such.”<sup>101</sup>

Most succinctly, and with some generalization, Nones believe in the institution of soft secularism, or “political secularism.”<sup>102</sup> There is a clear distaste for the political practices of the Religious Right with its notable “religion-infused politics and politics-infused religion.”<sup>103</sup>

With all this in mind, it is clear that, even with the rise of the Nones, we are not moving toward an atheist, agnostic, or areligious nation. The rise of the None population is attributed to distaste with organized and politicized Christianity, not against belief itself. Many will remain affiliated with traditional organized religion, and many of those who do abandon traditional religion are seeking “to give religion an even wider berth, to liberate it from its political shackles.”<sup>104</sup> Essentially, the rise of the Nones is “a massive generational shift toward [religious] re-enchantment.”<sup>105</sup>

### III. IN POLITICS AND LAW, WHY THE RELIGIOUS NONES MATTER

#### A. *The Socio-political Impact of the Nones.*

Kosmin suggests that if the Nones were able to mobilize under a political banner or at the voting booths, they would have a considerable political impact.<sup>106</sup> To some extent, it seems as though this prediction is already coming to fruition. As with the notoriety of the Nones increasing, surveys are being conducted that illustrate a significant portion of the United States separating the nation from Christianity. Specifically, as of June of 2015, 45% of Americans no longer believe that America is a Christian Nation.<sup>107</sup>

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101 *Id.* at 1776.

102 *See generally* Kosmin, *supra* note 54. *See also* Zuckerman & Berlinerblau, *supra* note 53, at 58–65.

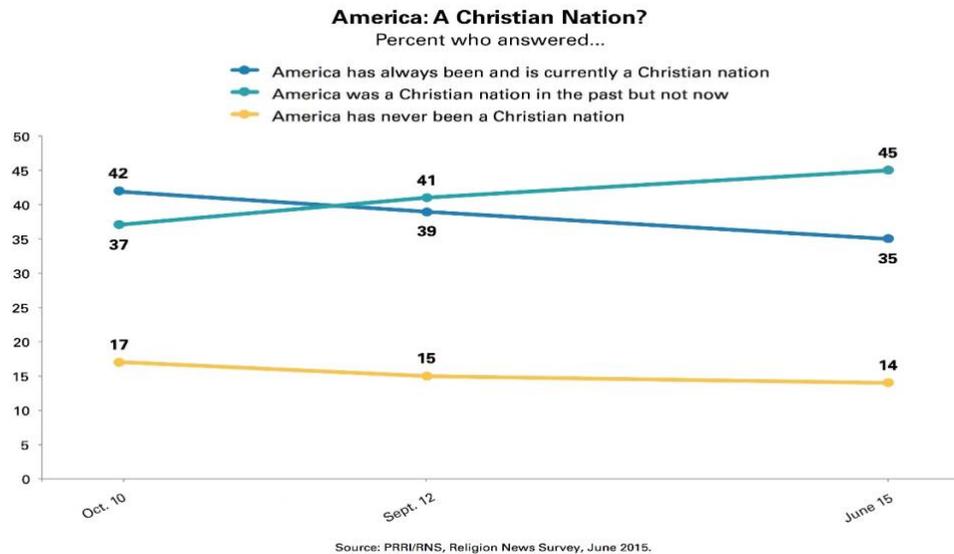
103 *See* David E. Campbell, *Religious Tolerance in Contemporary America*, 62 DEPAUL L. REV. 1009, 1018 (2013).

104 *See* Hedstrom, *supra* note 21, at 265.

105 *Id.*

106 *See* Kosmin, *supra* note 54, at 44–46.

107 *See* Daniel Cox & Joanna Piacenza, *Is America a Christian Nation? Majority of Americans Don't Think So*, PRRI, July 2, 2015, <http://www.pri.org/spotlight/is-america-a-christian-nation-nearly-half-of-americans-no-longer-think-so/> (last visited Jan. 12, 2017).



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This public perception is not without political significance either. Approximately 58% of Americans and 53% of Christians “oppose allowing a small business owner to refuse products or services to gay and lesbian people, even if doing so violates their religious beliefs.”<sup>109</sup>

This outspokenness and perception of political secularism is not going unnoticed by the American political elite. Mayor Bill De Blasio is recognized for being an outspoken None and adherent of political secularism.<sup>110</sup> Further, President Obama has twice stated that America is no longer a Christian Nation.<sup>111</sup> While this may seem innocuous, it could also be interpreted as a move toward a modern take on soft secularism, whereby then-President Obama is referring to a generalized civil religion.

Where “[t]he Religious Right was ostensibly formed to reassert the place of religion . . . in American society,” there is clearly an ongoing movement to push back against the religious influence of politics.<sup>112</sup> This push-back and change in perception of religion and politics has had the effect of limiting the campaigning done from the pulpit and clergy. While the topics of abortion, same-sex marriage, and contraception were all at issue in the 2012 election cycle, the Pew Forum on Religious and Public life reported that, “[W]hile many regular churchgoers say they have been encouraged

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108 *Id.*

109 Daniel Cox & Joanna Piacenza, *America No Longer a Christian Nation: And Other Critical Data from 2015*, RELIGION DISPATCHES, (Dec. 28, 2015), <http://religiondispatches.org/america-no-longer-a-christian-nation-and-other-critical-data-from-2015/>.

110 See Sarah Pulliam Bailey, *Mayor Bill De Blasio’s Faith: A ‘Spiritual But Not Religious’ Leader and Pioneer*, HUFFINGTON POST (Jan. 23, 2014), [http://www.huffingtonpost.com/2014/01/06/bill-de-blasio-faith\\_n\\_4551104.html](http://www.huffingtonpost.com/2014/01/06/bill-de-blasio-faith_n_4551104.html) (last updated Jan. 23, 2014).

111 See Kathleen Gilbert & John-Henry Westen, *Obama: “We Do Not Consider Ourselves a Christian Nation”*, LIFESITENEWS (Apr. 8, 2009), <https://www.lifesitenews.com/news/obama-we-do-not-consider-ourselves-a-christian-nation> (last visited Jan 12, 2017).

112 See Campbell, *supra* note 103, at 1019.

to vote by their clergy, relatively few say church leaders are discussing the candidates directly or favoring one candidate over the other.”<sup>113</sup>

Essentially, we have already begun to see the disentanglement of politics and religion as motivated socially by the American public. This change in political representation tracks the social change of an increased population of the None demographic.

### B. *The Present Legal Impact of the Nones.*

Throughout contemporary legal history, there has been a subtle shift from legal adherence to the Judeo-Christian tradition to the secularization of law that does not deal directly with religious liberty, which closely tracks the political changes from the evolution of the Religious Right to the advent of the Religious None, though no such connection was explicitly made. The primary example this Note shall rely on is the evolution of the Supreme Court's stance on anti-sodomy laws between *Bowers v. Hardwick* and *Lawrence v. Texas*.

In 1986, somewhat after the Religious Right's formation in the 1970s, the Supreme Court found in *Bowers v. Hardwick*, where the Supreme Court was asked “whether the Federal Constitution confers a fundamental right upon homosexuals to engage in sodomy and hence invalidates the laws of the many States that still make such conduct illegal and have done so for a very long time,” that “notions of morality” were sufficient justification for sodomy laws.<sup>114</sup> In his concurrence, Justice Burger specifically stated that the “notions of morality” were “firmly rooted in Judeo-Christian moral and ethical standards.”<sup>115</sup> While this majority opinion perhaps represented the civil religion of the time, Justice Blackmun dissented, stating:

That certain, but by no means all, religious groups condemn the behavior at issue gives the State no license to impose their judgments on the entire citizenry. The legitimacy of secular legislation depends instead on whether the State can advance some justification for its law beyond its conformity to religious doctrine.<sup>116</sup>

Blackmun condemned the choice to parrot a law on the shoulder of tradition when it blatantly ignored the fact that “the grounds upon which [the original law] was laid

113 *Id.* at 1021 (citing Pew Research Ctr., *In Deadlocked Race, Neither Side Has Ground Game Advantage*, PEW RESEARCH CENTER: U.S. POLITICS AND POLICY, Oct. 31, 2012, <http://www.people-press.org/2012/10/31/in-deadlocked-race-neither-side-has-ground-game-advantage/> (last visited Jan. 14, 2017)). Religious leaders were put on notice that they were barred from making partisan comments in 2015 through the IRS's Publication 1828 which states that organizations, such as churches, will lose their IRC § 501(c)(3) tax-exempt status for making such comments. See Publication 1828 (Rev. 8-2015), Tax Guide for Churches & Religious Organizations, DEPARTMENT OF THE TREASURY (2015) [hereinafter Publication 1828], <https://www.irs.gov/pub/irs-pdf/p1828.pdf>.

114 478 U.S. 186, at 190, 196 (1986).

115 *Id.* at 196 (Burger, J., concurring).

116 *Id.* at 201 (Blackmun, J., dissenting).

have vanished long since, and the rule simply persists from blind imitation of the past.”<sup>117</sup> Georgia, in Blackmun’s opinion, needed to “do more than assert that the choice they have made is an ‘abominable crime not fit to be named among Christians.’”<sup>118</sup>

Though the doctrine set under *Bowers* stood for seventeen years, Justice Blackmun’s dissent eventually gained traction in *Lawrence v. Texas* when the Supreme Court revisited anti-sodomy laws, overruling them as violating the liberty “touching upon the most private human conduct.”<sup>119</sup> Justice Kennedy’s opinion acknowledged that “the Court in *Bowers* was making the broader point that for centuries there have been powerful voices to condemn homosexual conduct as immoral. The condemnation has been shaped by religious beliefs.”<sup>120</sup> Ultimately, he concluded, “Our obligation is to define the liberty of all, not to mandate our own moral code.”<sup>121</sup> Justice O’Connor concurred stating that “[a] law branding one class of persons as criminal solely based on the State’s moral disapproval of that class and the conduct associated with that class runs contrary to the values of the Constitution . . . under any standard of review.”<sup>122</sup> The consensus, it seemed, was that justifying a law solely with traditional Christian morals was not sufficient for the Supreme Court to uphold laws. Again, this tracks the early recognition of the growing None population. It was in the 2000s that the None population was recognized as approximately 15% of the population.<sup>123</sup>

Though this connection is not technically causal, it would not be prudent to ignore the fact that the Supreme Court overturned a seventeen-year-old decision around the same time that the public began to change its collective opinion about laws motivated by Christian-moral tradition. Furthermore, Nicholas Roberts states that social opinion can place institutional pressure on a Court to influence its decision through a specific strategic model.<sup>124</sup>

The strategic model explains why the Court would be concerned with self-preservation in the first place. In a nutshell, this model supposes that judges understand that “they are constrained in their powers by the operation of outsiders, which may include the Congress, the President, the general public, state governments, private interest groups, attorneys, litigants, or other entities,” and suggests

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117 *Id.* at 199–200.

118 *Id.* at 200 (citing *Herring v. State*, 46 S.E. 876, 882 (1904)).

119 539 U.S. 558, 558 (2003).

120 *Id.* at 570.

121 *Id.* at 571.

122 *Id.* at 565 (O’Connor, J., concurring).

123 See *supra* text accompanying note 60.

124 See Nicholas C. Roberts, *The Rising None: Marsh Galloway, and the End of Legislative Prayer*, 90 IND. L.J. 407, 430–31 (2014).

that "judges amend their decisions to account for the preferences of these other actors."<sup>125</sup>

By this logic, the changing landscape of Supreme Court doctrine in the case of anti-sodomy laws could be attributed to the preferences of the general public at large.

If politicians and clergy are willing to back away from intertwining their worlds, and the Court is willing to surpass and limit the societal influence of traditional Christian morals in the realms of anti-sodomy laws and same-sex marriage, then where else may subtle social influence of the Nones make social, political, or legal changes?

### C. *The Potential Future Impact of the Nones.*

It would seem, as of yet, that the sphere of influence that the Nones have had over the political and legal arenas is limited to instances where individual rights are concerned (e.g., marriage, private association) or where there is excessive entanglement between government and religion (e.g., the Religious Right, partisan political statements made by church leaders)<sup>126</sup> We may see, in the coming years, the influence of the Nones over such matters as legislative prayer.

To begin with, the practice of legislative prayer, which seems at first blush like an inappropriate entanglement of Church and State, is the main focus of Nicholas Roberts in his article claiming that with the rise of the Religious None, soon comes the end to such practice.<sup>127</sup> It is Roberts' position that *Marsh v. Chambers*<sup>128</sup> and *Town of Greece v. Galloway*<sup>129</sup> were both wrongly decided, and that legislative prayer will "almost certainly be ruled unconstitutional eventually."<sup>130</sup> It has only survived this long, he posits, "because the American people have been willing to accept the practice. However, the public's acquiescence will not last forever, especially considering that the number of . . . [Nones] is growing."<sup>131</sup> Roberts, in applying his strategic model, shows that public opinion may influence the next decision the Supreme Court makes by threat of overruling the Court's decision by via the public's access to the legislative process and, specifically, to congressional legislation.<sup>132</sup> Because each "succeeding generation of new Americans [is] less religious than the one before it," it is only a matter of time before the practice of legislative prayer is successfully challenged.<sup>133</sup> "Americans become more secular and

125 *Id.* at 431 (citing Frank B. Cross & Blake J. Nelson, *Strategic Institutional Effects on Supreme Court Decisionmaking*, 95 NW U.L. REV. 1437, 1446 (2001)).

126 See Publication 1828, *supra* note 109, at 12.

127 See generally Roberts, *supra* note 124.

128 463 U.S. 783 (1983) (holding that the opening of state legislature sessions with prayer did not violate the Establishment Clause).

129 134 S. Ct. 1811 (2014) (holding that the practice of opening town meetings with a prayer did not violate the Establishment Clause).

130 See Roberts, *supra* note 127, at 408.

131 *Id.* at 408–409.

132 See *id.* at 432.

133 See *id.* at 437.

less attached to religion, they will likely also grow less tolerant of the Court's preference for monotheistic religions—and Christianity in particular—over all others. Such a shift would remove the institutional pressures that have forced the Court to uphold legislative prayer until now.”<sup>134</sup> According to Roberts, all that is required for political or legal change to occur is not for a majority of Americans to become Nones or for Christians to become a minority, but merely that a majority of Americans “become sympathetic to the cause.”<sup>135</sup>

Essentially, if the Nones continue to grow in population and if sympathy is the only requirement for change, America may be due for continued changes, such as the removal of legislative prayer or military chaplains. What remains as a further question is how the increased frequency of Nones will implicate religious liberties. For example, with a majority of Americans believing that business owners should not be able to discriminate based on sexual orientation for service based upon religious ideology, is this practice ripe for change? Secondly, will the religious doctor be denied the ability claim the status of conscientious objector to refuse providing certain kinds of medical care that that doctor finds contradictory to her own religious morals? These questions, while beyond the scope of this Note, will become more important as time moves on.

## CONCLUSION

Some commentators believe that the rise of the Religious Nones and their secularization of law and politics is a prediction for strain on American religious liberty,<sup>136</sup> or even the end of religion itself.<sup>137</sup> Others disagree, providing arguments for the ongoing necessity of religion and the special importance of protecting the status of religion and religious liberty in the United States.<sup>138</sup> Rabbi Eric Yoffie holds that while there is ongoing skepticism, “[c]hurch and synagogue will not be abandoned but reconfigured. Religious authority will not be discarded but rethought.

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134 *Id.*

135 *See id.*

136 *See* Conkle, *supra* note 4, at 23–28 (stating that formal neutrality will result in the long-term effect of the secularization of religion and, potentially, the cabining of religion as “irrelevant” in modern America).

137 *See generally* Gary Laderman, *The Rise of Religious “Nones” Indicates the End of Religion As We Know It*, HUFFINGTON POST, Mar. 20, 2013, [http://www.huffingtonpost.com/gary-laderman/the-rise-of-religious-non\\_b\\_2913000.html](http://www.huffingtonpost.com/gary-laderman/the-rise-of-religious-non_b_2913000.html) (last updated May 19, 2013) (“[T]he rise of the “nones” surely suggests it is the end of religion as we know it. Forget churches; forget priests and pastors; forget the Bible; forget organized religion generally.”). *See also* Gabe Bullard, *The World’s Newest Major Religion: No Religion*, NATIONAL GEOGRAPHIC, Apr. 22, 2016, <http://news.nationalgeographic.com/2016/04/160422-atheism-agnostic-secular-nones-rising-religion/> (last visited Jan. 14, 2017) (predicting great public swaths of Atheism resulting in total Western secularization).

138 *See generally* Brian Leiter, *Why Tolerate Religions*, 25 CONSTR. COMMENTARY 1, 26 (2008) (positing that, aside from Hobbesian and Lockean arguments, religion should be tolerated, at the very least, under the concept of a liberty of conscience, encompassing individualized religious belief).

And a restless, changing America will, yet again, create a synthesis between religious tradition and modernity that will reshape our religious institutions.”<sup>139</sup>

Regardless, when it comes to politics and law governing matters and issues that are based solely on the premise of traditional Judeo-Christian beliefs, the Nones should be identified as a causative element of change—one towards the secularization of laws that have no foundation except for that of religion. If Roberts is to be believed, the only requirement for change in politics or law is that a majority of Americans “become sympathetic to the law.”<sup>140</sup> With no reason to believe that the growth of the Nones will slow, it is possible that the socio-political and legal landscapes of the near future will be far more secularized, or without religious-based morality, at least, than what we see today.

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139 Yoffie, *supra* note 97.

140 See Roberts, *supra* note 124, at 437.