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TWENTIETH CENTURY APPROACHES TO DEFINING RELIGION: CLIFFORD GEERTZ AND THE FIRST AMENDMENT

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Religious freedom is a fundamental feature of a democratic society.[1] In the United States, religious freedom is guaranteed through the Religion Clauses of the First Amendment. The First Amendment of the Bill of Rights begins: "Congress shall make no law respecting the establishment of religion, nor prohibiting the free exercise thereof."[2] Although given pride of place in the Bill of Rights, there has been confusion and controversy over the meaning, scope, and purpose of these two phrases[3] among judges, lawyers, and constitutional scholars since the Constitutional Convention. The complexities of interpreting the two dimensions of religious freedom guaranteed by these two clauses increased with the adoption of the Fourteenth Amendment's incorporation clause, a growth in both religious and cultural diversity, and expansion of governmental involvement in the daily lives of individual citizens. But these three developments also increase the necessity of a clear understanding of religious freedom. Changes in the American landscape resulting from the Civil War amendments, a decline in cultural hegemony, and expansion in government responsibilities should not alter basic constitutional guarantees. Full analysis of constitutional protection of religious freedom exceeds the scope of this article, which focuses on developing a legal definition of "Religion" as used in the Religion Clauses.

My argument proceeds in four stages: In Part I, I present a brief survey of three key problems that have emerged in defining religion within the field of religious studies. Part II offers the definition of religion proposed by anthropologist Clifford Geertz as a possible response to these difficulties. In Part III, I examine criticisms of Geertz's ap-

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1. For my analysis of religious freedom on a discourse model of democratic political theory *see* Barbra Barnett, Religious Arguments in the Public Square: An Examination of Religious Freedom in Discourse Theory of Law and Democracy (in progress) (unpublished Ph.D. dissertation, University of Chicago).

2. U.S. CONST. amend. I.

3. Commonly referred to as the "Religion Clauses."

proach and whether these criticisms render futile the possibility of crafting a legal definition of religion. In Part IV, I sketch how an appropriation of Geertz's definition responds to the needs of courts by comparing a Geertzian approach to the definition of religion proposed by the U.S. Court of Appeals for the Third Circuit.

I. THE ACADEMIC STUDY OF RELIGION: CAN RELIGION BE DEFINED?

Many law review articles trace the difficulties involved with crafting a legal definition of religion. However, instead of reviewing various legal approaches, I tackle the problem from a different angle. Not only judges and legal scholars have difficulty settling upon a definition of religion. Even experts in the field of religious studies continue to debate what religion is and whether it is definable. I contend that the insights of those who have engaged in close, in-depth analysis of religion are invaluable to crafting a viable legal definition. The challenges confronted by such scholars, particularly as the academic study of religion came to critically reflect upon the assumptions and presuppositions that frame the field, are crucial to legal scholars as we aim for a definition of religion that is free from bias and misconceptions.

By the end of the last century, scholars of religion came to doubt whether a generally applicable definition of religion is possible. In order to better convey this crisis, I analyze three key difficulties encountered in defining religion. First, I examine the meta question of how one approaches the task of defining itself, *i.e.*, whether a definition ought to identify the core or essence of religion or merely mark the outline or limits of proper usage of the term. Next, I turn to debates in the field of religious studies about which method of analysis is best able to describe religion. This subsection will explore whether religion can be adequately understood by appropriating the Enlightenment framework and the methodology used in the natural sciences or whether religion is *sui generis*, pertaining to transhistorical, supernatural phenomena that cannot be grasped by means of rational inquiry and empirical analysis alone. The question of which mode of knowledge is best suited to the task of describing religion in turn leads to the third problem, that of perspective. Is religion a phenomenon that can be known only from the standpoint of an insider? Are believers the only persons capable of pronouncing what religion is? Or must an acceptable definition of religion be constructed from the perspective of an objective observer? Can there be such a thing as a neutral definition of religion, or is the definitional task inherently subjective, depending on and importing particular judgments about the object of study?

The historical progression of these three challenges demonstrates the emergence of the fundamental obstacle to defining religion in the current epistemological context. All knowledge is contingent and each of our so-called universal categories has historical roots and is shaped by cultural particularities. Concepts, like religion, are developed from within specific contexts and their shape and content is conditioned by their history. By the end of the twentieth century, the difficulties inherent in the task of crafting a generally applicable definition of religion led many to conclude that it was not a goal worth pursuing.[4] For reasons set forth below, I defend the approach of anthropologist Clifford Geertz as best able to meet these challenges and to serve the needs of constitutional scholars, lawyers, and judges. In addition, I hope my presentation of the difficulties encountered by religion scholars will serve as fair warning to others who seek to identify the meaning, scope, and purpose of the Religion Clauses. These difficulties will perhaps be of some value to courts attempting to discern a constitutional meaning of religion and are also useful for analyzing such attempts by legal scholars.

A. Defining Religion: The Problem of Essentialist Definitions

To define is to categorize and classify, to include and to exclude. However, the basis for inclusion and exclusion has proved difficult with respect to defining religion. The first step to establishing a proper definition is to decide whether a definition ought to identify the real essence and fundamental nature of the subject matter, or simply the range of applications of the defined term. For purposes of this article I refer to the first type of definition as "essentialist" and the second as "nominal." Essentialist definitions "seek to determine those attributes for the members of a class of phenomena which are most important for yielding an enhanced understanding of the phenomena."[5] They seek to identify a common, fundamental element of all religions,

4. For an example of the exasperation felt by religion scholars as a result of this crisis *see* SAM D. GILL, STORYTRACKING: TEXTS, STORIES, & HISTORIES IN CENTRAL AUSTRALIA 198 (Oxford University Press 1998) ("What is meant by *religion*? For decades it has been a term widely discussed and controversially defined. Most religion scholars have grown weary of the effort and have lost interest in the discussion despite the widely accepted principle that a word that cannot be defined is a word of limited academic value. Such a conundrum as the title by which the field—the academic study of *religion*—is identified is no small reason for broadly felt discomfort and embarrassment." (emphasis in original)).

5. Martin Southwold, *Buddhism and the Definition of Religion*, 13 MAN 362, 369 (1978).

thus revealing something of key significance to understanding the nature of religion itself, in all of its forms and manifestations.

By contrast, nominal definitions side-step the problem of discerning a core characteristic or fundamental essence in favor of a linguistic approach. A nominal definition of religion would include all those things that have been called or referred to as religions. They may share certain characteristics or qualities, but nominal definitions do not depend on such commonalities. The twentieth century saw the gradual transition away from essentialist approaches to defining religion as isolating a core characteristic common to all known religions became increasingly problematic. This definitional problem is highlighted by a debate between religious scholars at the 1927 symposium on "The Definition of Religion," published by The University of Chicago Journal of Religion. By comparing and contrasting two different essentialist approaches offered at that event and tracing challenges to and criticisms of these approaches we can better analyze the feasibility of essentialist definitions of religion.

One classification technique for discerning the essence or core of all religions in the early Twentieth Century was to define it in terms of "genus" with "differentia." In other words, one would survey known religions and then identify the common denominator or essential feature that characterizes all religions. The common or essential feature would mark the genus "religion". One could then identify those traits that distinguish one member of the class from another, the "differentia" of various religions. In the words of Ira Howerth: "Religion . . . bears about the same relation to the various religions as a genus to its species. A definition which applies only to one religion is no more a definition of religion than the definition of a particular person is a definition of the *genus homo*."[6] In the 1927 symposium on the definition of religion, Robert E. Hume and Edward Scribner Ames used the genus/species approach to explain the essence of religion. In many ways these two essays are emblematic of the difficulties inherent in defining religion.

Hume argues religion is of the genus "experience" and the type of experience that differentiates specific religions is the relationship of human to the divine.[7] Hume's definition is belief-centered. He does not consider ritual practice, institutional organization, or social utility to be essential to the general category of religion. For Hume, the subjective experience that characterizes all religion is "the experience of

6. Ira W. Howerth, *What is Religion?* 13 INT'L J. OF ETHICS 185, 186 (1903).

7. Robert E. Hume et al., *The Definition of Religion: A Symposium (Concluded)*, 7 THE J. OF RELIGION 284, 284-85 (1927).

an influence coming into, and also an influence coming out of, the individual."[8] Thus, all religious experience depends upon an object toward which and from which religious experiences flow, in Hume's words, "some superhuman object of faith and worship."[9] The distinctive element of religious experience is the relation between these subjective and objective poles, the relationship of human and divine. Within this category of religion there may be differing types. These are distinguished on the basis of the kind of deity believed in and the kind of experience associated with this type of god or gods.[10]

By contrast to Hume's belief-centered conception of religion, for E.S. Ames the genus of religion is "consciousness of social values."[11] Here consciousness is dynamic; it is more than mere individual awareness. Consciousness involves the realization that there is some worthy purpose in life toward which one ought to aim. It is the interest in and endeavor to achieve such aims and involves a hierarchy of goods to be pursued and ills to be avoided.[12] Thus, consciousness is awareness coupled with an aspiration or desire. It is the awareness that certain things ought to be pursued and others avoided. The distinguishing differentiation is one of degree: "highest."[13] Religion marks the extreme poles of this hierarchy: the greatest good and most reviled evil.

Ames casts this hierarchy in terms of a system of "social values." By referring to the distinctively social character of religious values, he points to the need to define religion in terms of context, those values that structure the individual's relation to the social world in and through which she takes her bearings. This approach contrasts sharply with a conception of religion as essentially concerned with individual belief and conviction, which is a private and personal matter. Ames's view of religion focuses on the place of the individual in the social order and the norms and values that dictate what the individual ought and ought not to do within that context.

The reference to social context, however, should not be read to imply that society is homogenous, with a single, consistent set of shared values. Ames does not seem troubled by the possibility that social consciousness is "seldom uniform in any race or country."[14] Thus, he makes room for the possibility of religious diversity. Nor is he con-

8. *Id.*
9. *Id.* at 285.
10. *Id.*
11. Hume, *supra* note 7, at 296.
12. *Id.* at 295.
13. *Id.* at 295-296.
14. *Id.* at 296.

cerned that individuals tend to simultaneously hold multiple sets of values. Individuals structure their lives by reference to many institutions (*e.g.*, family, law, work, church), each of which provides certain principles, guidelines, rules, directives, and preferences. Within this complex network of values, Ames identifies religion as the fundamental quality that marks the "highest" of these values.[15] No matter what variety of social goods an individual may value, whatever designates the supreme good and the most pernicious evil constitutes her religion. For example, many Christians value sharing in the Kingdom of God as the highest aim of human life, whereas a Buddhist may seek Nirvana. Both Ames and Hume identify what he sees as the most important dimension of religion. Ames understands religion in terms of social norms and values, and Hume understands religion in terms of individual belief and subjective experience.[16]

The genus/differentia construct used by both Hume and Ames relies on the assumption that there is an essential commonality that links all varieties of religion. The conviction that all of the world's religions are fundamentally the same in some basic aspect is taken for granted and not critically examined or analyzed. The failure to examine the assumption of a core essence common to all religions and the soundness of the grounds upon which that assumption is based can lead to two flaws with essentialist definitions: (1) They may be too narrow to capture the variety of known religions and the variety of forms within any single religious tradition; and (2) They are vulnerable to bias by incorporating preconceptions about what ought to count as religion. By way of illustration, I examine difficulties that Hume en-

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15. *Id.*

16. The tension between casting religion primarily in terms of the beliefs and subjective experiences of the individual, on the one hand, and in terms of the system of norms and values that regulates social life, on the other, reappears in different forms in a number of debates about defining religion. This article explores this tension further in the section treating emic and etic approaches to defining religion *infra*. The question of whether religion is best understood in terms of individual belief or in terms of the normative markers that structure and regulate social life also shapes debates among legal scholars, particularly in debates over *separationist* versus *accommodationist* approaches to understanding religious freedom. For an example of a separationist approach, *see generally* PHILLIP E. HAMMOND, WITH LIBERTY FOR ALL: FREEDOM OF RELIGION IN THE UNITED STATES (Westminster John Knox Press 1998) (arguing that religious freedom means full freedom of individual conscience, which can only be safeguarded through a strict separation between religious and public life and governmental neutrality among all such convictions). For an example of an accommodationist approach, *see generally* Michael W. McConnell, *Accommodation of Religion: An Update and a Response to the Critics*, 60 GEO. WASH. L. REV. 685 (March 1992) (arguing that because of the importance of religion in maintaining the social order, government ought to remove burdens on, or facilitate the exercise of, a person's or an institution's religion).

countered in trying to include Buddhism within his account of religion.[17]

Buddhism has been a foil for western definitions of religion at least since Emile Durkheim's 1912 volume describing religion from a sociological perspective, *The Elementary Forms of Religious Life.*[18] The example of Buddhism is useful for testing definitions of religion because it does not conform to the Judeo-Christian model that is paradigmatic for the study of religion in the West.

Hume grappled with how to incorporate Buddhism into his understanding of religion in 1927. He defines religion in terms of individual, subjective experience. But the type of experience that Hume identifies as distinctively religious is theistic in character, that is, religion is the awareness that human life is dependent upon a divine ruler of the universe. What is more, Hume presumes that this divine ruler is supremely worthy of worship and devotion. In his description of religion, Hume emphasizes the experience of some god or gods.[19] He further explains that the particular mode of experience essential to religion is "that phase of human experience in which a person lives in connection with what he believes to be the supremely worthful power or powers controlling the world."[20]

Hume acknowledges that Buddhism appears to be an exception to a theistic, belief-centered model of religion. He concedes that Buddhism was originally founded as a non-theistic "system of ethical self-culture [that] was applied socially to the organization of a new order."[21] Hume nonetheless seeks to defend his definition by applying it to the case of Buddhism. He does so by emphasizing one aspect of Buddhist belief and practice. What is of preeminent importance to understanding Buddhism for Hume is his claim that "the most ardent admirers of Buddha, who have been the most powerful in their history,

17. Although the below analysis focuses on the difficulties with applying Hume's belief-centered approach to Buddhism, Ames's approach also suffers from a failure to examine his grounds for the assumption of essential commonality among all of the world's religions.

18. EMILE DURKHEIM, THE ELEMENTARY FORMS OF THE RELIGIOUS LIFE: A STUDY IN RELIGIOUS SOCIOLOGY (Joseph Ward Swain trans., Free Press 1947) (Durkheim rejected the notion that the essence of religion is belief in divine beings, noting that some of the world's religions, including Sri Lankan Buddhism, are not essentially theistic. In the alternative, Durkheim proposed that religion be understood in terms of its division of society into two realms: the sacred and profane. The sacred/profane distinction may at first blush appear to define religion in supernatural terms. However, this was not Durkheim's claim, as discussed in further detail *infra*).

19. Hume, *supra* note 7, at 285.

20. *Id.*

21. *Id.* at 288.

have apotheosized him."[22] The superhuman qualities attributed to the Buddha by these admirers include claims that the Buddha was: "pre-existent in heaven, supernaturally conceived, miraculously born, planfully incarnate, sinlessly suffering, all knowing, all seeing, and self-existent and everlasting."[23] These qualities bear a striking resemblance to those characteristics that Christians attribute to Jesus of Nazareth.

Hume's focus on the attribution of superhuman qualities to the Buddha as emblematic and definitive of the entire religion raises a number of difficulties. First, Hume does not explore whether such theistic beliefs are common to all forms of Buddhist belief and practice. Without discussing the varieties of Buddhism in different geographical and cultural contexts, Hume implies that the belief that the Buddha manifests a particular set of superhuman qualities is universally held wherever Buddhism is practiced throughout the world. Second, Hume fails to discuss the significance and function of these divine characteristics in Buddhist belief and practice. Even with all of the superhuman qualities attributed to the Buddha, Hume does not assert that the Buddha is ever considered the supreme power governing the universe upon which all human life is dependent. Third, Hume does not explain who the "most ardent admirers" of the Buddha are, why they are deemed the "most powerful" in Buddhist history, or why their understanding of the Buddha has definitional authority over what Buddhism is for all Buddhists in all contexts. Hume assumes that a certain set of Buddhists ("the most ardent admirers of the Buddha") are authoritative. Their voices are presumed to conclusively determine the fundamental character of Buddhism. Despite these shortcomings with his analysis, Hume concludes by arguing that the apparent exception of Buddhism in fact proves the rule that religion is essentially an experience of the human relation to the divine.[24] This amounts to using Procrustean means to force Buddhism into the bed he has made for religion.

In the 1970's, anthropologist Martin Southwold engaged in an in-depth study of Sri Lankan Buddhism. His ethnographic field study

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22. *Id.* at 288-89.

23. *Id.* at 289.

24. Hume, *supra* note 7, at 289-90 ("[E]xamination of the two apparent exceptions of Jainism and Buddhism proves not to nullify, but rather to verify, the summary definition of religion. They show how, in times long past, strong men . . . turned to advocate some vigorous scheme of self-saving salvation with social benefits. But the great masses of men . . . derive most satisfying and empowering experience from faith in superhuman, though quasihuman, divine power or powers. The very earnestness of loyalty to a person, principle, or program which is taken up with religious enthusiasm, though originally non-theistic, would seem to demand belief in a helping God.").

in 1974-75 of practical Buddhism of Sinhalese villagers in the area of the Kurunegala District of Sri Lanka revealed that the form of Buddhism practiced by Sinhalese villagers in that particular district during that time does not manifest a central concern with gods or godlike beings. This study led him to the negative conclusion that Buddhism cannot be said to be essentially theistic in nature.[25]

Southwold's conclusion that Buddhism cannot be understood as being essentially theistic led him to question whether any essentialist definition of religion is possible. He argues that all essentialist definitions are doomed to failure because they presume a monothetic class. A monothetic class is one in which there is a single attribute or set of attributes that is common to strictly all members of the class. Each and every instance of class membership must exemplify the defining attribute or attributes. Thus, all bachelors are unmarried men. Each and every bachelor, by definition, exemplifies the attributes unmarried and male.[26] The problem with understanding religion as defining a monothetic class is that the semantic history of the Latin term *religio* and its later derivations reveals that throughout western history religion has been a multivocal concept expressing a variety of meanings.[27] In other words, as the use of the term religion evolved it came to encompass a variety of phenomena that may not be essentially similar in any identifiable way.

A theorist's attempt to simplify the complexity of religious phenomena by reference to a single criterion or set of criteria is a task that renders him particularly susceptible to favoring familiar qualities and ignoring or discounting those dimensions of religions that differ from his own. Such a definition takes on a prescriptive character, in effect deciding what *ought* to count as a religion and what constitutes an authentic religion. In his analysis, Hume's emphasis of attributes of Buddhist belief that resonate with core Christian beliefs indicates that his own convictions may have led him to assume that such tenets must also be essential to Buddhism. We can see shades of this bias in Hume's statement: "the very earnestness of loyalty . . . which is taken up with religious enthusiasm . . . would seem to demand belief in a

25. Southwold, *supra* note 5, at 365 ("In Buddhism, then we have a religion where, ideally, and for the most part, godlike beings are associated with the profane and not the sacred. It certainly cannot be said that concern with these godlike beings is central to Buddhagama, the 'Buddhist religion'.").

26. *Id.* at 367 ("Formally, a definition to be valid must apply to every instance of the phenomena to be defined; hence even one exception is sufficient to refute the definition.").

27. Benson Saler, *Religion and the Definition of Religion*, 38 CULT. ANTHRO. 395, 398 (1987).

helping God."[28] One could imagine the correlate: if loyalty to a person, principle, or program does not inspire belief in a helping God, then such loyalty is not sufficiently earnest to be considered *religious*. Hume's commitment to theistic belief as the essence of religion forces him to recast Buddhism as theologically comparable to monotheistic faiths in order to be worthy of the moniker "religion." Had he more carefully examined the varieties of Buddhist thought and practice and more closely examined his own presuppositions, Hume may have recognized the insufficiency of his approach.

The tendency to import one's preconceptions about the essence of religion without critically examining their basis is of particular concern in a legal context because such preconceptions may include evaluative judgments that bias one's apprehension of the phenomena under consideration. An essential characteristic becomes determinative of what counts as religion rather than merely a *description* of religions. A judge or juror may rate a practice in terms of its conformity with her own religious commitments. Thus, the consequences of an essentialist definition of religion are clear: To define is to include certain things and exclude others, and in a legal context constitutional rights turn on what is included or excluded. As Talal Asad cautions us: "[T]hese definitions are not mere abstract intellectual exercises. They are embedded in passionate social disputes on which the law of the state pronounces."[29]

B. The Experience of the Sacred: Scientific and Humanistic Approaches to Defining Religion

As we have considered, essentialist definitional strategies for specifying the meaning of the term religion are problematic because they tend to be too narrow, potentially biased, and inadequate to describe all members of a class of phenomena as complex as that expressed by the use of the word. Beyond the meta question of how one is to approach the task of defining lies a more profound issue: what type of knowledge best elucidates the meaning of religion? Is religion an historical phenomenon subject to investigation and interpretation by means of a social scientific framework or does religion relate to some feature of human existence that is transhistorical and extraordinary, which lies beyond the ability of reason and empirical analysis to describe?

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28. Hume, *supra* note 7, at 289-90.

29. Talal Asad, *Reading a Modern Classic: W.C. Smith's "The Meaning and End of Religion,"* 40 HISTORY OF RELIGIONS 205, 220 (2001).

To illustrate this problem and the challenges it raises to defining religion I highlight the differences between the approaches of sociologist Emile Durkheim and phenomenologist Mircea Eliade in articulating the meaning of religion. Both scholars define religion in terms of a sacred/profane distinction. But their understanding of the nature and meaning of the sacred differs in key respects—each utilizing a different approach and methodology. The differences between the methodologies of these two leading scholars epitomize a polarization of two approaches to understanding religion. Durkheim exemplifies the attempt to understand religion by appeal to a framework largely inspired by work in the natural sciences.[30] He represents an application of empirical testing, rational inquiry and scientific reasoning to the human sciences and utilizes this approach in discerning the true meaning of religion. Eliade's project, by contrast, understands religion in terms of a universal, transhistorical dimension to human experience that can never be reached by means of empirical research and inductive reasoning alone. He represents a humanist approach to studying religion by reference to enduring features of the human condition.

Using scientific principles of inquiry to analyze society, Durkheim challenged the idea that religion is best understood in terms of a belief in supernatural beings.[31] Durkheim believed society could and ought to be studied as objectively and scientifically as possible and that social facts are as concrete and observable as any other real thing.[32] As mentioned before, Durkheim believed the existence of nontheistic religions indicated the fallacy of defining religion by belief in a god or gods.[33] But beyond that observation, Durkheim thought he could prove that no religion is essentially about its gods. Durkheim argued religion is concerned with the structures, institutions, and relationships that form and maintain society.[34]

Durkheim's observations led him to conclude that, in the case of religiosity, human experience can be divided into two distinct

30. Wouter W. Belier, *Durkheim, Mauss, Classical Evolutionism and the Origin of Religion,* "11 METHOD AND THEORY IN THE STUDY OF RELIGION 24, 43 (1999) ("For Durkheim the main aim was to demonstrate the scientific character of the new science of society.").

31. *See generally* DURKHEIM, *supra* note 18.

32. DANIEL L. PALS, SEVEN THEORIES OF RELIGION 93-97 (Oxford University Press 1996). It is important to note that Durkheim did not himself perform the empirical research upon which he relied, which led to criticism of the scientific rigor of his analysis. *See supra* 116-17. However, the important point is that Durkheim and these critics took for granted the superiority of scientific modes of knowledge.

33. *See generally* DURKHEIM, *supra* note 18.

34. Stanley Taylor, *Some Implications of the Contributions of Emile Durkheim to Religious Thought,* 24 PHIL. AND PHENOMENOLOGICAL RESEARCH 125, 131 (1963) (religion, as a set of practices, reveals social reality and pragmatically functions to strengthen the moral life).

realms. However, Durkheim saw no evidence of supernatural forces or beings. Rather, he saw peoples of various religious traditions dividing up their world into sacred and profane realms. Sacred and profane can be distinguished as follows: "Sacred things are always set apart as superior, powerful, forbidden to normal contact, and deserving of great respect. Profane things are the opposite; they belong to the ordinary, uneventful, and practical routine of everyday life".[35] In other words, religion entails attention to the sacred, to those things that are set apart from ordinary contact and everyday life. But for Durkheim, the category of the sacred is essentially *social* not supernatural: Sacred rites form and maintain society. Indeed, for Durkheim society is the true object of worship.[36] As religion scholar Daniel Pals explains, for Durkheim:

> Sacred things always involve large concerns: the interests and welfare of an entire group of people, not just one or a few. Profane things, on the other hand, are little matters; they reflect the day-to-day business of each individual—the smaller, private activities and endeavors of the immediate family and personal life.[37]

In other words, rather than define religion in terms of the content of religious beliefs (such as a belief in human dependence upon a divine ruler of the universe), Durkheim sought to describe the function of religious practices in human life. The religious function is to bring together and maintain a cohesive social community. The content of the beliefs of the community are secondary to the unity of the community itself. The category of the sacred draws the attention of individuals away from their personal concerns and interests and directs them towards the concerns of the entire community: "[T]he sacred functions as the focal point of the claims that affect the entire community."[38]

Durkheim's sociological definition of religion offers a unique perspective on religion. However, his tendency to reduce the meaning of religion to a social function was controversial. By the middle of the twentieth century the preeminent historian of religion, Mircea Eliade, had pioneered a completely different approach to defining religion. Eliade also defines religion as concern with the sacred. However, Eliade sees the attempt to demystify religion and explain it in terms of

35. PALS, *supra* note 32, at 99 (internal citation omitted).
36. Taylor, *supra* note 34, at 130.
37. PALS, *supra* note 32, at 99 (internal citation omitted).
38. *Id.* at 100.

social scientific categories as misguided.[39] Sociology, economics, and psychology may perhaps provide some insight into the form that religions take, but can never define religion as such. Religion is *sui generis*, unique and irreducible:

> A religious phenomenon will only be recognized as such if it is grasped at its own level, that is to say, if it is studied *as* something religious. To try to grasp the essence of such a phenomenon by means of physiology, psychology, sociology, economics, linguistics, art, or any other study is false; it misses the one unique and irreducible element in it—the element of the sacred.[40]

In other words, the sacred ought not to be construed as a screen for something else, *e.g.*, society. It is a singular phenomenon that cannot be reduced to or understood in terms of any other feature or features of earthly existence.

In Eliade's view, the sacred is universal and transhistorical. It is an element in the structure of human consciousness that expresses the source of authentic human life.[41] Religion is the means by which we relate to this transcendent realm. Religious beliefs and practices reveal more than the details of a particular historical and cultural moment, they reveal important truths about humanity and the relation of human life to the sacred.[42] The sacred is the encounter with authentic being, meaning, and truth.[43] The experience of the sacred marks an awareness of a real and meaningful realm that breaks through everyday existence and imparts the fundamental worth of human existence.

Eliade seeks to explain what religion is from the perspective of what reality itself is and the relation of individual human beings to that which transcends mere existence. For Eliade the sacred "is synonym-

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39. MIRCEA ELIADE, THE QUEST: HISTORY AND MEANING IN RELIGION 19 (The University of Chicago Press 1969) ("The confusion [in studying religion] starts when *only one* aspect of religious life is accepted as primary and meaningful, and the other aspects or functions are regarded as secondary or even illusory. Such a reductionist method was applied by Durkheim and other sociologists of religion. An even more drastic reductionism was brought forward by Freud in his *Totem und Tabu.*"); *see also id.* at 68 ("It would be useless, because ineffectual, to appeal to some reductionist principle and to demystify the behavior and ideologies of *homo religiosus* by showing, for example, that it is a matter of projections of the unconscious, or of screens raised for social, economic, political or other reasons.").

40. PALS, *supra* note 32, at 161 (citing MIRCEA ELIADE, PATTERNS IN COMPARATIVE RELIGION xiii (Rosemary Sheed trans., Meridian Books 1963) (1949)).

41. ELIADE, *supra* note 39, at Preface; *see also* Allen, *infra* note 45, at 558.

42. *Id.* at 53.

43. ELIADE, *supra* note 39, at Preface.

ous with the real and the true."[44] Human history is itself wretched and hollow. Without access to a dimension of existence that transcends the tragedies and existential crises characterizing the temporal, historical dimension of human experience, humanity is destined to suffer nihilism and despair.[45] Without a sacred dimension human life is meaningless and oppressive.[46]

Eliade's definition of religion, thus involves claims about the human condition as such.[47] To study the life of a religious person, *homo religiosus*, is to study human life in its truest, most complete sense, to analyze the "total person."[48] The scientific method is ill-suited to interpreting and analyzing such transhistorical dimensions of human existence. Ethnographic research and other modes of empirical analysis are blind to this dimension, which is both specifically religious and characteristically human.[49]

The attempt capture this dimension of religion may be understood as a "humanistic approach."[50] Understanding religion through humanistic categories amounts to recognizing that religion involves human thought, intention, and emotion, which are not readily testable empirically. The study of religion involves an engagement with enduring human questions. Approaching religion through humanist categories thus means implementing techniques analogous to those used in other fields that aim at rendering meaningful the human condition, such as philosophy, history, and literature.[51]

The humanist maneuver in defining and understanding religion raised the hackles of those seeking scientific respectability for the field of religious studies. Those who invoke the Enlightenment model of rational scientific analysis of religion saw the attempt to define religion in terms some unique and irreducible dimension of the human condition problematic in two principle ways: (1) that such approaches are

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44. GILL, *supra* note 4, at 198 (internal citation omitted).

45. Douglas Allen, *Eliade and History,* 68 THE JOURNAL OF RELIGION 545, 558 (1988).

46. GILL, *supra note 4*, at 199. As Sam Gill explains: "[S]uffering becomes intelligible and hence tolerable" only when seen in the light of the extrahistorical, which Eliade identified as evidenced in myth ("sacred history"), the accounts of the actions of supernaturals. . . . The historically concrete is secondary to the extrahistorical because it is on the basis of the extrahistorical that the historically concrete can be comprehended as meaningful. *Id.*

47. Allen, *supra* note 45, at 554.

48. *Id.* at 558.

49. Orye, *infra* note 50, at 348.

50. *See* Lieve Orye, *Reappropriating 'Religion'?: Constructively Reconceptualising (Human) Science and the Study of Religion,* 17 METHOD & THEORY IN THE STUDY OF RELIGION 337, 346 (2005).

51. *Id.*

ill-advised retreats from scientific principles[52] and (2) that humanist definitions are confessional or crypto-theological.[53]

As a retreat from scientific principles, the humanistic approach presents problems for academic discourse because its claims are neither falsifiable nor verifiable. Humanistic claims depend upon assumptions that are beyond the scope of rational inquiry and empirical analysis. Thus, critical engagement is limited and cannot proceed along objective lines. Eliade's project is particularly vulnerable to this charge.[54] He argues that there is a dimension of existence that is real and true, but that cannot be evaluated and analyzed by empirical means alone.[55] In addition to this ontological claim about the structure of reality, Eliade makes the normative claim that *homo religiosus*, the "total person," lives an authentic meaningful existence by participating in the experience of the sacred. By contrast, skeptics who focus on the forces of history and the physical laws of the natural world, denying the reality of a transcendent realm that reveals itself in the sacred, are living lives without satisfaction, purpose, or meaning. Eliade's claims about the nature of reality and the source of being, meaning, and truth are thus dogmatically invested with specific content that is withdrawn from rational discussion and thus from criticism.

The charge that humanistic approaches to the study of religion are confessional or crypto-theological means that in describing religion in terms of enduring features of the human condition and the true nature of existence, humanistic scholars of religion are in fact defending particular religious convictions about the true source and aim of human life. In this regard, such approaches appear to blur the distinction between observing and practicing religion.[56] Scientific approaches assume the need for objectivity, the ability to stand apart from and ex-

52. *See* Catherine Bell, *Modernism and Postmodernism in the Study of Religion*, 22 RELIGIOUS STUDIES REVIEW 179, 183 (1996).

53. *See* Orye, *supra* note 50, at 337-49.

54. *See* Allen, *supra* note 45, at 545 ("Probably the most frequent general criticism by specialists of religion has been that Eliade is methodologically uncritical, arbitrary, and subjective. Critics assert that his works are highly normative, departing from the descriptive domain of *Religionswissenschaft* and other empirical and scientific approaches.").

55. To be sure, Eliade does appeal to field studies of particular religious practices in his analysis. However, his theoretical arguments depend upon universal claims about the practice of religion *as such*, transcending any historical example of a specific practice or object of worship. *See, e.g.*, ELIADE, *supra* note 39, at 53 ("[T]he historicity of a religious experience does not tell us what a religious experience ultimately *is*. We know that we can grasp the sacred only through manifestations which are always historically conditioned. But the study of these historically conditioned expressions does not give us the answer to the questions: What is the sacred? What does a religious experience actually mean?").

56. Orye, *supra* note 50, at 342.

plain an activity, rather than be involved in it.[57] By seeking to re-enchant the features of the natural world, which scientific approaches sought to de-mystify, humanistic approaches blur the line between subject matter and discipline, turning the study of religion into a theological endeavor.[58]

Eliade's project is also vulnerable to the charge of crypto-theology. Eliade's chief concern is to articulate the nontemporal, non-historical, universal religious structures that manifest themselves in and are occasioned by particular historical situations.[59] His journal entries and other personal writings express his conviction that the only escape from the despair of existential crisis is participation in the sacred.[60] His tendency to blend the subjective and objective poles of his reflection on religion have led to claims that he emphasizes certain religious forms over others[61] and that he mischaracterizes certain religious practices to conform with his own preconceptions.[62]

C. The problem of perspective: Emic/Etic Approaches

The example of Mircea Eliade brings us to the question of the perspective taken in crafting a definition of religion. For Eliade religion "can be understood only if we try to see it from the standpoint of the believer."[63] However, this led to the criticism that because he blended the perspectives of observer and participant, his project was tainted by his own ideological agenda. In other words, his prior assumptions caused him to recast other religions in terms that were consistent with his own beliefs.

The problem of perspective is important in the human sciences, and particularly anthropology. It is often cast in terms of "emic" and "etic" distinctions. The emic perspective is that of an insider. It relates to knowledge expressed in terms that are meaningful to the members

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57. *Id.*

58. *Id.* at 356.

59. Allen, *supra* note 45, at 552-53.

60. *Id.* at 555 ("For example, [Eliade] writes: 'My essential preoccupation is precisely the means of escaping History, of saving myself through symbol, myth, rites, archetypes.'") (internal citations omitted).

61. *See, e.g.*, *id.* at 556-57 (noting Eliade's minimal and cursory analysis of mainstream western religious thought in contrast to his more detailed and sympathetic treatment of popular practices and the insights of the *Bhagavad Gita).*

62. GILL, *supra* note 4, at 181 (In the case of Australian religion, Gill writes: "Eliade is . . . creating an Australian aboriginal simulacrum based on his generic understanding of religion.").

63. PALS, *supra* note 32, at 186.

of the group being described. The emic perspective may be distinguished from an etic perspective, which is that of an outside observer, and consists in the concepts and categories that are meaningful to the scientific community doing the describing. By using this paradigm, we can say that Durkheim adopts an etic approach to analyzing and describing religion, while Eliade opts for an emic approach.

Each of these alternative perspectives is inherently problematic. Durkheim's approach aims at neutral objectivity. However, his rejection of the claims of insiders as to the nature and purpose of their religious experiences and behaviors reduces all religious behaviors to their sociological dimension, rendering his account of religion incomplete. On the other hand, Eliade's approach, in rejecting the possibility of neutral objectivity, is unable to produce categories and concepts for studying religious phenomena that are free from bias and prejudgment.

The tension between insider and outsider perspectives in crafting a definition of religion seems to present an irreconcilable problem. The field of religious studies was marked by an apparent polarization of observers and participants, skeptics and theologians.[64] The tension between objective and subjective attitudes toward religion is rooted in the history of the Enlightenment model of knowledge itself. The Age of Reason saw science as the great debunker of myth and superstition.[65] The scientific model was seen as the only mode of knowledge that is free from the parochialism and bias inherent in premodern thought.[66]

II. BOTH/AND: A GEERTZIAN SYNTHESIS

We have thus encountered three sets of difficulties with defining religion: (1) essentialist vs. nominal paradigms; (2) scientific vs. humanistic approaches; and (3) insider vs. outsider perspectives. Each of these obstacles to defining religion involves seemingly oppositional aspects, either a definition is essentialist or nominal, either religion is approached using a scientific or humanistic methodology, either religion is best analyzed from the perspective of an insider or an outsider.

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64. *See* Bell, *supra* note 52, at 181.

65. *See* Orye, *supra* note 50, at 355-56 ("[D]isenchantment is inherent to the very method and procedure of rational inquiry."); *see also* Bell, *supra* note 52, at 179 ("The main argument [of the text under review] demonstrates that the historical emergence of a 'naturalistic' paradigm to explain the origins of religion . . . was rooted in a profound criticism of religious practice, a rejection of theology, and a revolutionary upending of the reigning theological world view.").

66. Bell, *supra* note 52, at 183.

However, perhaps the optimal strategy for defining religion would be to effect a synthesis of the insights of each of these aspects.

Cultural anthropologist Clifford Geertz proposes a definition of religion as a cultural system, which offers such a synthesis. Geertz seeks to incorporate a humanistic dimension to his definition of religion, while retaining the importance of scientific principles and methods of inquiry. He uses ethnographic observation to describe religious practices and thick description to explain the meaning of observed practices. This approach offers a possible alternative to the stark polarization between emic and etic perspectives. After explaining Geertz's methodology and the salient features of his definition of religion, I respond to important criticisms raised to his approach. I return to the meta question of how one is to approach the task of defining religion after responding to Geertz's critics.

A. Blending the Perspectives of Observer and Observed

Geertz sought an approach to studying religion that he believed could bridge the divides between emic and etic perspectives of inquiry. This methodology also opens the possibility of bridging the divide between humanistic and scientific modes of inquiry, by allowing for the possibility that religions offer an account of the enduring features of the human condition *for their adherents* but without specifying in advance what a religion has to say about human existence generally.

As a cultural anthropologist, Geertz defines religion as a cultural system. In other words, he examines religion in relation to the particular social context in and through which religious phenomena are manifest. He sought to develop "the cultural dimension of religious analysis."[67] Geertz argues that individuals belong to a cultural group, which shares a system of concepts and symbols in terms of which individuals understand the fundamental nature of reality. By examining the cultural aspects of religion, Geertz is able to recognize the social functions of religion without utterly reducing religion to society's concerns. Religious practices may have multiple meanings, perhaps including social cohesion, but perhaps also including an experience of the sacred.

Geertz uses an ethnographic method in cultural anthropology to yield *thick descriptions* of the observed phenomena. Thick description conveys the idea that the central task of anthropology is interpretation,

67. CLIFFORD GEERTZ, THE INTERPRETATION OF CULTURES 89 (Harper Collins 2000) (1973).

a description and analysis of what is observed. Geertz does not deny the role of the observer in relating what has been observed. Rather, thick description means to explain these observations in terms of their context.

The aim of the cultural anthropologist is to provide an interpretation that is "actor-oriented." The best interpretation is one that takes into account the meanings that the actor assigns to her own behavior. In other words, although the cultural anthropologist may go in search of the "exotic," wholly other (such as "Berber horsemen, Jewish peddlers, French Legionnaires,"[68]), her interpretation of their behaviors should be cast in their terms, not her own. The anthropologist ought not to assume she has superior knowledge or observes from a neutral vantage point. Rather, the job of the anthropologist is to study the varieties of human experience, which must take into account the world as seen by the subject under observation:

> [D]escriptions of Berber, Jewish, or French culture must be cast in terms of the constructions we imagine Berbers, Jews, or Frenchmen to place upon what they live through, the formulae they use to define what happens to them. What it does not mean is that such descriptions are themselves Berber, Jewish, or French—that is, part of the reality they are ostensibly describing; they are anthropological—that is, part of a developing system of scientific analysis. They must be cast in terms of the interpretations to which persons of a particular denomination subject their experience, because that is what they profess to be descriptions of; they are anthropological because it is, in fact, anthropologists who profess them.[69]

It is important to note that Geertz's interpretive approach is not strictly speaking scientific "if by 'science' we mean the making of ironclad predictive laws about human behavior in the way physicists speak of the law of gravity and biologists describe the law of cell division."[70] However, Geertz does assert his belief that the anthropological study of religions can be conducted scientifically.[71] He believes that as cultural activities religions are subject to empirical observation and

68. *Id.* at 14.

69. *Id.* at 15.

70. PALS, *supra* note 32, at 260.

71. GEERTZ, *supra* note 67, at 24.

analysis, and that such analysis can yield theoretical insights into the social or psychological dimensions of religious behaviors.[72] However, he sees these as two distinct, but related stages of the methodology: "first, an analysis of the system of meanings embodied in the symbols which make up the religion proper, and, second, the relating of these systems to social-structural and psychological processes."[73] The key is to root one's theory in the religious practices and beliefs themselves, to "stay rather closer to the ground."[74]

B. Religion as a Cultural System

Geertz lays out a five point definition of religion. He defines religion as:

> (1) a system of symbols which acts to (2) establish powerful, pervasive, and long-lasting moods and motivations in men by (3) formulating conceptions of a general order of existence and (4) clothing these conceptions with such an aura of factuality that (5) the moods and motivations seem uniquely realistic.[75]

1. System of Symbols

First, Geertz sees religions as systematic and symbolic. Religions are patterns or systems of symbols that model our experiences of the context in and through which we live our lives. Geertz offers several explanations and examples to relay his understanding of symbols. A symbol is "any object, act, event, quality, or relation which serves as a vehicle for a conception . . . tangible formulations of notions, abstractions from experience fixed in perceptible forms, concrete embodiments of ideas, attitudes, judgments, longings, or beliefs."[76] While experts in semiotic theory judge this explanatory language to be rather opaque,[77] for our purposes, the relevant point is Geertz's observation

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72. *Id.* at 124-25.

73. *Id.* at 125.

74. *Id.* at 24.

75. *Id.* at 90.

76. GEERTZ, *supra* note 67, at 91.

77. *See* Nancy K. Frankenberry & Hans H. Penner, *Clifford Geertz's Long Lasting Moods, Motivations and Metaphysical Conceptions* 79 J. REL. 617, 619 (1999) ("The sheer commonplaceness of [Geertz's notion of symbol] masks two problems. First, the use of 'vehicle,' made famous by I.A. Richards in 1936, is purely metaphorical. What we want to know but are not told is what semantic rules apply to symbols as vehicles of conception. Second, just what does Geertz mean by 'conception?' Clarification of this term is crucial since 'conception,' given his definition, is the meaning of symbol. Without clarification we are at a loss

that groups of human beings explain and describe certain objects and experiences in terms of other things, use symbolic forms to express their sense of the meaning of the world. Thus, Geertz uses examples such as the number six, the cross, the painting "Guernica" to demonstrate that each of these things is heavy with the ideas it carries within it. Although the beliefs of individual religious adherents are not accessible to empirical observation, the symbols that they use to convey these beliefs are.

Religion is a system or pattern of symbolic activities, not random, isolated, discrete symbols. The meanings assigned to particular symbols are related to others and explain the relations of the objects of experience so described. Symbol systems express the structure of physical relationships, rendering them comprehensible.[78] As cultural patterns, religious symbol systems orient people within their experiences, explaining the nature and meaning of the world inhabited and the individual's place within it.

2. Powerful, Pervasive, Long-lasting Moods and Motivations: "Ethos"

Geertz describes this process in terms of an intrinsic double aspect of religious cultural patterns. They are models *for* and models *of* reality. The idea that systems of symbols serve as models *for* reality means that they provide recipes, blueprints, or templates for how to act. They provide programs for the "social and psychological processes which shape public behavior."[79] Geertz describes this process in the second element of his definition of religion: Religions "establish powerful, pervasive, and long-lasting moods and motivations."[80] Geertz describes how religious symbols serve as models *for* reality as follows:

> They shape [reality] by inducing in the worshipper a certain distinctive set of dispositions (tendencies, capacities, propensities, skills, habits, liabilities, pronenesses) which lend a chronic character to the flow of his activity and the quality of his experience. A disposition describes not an activity or an occurrence but a probability of an activity being performed or an occurrence

from the very beginning to interpret the meaning of the crucial terms 'vehicle,' 'meaning,' 'symbol,' and 'conception.'").

78. GEERTZ, *supra* note 67, at 93.

79. *Id.* at 92.

80. *Id.* at 90.

> occurring in certain circumstances . . . . [T]o be pious is not to be performing something we would call an act of piety, but to be liable to perform such acts.[81]

Religions inculcate enduring propensities, ingrained tendencies, persistent inclinations that shape our experiences of the world. They dictate to us how to act in certain situations, how to respond to events, how to behave in certain contexts.

Geertz uses the term "ethos" to describe this aspect of religion. For Geertz the ethos of a particular group of people is "the underlying attitude toward themselves and their world that life reflects."[82] He defines ethos as: "[T]he tone, character, and quality of [a particular people's] life, its moral and aesthetic style and mood."[83] In other words, an ethos is the value system of a culture, the set of normative markers (both moral and aesthetic) by which aspects of one's world view are evaluated. However, as distinguished from earlier accounts of religion, for Geertz religion is not confined to the highest values, the apex of the normative hierarchy. The religious ethos includes the system of valuation itself, the bases for making distinctions between shades of worthiness and unworthiness that permit decision-making and judgment.

By casting the concept of ethos in terms of moods and motivations, Geertz is attempting to render observable and describable the mental traits or psychological forces that structure and orient the lives and experiences of religious adherents. Thus, rather than defining religion as an interior state of piety, he can describe "the Plains Indian's bravura, the Manus' compunctiousness, or the Javanese's quietism, which in their contexts, form the substance of piety."[84]

3. Conception of a General Order of Existence: "Worldview"

A people's religion thus includes the ethos that provides a model for reality. But this is only a part of Geertz's account of religion. In addition, he argues these same symbolic systems generate this ethos by "formulating conceptions of a general order of existence."[85] Geertz refers to this dimension of religions as a "world view," which is "the picture [a particular people has] of the way things in sheer actuali-

81. *Id.* at 95.
82. *Id.* at 127.
83. GEERTZ, *supra* note 67, at 127.
84. *Id.* at 95.
85. *Id.* at 90.

ty are, their most comprehensive ideas of order."[86] This is the aspect by which symbol systems act as models *of* reality. A worldview encompasses the assumed structure of reality.[87] As such, it symbolically parallels the physical relationships encountered by the believer and renders them comprehensible: When speaking of religions functioning as models *of* reality, Geertz explains:

> [W]hat is stressed is the manipulation of symbol structures so as to bring them, more or less closely, into parallel with the pre-established nonsymbolic system, as when we grasp how dams work by developing a theory of hydraulics or constructing a flow chart. The theory or chart models physical relationships in such a way—that is, by expressing their structure in synoptic form—as to render them apprehensible; it is a model *of* "reality."[88]

Another way of expressing the function of religions as providing models of reality is to say that religions include an account of the human condition as such. They conceptualize an individual's place within the grand scheme of things, the cosmos, and reality. This is not to say that Geertz conflates religion with systematic theology. He cautions that these general ideas of order may be formulated "obliquely, inarticulately, or unsystematically."[89] A particular affirmation about the fundamental nature of reality may be "obscure, shallow, or . . . perverse."[90] In other words, Geertz takes pains not to limit his account to organized religions that have developed detailed and extensive analysis of the nature and meaning of reality. However, he insists that formulation of some general idea of the order of existence, or affirmation of the fundamental nature of reality distinguishes religion from *non*-religion.[91] The comprehensive metaphysical[92] orientation of cer-

86. *Id.* at 89.

87. *Id.* at 90.

88. GEERTZ, *supra* note 67, at 93.

89. *Id.* at 98.

90. *Id.*

91. *Id.*

92. "Metaphysical" as used here simply means the highest level of generality, a study of "being qua being." In other words, metaphysics is reflection on the very nature of existence itself, the most comprehensive order of analysis of reality or the entire context of human existence. On my account, a metaphysics may include some conception of a transcendent realm or an affirmation of the existence of supernatural beings. However, a skeptical denial that there exists any reality beyond the physical universe is also a metaphysics.

tain symbol systems is what renders them *religions*, rather than something else.[93]

In defending an approach to defining religion that is humanistic in this regard, Geertz offers three circumstances through which we can observe how religions provide models of reality. Geertz posits that religious experiences often seem to address human anxiety produced by chaotic circumstances. He suggests three areas in which religious experiences seem particularly useful in rendering understandable seemingly incomprehensible features of human life. These areas are bafflement, suffering, and evil:

> There are at least three points where chaos—a tumult of events which lack not just interpretations but *interpretability*—threatens to break in upon man: at the limits of his analytic capacities, at the limits of his powers of endurance, and at the limits of his moral insight. Bafflement, suffering, and a sense of intractable ethical paradox are all, if they become intense enough or are sustained long enough, radical challenges to the proposition that life is comprehensible and that we can, by taking thought, orient ourselves effectively within it.[94]

Geertz explores at length the role of religions in helping their adherents to bear experiences of bafflement, suffering, and evil. In my view, these points are meant to be illustrative. The specific examples that Geertz suggests of the recurring challenges of human life are of less significance than his insistence that a religion, by definition, includes *some* conception of the truth of human existence. His illustrations are fields of play, arenas through which conceptions about the nature, meaning, and value of human life may be perceived and recognized as such. These illustrations may be particularly useful in evaluating putative religions that lack a systematic theology but offer guidance for navigating enduring features of the human condition.

However, it would be a misreading of Geertz to assume that *his* depiction of human life, his view that the human condition is uniquely characterized by the inability to tolerate incomprehensibility and chaos, is a necessary feature of all conceptions of the general order of

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93. *Cf.* David Chidester, *The Church of Baseball, the Fetish of Coca-Cola, and the Potlatch of Rock 'n' Roll: Theoretical Models for the Study of Religion in American Popular Culture*, 64 J. AM. ACAD. REL. 743, 744 (1996).

94. GEERTZ, *supra* note 67, at 100.

existence. To define religion as a response to human discomfort with bafflement, suffering, and evil would be to import a particular claim about transhistorical and transcultural features of the human condition. Such a maneuver would blend the two roles of participant in and observer of religion, and may exclude certain conceptions of the general order of existence from the definition of religion on the basis of a specific conviction about the truth of human life.

Geertz suggests that religions serve to console individuals in the face of bafflement, suffering, and evil. The manner in which he presents these illustrations and the language that he uses imply that Geertz himself may deny the existence of a transcendent realm that in fact imparts meaning and value to the material world. This denial would also constitute a particular conviction about the general context of human life and the enduring features of the human condition. Upon my reading, therefore, it would also be improper to define religion merely in terms of a consoling function. The relevant question is not whether a religion offers solace in the face of troubling features of human life, but whether the system in question offers a view of the general features of human life. Thus, the definition of what constitutes religion neither affirms nor denies the existence of a supernatural realm that imparts meaning to the natural world.

Geertz's definition of religion provides a means to include a humanistic dimension to the definition of religion without investing the definition itself with particular convictions about the human condition. In a legal context, evidence could be offered to show that a putative religion provides an account of the nature, meaning, and truth of human existence. Geertz's illustrations provide signposts and guidelines for verifying the existence of such a humanistic aspect. This approach to acknowledging the humanistic dimension of religion is useful because it does not depend on criteria that are beyond rational analysis.

4. Aura of Factuality Rendering Religious Accounts Uniquely Realistic

Next, Geertz argues the symbol systems that generate an ethos and world view render these conceptions about the general order of existence convincing by "clothing [them] with such an aura of factuality that . . . the moods and motivations seem uniquely realistic."[95] These

95. *Id.* at 90. The use of phrases such as "clothing [them] in an aura of factuality" and "seem uniquely realistic" in this context again may be read to imply that Geertz denies the authenticity of the ethos and worldview under observation. However, a more charitable reading of his use of this terminology is that Geertz is seeking to balance the demands of two perspec-

two elements describe the process by which an ethos and world view may come to be accepted as unquestionably true. The first element of this process concerns authority. For Geertz the examples of bafflement, suffering, and evil are useful because they beg the question of how religious answers to these crises come to be consoling: "How is it that the religious man moves from a troubled perception of experienced disorder to a more or less settled conviction of fundamental order?"[96] The answer he proposes is that there has been a prior acceptance of the authority of the religious explanation that permits belief in its truth.[97]

Ethos and world view fuse, reflecting back on the believer's experience of the world, coloring her conceptions, and thus both describing the social order and shaping it.[98] Religions, as embodied and communicated in symbols and rituals, demonstrate the meaningful relation between the values a people holds (its ethos) and its understanding of the general order of existence (its world view).[99] The value system is a religious one if and to the extent it relates to a comprehensive order of reality. In other words, things are valued as they are because the world is the way it is. The ethos and world view mutually sustain and confirm one another. Geertz describes this synthesis in the following passage:

> In religious belief and practice a group's ethos is rendered intellectually reasonable by being shown to represent a way of life ideally adapted to the actual state of affairs the world view describes, while the world view is rendered emotionally convincing by being presented as an image of an actual state of affairs peculiarly well-arranged to accommodate such a way of life. This confrontation and mutual confrontation has two fundamental effects. On the one hand, it objectivizes moral and aesthetic preferences by depicting them as

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tives in his definitional strategy. The observer may in fact deny the truth of the fusion of ethos and worldview under study. However, from the perspective of the participant, her ethos-worldview is singularly true, depicts reality as it really is. From the observer's perspective, religious experiences are cloaked in an aura of factuality. From the participant's perspective the cloak defines reality. Conceptions about the meaning and nature of existence that lie beyond it are less true.

96. *Id.* at 109.

97. *Id.* On Geertz's account, ritual practice plays an important role in establishing and maintaining authority. *See id.* at 112, 114. However, Geertz leaves many questions unanswered as to the nature, source, and power of religious authority.

98. *Id.* at 119.

99. GEERTZ, *supra* note 67, at 127.

> the imposed conditions of life implicit in a world with a particular structure, as mere common sense given the unalterable shape of reality. On the other, it supports these received beliefs about the world's body by invoking deeply felt moral and aesthetic sentiments as experiential evidence for their truth.[100]

For Geertz, religions are more than the synthesis of ethos and world view. Religions orient the individual within this synthesis. There is a reflexive relationship between the system of concepts and symbols and the view of reality they represent. If a member of the group understands the meaning of a particular symbol, the symbol itself comes to confirm the truth of what it represents.

For example, after the 1727 New England earthquake, ministers preached that the sinful and depraved actions of unsaved and backslid New Englanders had provoked God's wrath and visited it upon them.[101] The values of the New England ethos recognized both sinful behavior and earthquakes as bad things and their world view included a just universe in which bad things happen to bad people. The earthquake sermons synthesized these two aspects of New England life so successfully that inhabitants were moved to reform their ways and renew their covenant with God. In this manner, a synthesis of ethos and worldview acts as both a gloss on the mundane world, interpreting natural processes in cosmic terms. But it also acts as a template for living in the world, dictating the proper response to human experiences.[102] Geertz describes this process another way, "religion tunes human actions to an envisaged cosmic order and projects images of cosmic order onto the plane of human experience."[103]

Geertz's understanding of religion in terms of orienting its adherents within a cosmic order is decidedly humanistic. His contention is that religions offer explanations of the authentic meaning, being, and truth of existence. However, Geertz does not specify any particular content that all religions must affirm or explain. Thus, while Geertz understands this distinctive synthesis of world view and ethos as basic to religions, he is more concerned to describe the scope and function of religions than their core or essence.

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100. *Id.* at 89–90.

101. HARRY S. STOUT, THE NEW ENGLAND SOUL: PREACHING AND RELIGIOUS CULTURE IN COLONIAL NEW ENGLAND 178–79 (Oxford University Press 1986).

102. GEERTZ, *supra* note 67, at 124.

103. *Id.* at 90.

III. POST-MODERN CRITICISM OF GENERAL DEFINITIONS OF RELIGION

Geertz thus offers a comprehensive definition of religion that seems to address several difficulties encountered by earlier attempts. He includes a humanistic dimension and calls for thick interpretive descriptions without sacrificing empirical investigation and rational analysis. However, despite these seeming advantages to Geertz's approach, his project served as a springboard for post-modernist critique and disconcerting questions about whether the quest for a definition of religion is itself intelligible or rationally sound. Perhaps the most prominent critic of Geertz is Talal Asad.[104] Asad systematically challenges Geertz's approach and its presuppositions. However, his main target is not the particular definition of religion offered by Geertz, but rather the possibility of producing a universal definition of religion at all.

A. Religion and Power

Asad raises many specific criticisms of Geertz's analysis. He reads Geertz's emphasis on symbol and meaning as developing an essentially private, interiorized conception of religion that corresponds with contemporary Protestant Christianity.[105] In particular, Asad points to Geertz's statements regarding religious meaning—that religious belief transforms experience.[106] Specifically when confronting incomprehensibility, suffering, or moral paradox, religious beliefs may render these experiences comprehensible, bearable, and reflecting a higher justice.

Geertz argues these beliefs are efficacious because they are rooted in a conception of a comprehensive, general order that corrects and completes realities of everyday life.[107] However, in order for a cosmic explanation to function, it must be accepted as authoritative. In other words, in order to be consoled by religious answers, one must believe them to be valid. In this context, Geertz states: "he who would know must first believe."[108]

Asad reads these statements as implying "that religious belief stands independently of the worldly conditions that produce baffle-

104. *See* TALAL ASAD, GENEALOGIES OF RELIGION: DISCIPLINE AND REASONS OF POWER IN CHRISTIANITY AND ISLAM 27–55 (Johns Hopkins University Press 1993).

105. *Id.*

106. *Id.* at 46.

107. GEERTZ, *supra* note 67, at 112.

108. *Id.* at 110.

ment, pain, and moral paradox."[109] In other words, Geertz seems to isolate religious forms of knowledge from other experiences and understandings about the world. If religious knowledge can only spring from a prior acceptance of certain tenets on the basis of faith alone, then religious belief is not rooted in one's experiences of the world. Asad argues that Geertz emphasizes the priority of belief as an independent mental state that precedes and stands apart from engagement with and activity in the world.[110] This account of religion reflects modern western sensibilities, in which religious belief is seen as incommensurable with other forms of knowledge:

> Geertz's treatment of religious belief . . . is a modern, privatized Christian one. . . . In modern society, where knowledge is rooted either in an a-Christian everyday life or in an a-religious science, the Christian apologist tends not to regard belief as the conclusion to a knowledge process but as its precondition.[111]

Asad thus questions the general applicability of Geertz's definition to all religions everywhere in every time. For example, Christian rationalists of the Scholastic era would dispute this hard distinction between religious knowledge and other sources of knowledge.

Kevin Schilbrack offers an alternative reading of Geertz, challenging the idea that Geertz defines religion in terms that are either essentially cognitive or private, pointing out that while "belief is an essential *part* of a religion's worldview, the religion's ethos is equally essential to Geertz's definition."[112] In other words, one's experiences of and engagement with the world make up a significant part of one's religious knowledge. Schilbrack also challenges Asad's characterization of Geertz's project on the ground that Geertz does not think any kind of knowledge (religious or otherwise) is a product of a private, interior mode of contemplation.

Symbols are not private, interior thoughts. The meanings of symbols are socially and culturally mediated. Geertz calls them "extrinsic sources of information."[113] They come from outside of the human subject. In other words, when Geertz describes a symbol as a ve-

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109. ASAD, *supra* note 104, at 46.

110. *Id.*

111. *Id.* at 47.

112. Kevin Schilbrack, *Religion, Models of, and Reality: Are We Really Through with Geertz?*, 73 J. AM. ACAD. RELIGION 429, 437 (2005).

113. GEERTZ, *supra* note 67, at 92.

hicle for a conception, he does not mean that the meaning of a symbol is merely an individual's private conviction about what is symbolized. Rather the symbol is itself a part of the world the believer experiences, symbols lie "in that intersubjective world of common understandings into which all human individuals are born, in which they pursue their separate careers, and which they leave persisting behind them after they die."[114] Geertz specifically rejects the notion that the study of religion entails the study of abstractions, beliefs, or ideas.[115]

In characterizing religious symbols as "extrinsic sources of information,"[116] which lie "in that intersubjective world of common understandings,"[117] Geertz is part of an epistemological movement that "takes meaning out of the head."[118] In other words, our very ideas and understandings of the meaning of experiences and phenomena are themselves socially and linguistically mediated. They are not private, internal mental objects that stand independent and apart from reality. They *are* our reality and are as observable as weddings and agriculture. Our perceptions and experiences of the world are determined by our context and that context shapes how we come to understand those perceptions and experiences. Thus, the statement that when it comes to accepting the authority of religious answers "he who would know must first believe" could be coupled with the caveat "he who would believe must first have encountered belief through interaction with his social context."

The main thrust of Asad's criticisms, however, does not seem to be the interior, private nature of religious belief in Geertz's account. Rather, Asad seems primarily concerned with Geertz's exclusion of questions of power and authority in his treatment of religion. Asad argues the attempt to discern an autonomous, transhistorical, transcultural essence of religion is to divorce religion conceptually from the issue of power, authority, control, and domination.[119] In other words, one cannot describe religion generically without reference to the role of religion in human history.

Domination is of particular import when analyzing religion from this perspective. The relation between power, pain, and truth is

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114. *Id.*

115. *Id.* at 91 (To study religion we do not have to "enter into a mentalistic world of introspective psychology or, worse, speculative philosophy. . . . [T]he construction, apprehension, and utilization of symbolic forms, are social events like any other; they are as public as marriage and as observable as agriculture").

116. *Id.* at 92.

117. *Id.*

118. Schilbrack, *supra* note 112, at 438.

119. ASAD, *supra* note 104, at 28-29.

central to Asad's research. In "Pain and Truth in Medieval Christian Ritual," Asad examines the link between pain and truth-seeking in medieval judicial torture. He argues the first step from divine to human proofs in western judicial proceedings occurred with the transition from trial by ordeal to using judicial torture to produce information, procure truth, and arrive at judgment.[120] In ordeals, supernatural powers judge or reveal the truth of an accusation or claim through divination, physical test (such as fire or water), or even ritual combat.[121] By contrast, trials conducted through torture depended on human beings as the exclusive witnesses to and judges of truth. Thus, they placed us on a path leading away from irrationality and superstition and towards rational adjudication. Pain was used to elicit truth from reluctant witnesses. Similarly, religious rituals of pain and asceticism were intrinsically linked to truth-seeking: "the body . . . was primarily a medium by which the truth about the self's essential potentiality for transgression could be brought into the light, so that it could be illuminated by a metaphysical truth, a process in which pain and discomfort were inescapable elements."[122]

With this background regarding the intrinsic link between pain and truth in medieval Europe in mind, Asad uses medieval Christianity to critique Geertz and to consider the role of power in the process of building and sustaining religious dispositions and convictions. He asks, "How does (religious) power create (religious) truth?"[123] Asad shows the impotence of Geertz's analysis in capturing the hierarchies of authority that contribute to the construction and maintenance of religious dispositions:

> [I]t is not mere symbols that implant true Christian dispositions, but power—ranging all the way from laws (imperial and ecclesiastical) and other sanctions (hellfire, death, salvation, good repute, peace) to the disciplinary activities of social institutions (family, school, city, church) and of human bodies (fasting, prayer, obedience, penance) . . . . It was not the mind that moved

120. *Id.* at 94-95.

121. Encyclopedia Britannica Online, http://search.eb.com/eb/article-9057308 (last visited Oct. 19, 2007).

122. ASAD, *supra* note 104, at 110.

123. *Id.* at 33.

> spontaneously to religious truth, but power that created the conditions for experiencing that truth.[124]

The shift away from physical coercion, pain, and humiliation as a means to discover and confirm truths coincided with the Church's loss of its formal authority as the only legitimate arbiter of truth, on the heels of the Reformation, Enlightenment thought, republican revolutions, and the rise of modern science.[125] On Asad's reading, Geertz's view of religion is thus "a product of the only legitimate space allowed to Christianity by post-Enlightenment society, the right to individual *belief*."[126] Geertz's own understanding of religion is thoroughly rooted in a post-Enlightenment world view, in which the power and authority of the Church has been circumscribed, holding sway only over the beliefs and consciences of individual adherents.[127]

Asad thus situates Geertz's project within the context of the western Church's loss of its dominant position and exclusive authority. He highlights several dimensions of Geertz's project in which the absence of an analysis of power undermines the usefulness of Geertz's definition. First, Asad points to what he calls a conceptual confusion in Geertz's description of the nature and function of symbols. This confusion involves ambiguities regarding whether a symbol is a vehicle for a conception or a concept of reality in itself, a representation of an object of reality, or itself an aspect of reality.[128] Such ambiguities cloud the connection between discourse, understanding, and social practice.[129] In other words, Geertz avoids confronting the question of what a symbol is, what it represents, and how it comes to be accepted. By side-stepping questions of how discursive practices shape understanding, and how they are connected to social practices, Geertz avoids treating the question of how symbols come to be constructed, established as authoritative, accepted as natural, and transmitted as insights and wisdom.

Similarly, Asad challenges Geertz's hypothesis that ritual practice is the incubator of religious conviction, generating religious dispositions, and convincing participants of the truth and reliability of religious precepts. Ritual practice is only a small piece of this puzzle: "it is not simply worship but social, political, and economic institutions in

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124. *Id.* at 35.
125. *Id.* at 39.
126. *Id.* at 45.
127. *Id.* at 39, 45.
128. *Id.* at 30.
129. *Id.* at 31.

general, within which individual biographies are lived out, that lend a stable character to the flow of a [religious adherent's] activity and to the quality of her experience."[130] In other words, Geertz's omission of the role of domination, power and authority, in discovering and confirming true convictions misapprehends the nature of religious belief, religious symbols, and ritual practice.

Asad is entirely correct that Geertz's definition of religion fails to adequately take into consideration the role of power and authority. Geertz defines religion without analyzing the process by which a general order of existence is postulated and affirmed or the means through which religious practices, utterances, and dispositions participate in this process. While it is fair to say that Geertz's definition does not explicitly recognize the role played by power, he does not deny that power plays a role. He simply fails to adequately account for it. As mentioned before, Geertz recognizes that belief, at least in part, depends upon prior acceptance of authority.[131] However, he fails to further develop the nature, content, and source of this power.

This oversight is deeply problematic with respect to an anthropological understanding of religion. However, it is a boon to those of us seeking a legal definition of religion. An anthropological study is incomplete without investigating the role of power and authority in religious belief and practice. However, a legal definition of religion should not include an understanding of the role of power in constructing and maintaining religious beliefs, practices, discourses, and institutions. A legal definition ought to admit of a variety of conceptions and configurations of power within and in relation to religion. This may perhaps seem an odd argument, because the Religion Clauses of the First Amendment postulate a particular relation between political authority and religion. However, that is precisely why a definition of the term religion ought to remain neutral with respect to the question of power.

In various places and times in human history there have been myriad configurations of the relation of power and convictions about human life and purpose. The extent to which a particular synthesis of ethos and worldview includes an understanding of the proper relation of coercion and conviction is not essential to determining whether or not that synthesis constitutes a religion. That understanding is important to applying the constitutional limits on the relation between the coercive power of the state and the guarantee of religious freedom. But

130. *Id.* at 33.

131. GEERTZ, *supra* note 67, at 109.

a definition of the term religion that includes a conception about the proper relation of authority and belief would seem to obviate the need for a constitutional amendment that establishes those parameters. Thus the Geertzian claim that there must be some prior acceptance of the authority of religious truths (be that authority divine, familial, social or other) acknowledges that there is some role for power in inculcating religious belief without specifying the means. In the context of the United States, however, religious authority cannot be merged with the power of the state.

This distinction between secular and religious sources of authority is distinctively modern and western and its specific formulation under discussion is rooted in the unique history of the American republic.[132] The modern western norm of a conceptual bifurcation between religious authority and political power is not transhistorical or transcultural. Various formulations of the distinction between religious and political authority are rooted in the Reformation, Enlightenment thought, republican revolutions, and the rise of modern science. But the concept of religion need not presuppose such a bifurcation. A religion that does not distinguish among sources of authority or does not permit conceptual bifurcation of the grounds for its authority may prove a difficult case in terms of applying the protections of the First Amendment, but it will still count as a *religion*.

B. Incomprehensibility of Metaphysics

Another important criticism of Geertz's project has been raised by Nancy Frankenberry and Hans Penner in their 1999 essay "Clifford Geertz's Long-Lasting Moods, Motivations, and Metaphysical Con-

132. For example, note the differences between American-style religious freedom as codified in the Religion Clauses of the United States Constitution and the French formulation of the distinction between secular and religious sources of authority, laïcité. The French concept of laïcité is codified in Article 1 of the Constitution of the Fifth French Republic: "France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. It shall be organized on a decentralized basis." 1958 CONST. 1. The principle of laïcité embodies ideals of equality, freedom, neutrality, and toleration. However, France's history has been fraught with a deep mistrust of organized religion, as evidenced by the campaign of de-Christianization waged during the First French Republic, followed by bitter political divisions along anti-clerical-republican and royalist-Bonapartist/pro-Roman Catholic lines. This polarization is exemplified in the passage of the 1901 Law of Associations (which suppressed nearly all of the religious orders in France and confiscated their property), and the 1905 Law of Separation of Churches and the State (rescinding the Concordat that Napoleon had reached with the Catholic Church in 1801).

ceptions."[133] Frankenberry and Penner raise epistemological concerns regarding Geertz's understanding and explanation of the role of symbols in cultural practices. They argue Geertz's theory is permeated with confusion regarding the truth status of religious symbol systems.[134] They see Geertz as alternating between two conflicting epistemological paradigms. With respect to the claim that religions act as models *of* reality, they claim Geertz proposes a *correspondence* theory of truth.[135] By correspondence theory of truth they mean Geertz claims that religious tenets are accepted as convincing only insofar as they conform to the nonsymbolic realities they represent. Thus, as models *of* reality, Geertz presupposes religious claims derive their legitimacy by their intrinsic relation to nonsymbolic reality—existence in and of itself—apart from interpretations and representations of it.[136] A correspondence theory of truth is epistemologically problematic because it assumes a dualism between what we experience and our conceptions of it.

Frankenberry and Penner then allege that Geertz's model *for* approach presupposes a *coherence* theory of truth.[137] By coherence theory of truth, they mean systems of symbols derive their legitimacy from the internal consistency of the system itself. Coherence theories of truth do not depend upon the relation of representations or interpretations to the facts of the matter. Instead, they rely on the internal relation among the propositions of the program or system of description. Thus, religious tenets derive their legitimacy from their consistency with other elements of the symbolic system. The problem with a coherence theory of truth is "there is no way to stave off skeptical worries that the world could be completely different from what we actually believe it to be, or from what the symbolic vehicles represent it as being."[138] By showing that Geertz presupposes both a correspondence theory of truth and a coherence theory of truth they argue his program

133. Nancy K. Frankenberry & Hans H. Penner, *Clifford Geertz's Long Lasting Moods, Motivations, and Metaphysical Conceptions*, 79 J. RELIGION 617 (1999).

134. *Id.* at 621-26.

135. *Id.* at 622.

136. *Id.*

> So when Geertz says that models 'are sets of symbols whose relations to one another 'model' relations among entities, processes, or what-have-you in physical, organic, social, or psychological systems, 'paralleling,' 'imitating,' or 'simulating' them', we can understand him as saying that symbolic systems *correspond* to nonsymbolic physical, organic, or social systems in some complex way.

Id.

137. *Id.* at 624.

138. *Id.*

is indefensible in each respect and, in the combination of both, schizophrenic and utterly confused.[139]

In his recent essay on the status of Geertz's definition of religion, Schilbrack opines that Frankenberry and Penner are part of an anti-metaphysical current in post-modern thought.[140] Their claims of the sheer incomprehensibility of Geertz's program reflect their view that metaphysical pursuits are inherently nonsensical. This is because they appear to equate metaphysics with a Kantian dualism between what "really" is and what "appears" to be. They challenge the possibility of constructing a conceptual scheme that renders intelligible fundamental reality: "[W]hy should we suppose that a specific human activity could lead us to the 'truth' about what there 'really' is? . . . Instead, we would simply maintain that we are 'in unmediated touch with the familiar objects whose antics make our sentences and opinions true or false.'"[141]

However, it is not at all clear that Geertz is making any metaphysical claims about ultimate actuality or the really real. One may certainly read Geertz's account of the function of symbols as interpreting preconceptualized reality and expressing a theory of truth. It is also possible to read Geertz's meaning of correspondence in a less mystifying, more commonplace manner, as Schilbrack does:

> Clearly there is an everyday and fully acceptable sense in which we speak of symbolic representations or models of reality. . . . It makes perfect sense to say that a blue line on the map "corresponds" to this highway or that the construction workers "follow" or "copy" the blueprint. This makes sense, notwithstanding the fact that it involves a comparison between a symbol and something else "in the world" that is not symbolic. . . . [In such cases] a symbol is not being compared to some prelinguistic or unconceptualized, individuated element in reality. Blue line means highway; two squares mean French doors. In other words, though it is confused to argue that a conceptual scheme corresponds to uncon-

139. *Id.* at 626.

140. *See* Schilbrack, *supra* note 112, at 43 ("Since the sixties, a variety of movements have arisen that criticize the assumption that symbolic systems can reach outside themselves to connect to the world. These versions of postmodernism repudiate the possibility of metaphysical inquiry.").

141. Frankenberry & Penner, *supra* note 133, at 637–38.

> ceptualized reality, it is not at all confused to hold that words correspond to things.[142]

In Geertz's own words, a religious conception of a cosmic order provides "a gloss upon the mundane world of social relationships and psychological events. It renders them graspable."[143] Thus, Geertz may not himself be making any metaphysical claims.

While Frankenberry and Penner may equate metaphysics with a particular form of reasoning about reality, Geertz does not. The "worldview" prong of his definition of religion is metaphysical to the extent that metaphysics refers to concern with the entire context of existence, to some cosmic, general order. Geertz's only requirement for a religious metaphysics is that it function at the highest level of generality, that it relate to a general order of existence. He neither affirms nor denies the possibility of probing beneath our experiences and our interpretations to reach a pure unmediated truth. He leaves open the possibility that a religion may opine that there is some reality beyond our experiences of it or that there is no reality but what our immediate senses perceive. But the defining characteristic of metaphysics is its scope not its content. Thus, we can agree with Schilbrack in responding to Asad's concern that Geertz's metaphysical requirement serves as a pretext for colonial and missionary imperial projects: "there is nothing *necessarily* invidious or crypto-Christian about the idea of a 'religious metaphysics.' Metaphysics is not necessarily an imperialist move."[144]

C. Futility of a General Definition of Religion?

In the Twentieth Century, religion scholars grappled with a number of challenges to the task of defining religion. While my examination of these challenges focused on only a few voices, the difficulties inherent in defining religion affected the entire academy. I have highlighted three issues at stake in these debates: (1) the meta question regarding the task of defining itself; (2) the question of methodology; and (3) the question of perspective. Each of these dimensions of the problem of defining religion manifests a challenge confronting the modern quest for wisdom on the basis of human reason alone. Essentialist models of defining religion sought to reflect a scientific paradigm, mirroring the genus/species construct of the natural sciences.

142. Schilbrack, *supra* note 112, at 443–44.

143. GEERTZ, *supra* note 67, at 124.

144. Schilbrack, *supra* note 112, at 441.

But the goal of crafting a modern definition was stymied by the persistence of unexamined presuppositions that rendered essentialist constructs flawed and unworkable. The sociological attempt to define religion using a scientific framework was criticized as reductionistic and incomplete. By explaining religion in terms of something else (its social function) such approaches deny religion's character as a unique, irreducible feature of human life. But the humanistic response to reductionism was met with charges of crypto-confessionalism, bias, and an improper blending of two incommensurable points of view. Participant perspectives were rejected as subjective, soft, and uncritical, while observer perspectives were seen as hostile to religion and dismissive of religious experience.

The modern conceit that scientific rigor, empirical investigation, and rational analysis could yield objective truth gave birth to matricidal post-modern offspring who deny the possibility of objectivity or of truth. Asad rejects the prospect of formulating a generally applicable definition of religion. The very concept of religion as a discrete feature of human life that can be identified and made the object of study, is rooted in the history of the West.[145] Frankenberry and Penner reject the notion of absolute, unmediated truth.[146] They also reject the possibility of conceptual perspectivism or relativism on the ground that any assertion that all truth is relative is itself a universal claim about the nature of truth.[147]

The post-modern predicament exposes many theoretical problems with defining religion. But post-modern critics offer little in the way of a practical passage out of the quagmire.[148] The problem of interpreting the meaning of religion for purposes of defining and guaranteeing constitutional rights demands a pragmatic solution. My defense of Geertz's definition of religion is meant to offer such a possibility. I do not argue that Geertz's approach is categorically true or of universal applicability. However, I do believe it offers a framework that may be useful in evaluating Religion Clause claims and avoiding some of the pitfalls that the courts have encountered.

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145. ASAD, *supra* note 104, at 28.

146. Frankenberry & Penner, *supra* note 133, at 638.

147. *Id.* at 633. "[O]ne cannot proclaim relativism without rising above it, and one cannot rise above it without giving it up." *Id.*

148. Bell, *supra* note 52, at 187. "For some postmodernism is primarily a critical stance, modernism turned in on itself. It simply cancels out the universality of both science and religion." *Id.*

IV. TOWARDS A LEGAL DEFINITION

Legal definitions of religion are plagued by the same difficulties confronting religion scholars. Courts and commentators have struggled with whether a definition of religion ought to be monothetic or analogical, content-based or functionalist, based on objective or subjective criteria. The Court initially developed an understanding of religion that is monothetic, monotheistic, and belief-centered. In the 1878 case examining the constitutionality of federal anti-polygamy programs as applied against Mormons in federal territories, the Court found "religion is a matter which lies solely between man and his God."[149] The Court's early cases focus on personal, internal states of belief. For example, in another early case the Court states:

> The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. It is often confounded with the *cultus* or form of worship of a particular sect, but is distinguishable from the latter.[150]

As new cases presented themselves for the Court's consideration under the Religion Clauses, the Court modified its approach, extending the definition of religion to cover non-theistic beliefs by analogy to theistic religions and alluding to observable features of religions as relevant to their inquiry. In the 1940's the Court recognized that the First Amendment may bar the state from discriminating among religious groups on the basis of the content of the beliefs of practitioners.[151] However, the Court did not expand its definition of religion to encompass non-theistic faiths until a famous footnote in the 1961 case *Torcaso v. Watkins*: "Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others."[152] Although this footnote intimates that these non-theistic faiths fall within the purview of the First Amendment, the Court did not specifically announce an expanded definition of religion.

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149. Reynolds v. U.S., 98 U.S. 145, 164 (1878).

150. Davis v. Beason, 133 U.S. 333, 342 (1889).

151. *See* U.S. v. Ballard, 322 U.S. 78, 87 (1944) ("The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position.").

152. Torcaso v. Watkins, 367 U.S. 488, 495 n.11 (1960).

The Court continued to broaden its understanding of religion and developed an analogical framework for identifying religion in several cases interpreting the conscientious objection provision of the Universal Military Training and Service Act of 1948 (the "UMTSA"). The act exempted from military service individuals who objected to all wars on the basis of religious training and belief.[153] Congress defined "religious training and belief" as "an individual's belief in relation to a Supreme Being involving duties superior to those arising from any human relation, but [not including] essentially political, sociological, or philosophical views or a merely personal moral code."[154]

In one of the UMTSA cases, *U.S. v. Seeger*,[155] the Court confronted two questions: whether it is unconstitutional to discriminate against non-religion (by denying exemption to individuals whose objections to war are grounded in political, sociological, philosophical views or amount to a strictly personal moral code); and whether it is unconstitutional to discriminate among religions on the basis of the content of religious belief (by limiting the exemption to those who believe in a Supreme Being that requires duties superior to duties arising from any human relation). The Court found that Congress may limit the exemption to religious individuals, not extending it to individuals whose convictions were grounded solely in political, sociological, philosophical views or amount to a strictly personal moral code.[156] However, the Court expanded the meaning of Supreme Being to include any sincere and meaningful conviction that "occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who would clearly qualify for the exemption."[157]

In *Welsh v. U.S.*,[158] the Court extended the exemption to reach an individual who was avowedly non-religious. The *Welsh* Court applied the parallel position test to find that an individual whose objection to war is grounded in deeply held, sincere convictions that are purely ethical or moral, but occupy a place in his life parallel to that held by God for traditionally religious persons.[159] Thus, the Court seems to proffer an analogical approach, based upon the core beliefs of petitioners.

153. 50 U.S.C. § 456(j) (1948) (omitted 1973).
154. *Id.*
155. 380 U.S. 163 (1965).
156. *Id.* at 173.
157. *Id.* at 166.
158. 398 U.S. 333 (1970).
159. *Id.* at 340.

Since the UMTSA cases, the Court's statements about the meaning of religion have been limited. In *Wisconsin v. Yoder*, the Court contrasted constitutionally protected religion from purely philosophical or personal values.[160] In upholding the right of Amish parents to exempt their children from the state's compulsory public education law, the Court noted several aspects of the Amish religion that it deemed relevant to its determination. The court noted the long history of the Old Order Amish communities. The court also noted their rejection of worldly values and return to the ways of life of the early Christian communities. The Court seemed persuaded by the importance of religious precepts in regulating and ordering every aspect of Amish life, especially the community's rejection of formal education beyond the eighth grade.[161] In engaging in an extensive description of Amish history, life, and beliefs, the Court seems to want to embrace an analogical approach, whereby putative religions are identified by comparison to recognized religions, but the Court has yet to enunciate which elements are relevant to its determination or why.

Legal commentators have proposed alternative approaches to defining religion. These proposals vary from a bifurcated approach that defines religion expansively in Free Exercise cases and more nar-

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160. 406 U.S. 205, 215–16 (1972) (distinguishing between the Amish community's rejection of contemporary social values and Henry Thoreau's).

161. *Id.* at 209–11 ("The history of the Amish sect was given in some detail, beginning with the Swiss Anabaptists of the sixteenth century who rejected institutionalized churches and sought to return to the early, simple, Christian life de-emphasizing material success, rejecting the competitive spirit, and seeking to insulate themselves from the modern world. As a result of their common heritage, Old Order Amish communities today are characterized by a fundamental belief that salvation requires life in a church community separate and apart from the world and worldly influence. This concept of life aloof from the world and its values is central to their faith.

"A related feature of Old Order Amish communities is their devotion to a life in harmony with nature and the soil, as exemplified by the simple life of the early Christian era that continued in America during much of our early national life. Amish beliefs require members of the community to make their living by farming or closely related activities. Broadly speaking, the Old Order Amish religion pervades and determines the entire mode of life of its adherents. Their conduct is regulated in great detail by the *Ordnung*, or rules, of the church community. Adult baptism, which occurs in late adolescence, is the time at which Amish young people voluntarily undertake heavy obligations, not unlike the Bar Mitzvah of the Jews, to abide by the rules of the church community.

"Amish objection to formal education beyond the eighth grade is firmly grounded in these central religious concepts. They object to the high school, and higher education generally, because the values they teach are in marked variance with Amish values and the Amish way of life; they view secondary school education as an impermissible exposure of their children to a 'worldly' influence in conflict with their beliefs. . . . Amish society emphasizes informal learning-through-doing; a life of 'goodness,' rather than a life of intellect; wisdom, rather than technical knowledge; community welfare, rather than competition; and separation from, rather than integration with, contemporary worldly society.").

rowly in Establishment Clause cases;[162] a functional approach, that defines religion by the role it serves in the lives of adherents;[163] a content-based approach, that defines religion in terms of the substance of core beliefs;[164] and an analogical approach, that incorporates new religious movements into the protections of the Religion Clauses by comparison with certain features of generally recognized religions.[165]

In a concurring opinion in the case of *Malnak v. Yogi*,[166] Judge Adams of the U.S. Court of Appeals for the Third Circuit developed a particularly thoughtful and insightful approach to defining religion. The definition of religion first articulated by Judge Adams in his concurring opinion in the *Malnak* case was adopted by the Third Circuit in the case of *Africa v. Pennsylvania*.[167] Judge Adams' approach is notable because he seeks to reconcile the challenges to defining religion with Supreme Court precedent, thus addressing conceptual difficulties and the practical needs of courts. He offers an approach to defining religion that continues to be followed and cited with approval both within the Third Circuit and in other jurisdictions.[168] However, I believe Judge Adams' approach could be clarified, refined and improved by incorporating the insights of a Geertzian analysis into his definition of religion.

Instead of Geertz's five indicia of religion, Judge Adams' approach includes only three indicia of religion: (1) Religions are concerned with ultimate subject-matter, seeking to address fundamental questions; (2) are comprehensive in scope; and (3) exhibit surface characteristics similar to recognized religions, including, *inter alia*: trained teachers and institutions responsible for inculcating beliefs, means for disseminating beliefs and practices, performance of ceremonies or rites.[169] While this approach strives to identify objective cri-

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162. Note, *Toward a Constitutional Definition of Religion*, 91 HARV. L. REV. 1056 (1978).

163. Ben Clements, *Defining "Religion" in the First Amendment: A Functional Approach*, 74 CORNELL L. REV. 532 (1989).

164. Eli A. Echols, *Defining Religion for Constitutional Purposes: A New Approach Based on the Writings of Emanuel Swedenborg*, 13 B.U. PUB. INT. L.J. 117 (2003); *see also* Jesse H. Choper, *Defining "Religion" in the First Amendment*, 1982 U. ILL. L. REV. 579 (1982) (focusing on a belief in extratemporal consequences).

165. Kent Greenawalt, *The Religion Clauses Article: Religion as a Concept in Constitutional Law*, 72 CAL. L. REV. 753 (1984).

166. 592 F.2d 197 (3d Cir. 1979).

167. 622 F.2d 1025 (3d Cir. 1981).

168. *See* Brown v. Johnson, 116 Fed. Appx. 342 (3d Cir. 2004); Heleva v. Kramer, 2006 U.S. Dist. LEXIS 5237 (M.D. Pa. 2006); Love v. Reed, 216 F.3d 682 (8th Cir. 2000); Alvarado v. City of San Jose, 94 F.3d 1223 (9th Cir. 1996).

169. *See* Africa v. Pennsylvania, 662 F.2d 1025, 1035–37 (1981).

teria that could be used to distinguish religion from non-religion, the criteria offered lack precision, are incomplete, and do not provide the predictability desirable in constitutional jurisprudence.

In *Malnak*, the court reviewed the district court determination that five New Jersey public high schools violated the Establishment Clause by teaching courses on the Science of Creative Intelligence Transcendental Meditation (SCI/TM). The court decided, per curiam, that there was no reversible error in the district court's determination that the SCI/TM course involved religious activity, by reference to the types of activities and beliefs that have been recognized as religious in prior first amendment cases.[170] In his concurrence, Judge Adams argued the facts presented were novel.[171] Accordingly, although he agreed that precedent dictated the outcome, he thought it necessary to articulate why the authorities cited extended to the novel facts of the case at bar.[172]

In his concurring opinion, Adams examined four types of precedents: cases that employed a traditional, theistic definition of religion; school prayer cases; the UMTSA cases; and cases expanding the constitutional definition of religion beyond traditional theism. Analyzing these cases, Adams articulated why a public school course on the SCI/TM constitutes religious activity that is prohibited by the Establishment Clause. In his review of precedent, Adams concluded that constitutional cases "strongly support a definition for religion broader than the Theistic formulation of the earlier Supreme Court cases."[173] However, in lieu of clear guidelines for the scope of a modern definition of religion, the Supreme Court and noted Courts of Appeals seemed to reason by analogy, "look[ing] to the familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted 'religions.'"[174]

Analogical reasoning in cases determining the meaning and scope of the Religion Clauses is problematic because socially favored and accepted religions set the standard for what ought to count as religion. Such an approach institutionalizes bias and systematically marginalizes unpopular or novel religious movements. Judge Adams cautioned that in order for analogical reasoning to be viable as a means of identifying what counts as constitutionally protected religion, courts

170. Malnak v. Yogi, 592 F.2d 197, 199-200 (3d Cir. 1979).
171. *Id.* at 200.
172. *Id.* at 201.
173. *Id.* at 207.
174. *Id.*

will need to specify "exactly what indicia are to be looked to in making such an analogy and justifying it."[175]

Both academic and legal definitions of religion must be careful not to normalize a dominant form of religion, stigmatizing, and in the First Amendment context denying constitutional protection for, minority, unpopular, disfavored, or unorthodox traditions. This error occurs whenever theorists either specify the content of properly religious convictions (*e.g.*, in terms of belief in a Supreme Being) or specify the particular domain that religion occupies (*e.g.*, defining religion exclusively in terms of interior states of conviction).

In his concurring opinion in the *Malnak* case and writing the opinion of the court in the 1981 case, *Africa v. Pennsylvania*, Judge Adams sought to move beyond the difficulties inherent in analogical approaches to defining religion by eliminating the content-specific test of religious conviction and including the dimension of formal, external, surface elements of religion that are subject to observation and analysis. However, the indicia offered remain vague and imprecise. The first criterion offered is that religion address fundamental questions, matters of ultimate concern: "questions having to do with, among other things, life and death, right and wrong, and good and evil."[176] Although the approach of the Third Circuit aims for content-neutrality, the ultimate questions test in fact specifies the content of constitutionally protected religious convictions. In other words, it depends upon the conviction that the human condition is characterized by difficulties confronting and grappling with: life and death, right and wrong, and good and evil. The court defines religion in terms of the answers provided to these questions by the system of beliefs and practices under analysis (based on the trial record). A preferable approach would be to frame the question in terms of scope, rather than content. Is the putative religion humanistic in scope? Does it posit some conception of the meaning, truth, and value of human existence? Is it concerned with the entire context of human existence, a person's relation to the universe? Does it suggest certain enduring features of the human condition?

The Third Circuit approach discusses the question of scope in the second prong of the analysis: comprehensiveness. For the Third Circuit, comprehensiveness entails a worldview that aims at "providing the answers to 'questions concerning the nature both of world and man, the underlying sustaining force of the universe, and the way to

175. Malnak v. Yogi, 592 F.2d 197, 207 (3d Cir. 1979).

176. Africa v. Pennsylvania, 662 F.2d 1025, 1033 (3d Cir. 1981).

unlimited happiness.'"[177] This approach seems to conflate comprehensiveness with ultimate concern. Matters of ultimate concern are comprehensive in the sense that they are metaphysical, of general applicability. They apply to all things unconditionally. The Third Circuit's distinction between "matters of ultimate concern" and comprehensiveness of scope seems confused because ultimate concern implies the highest, most general level of concern.

Another sense of comprehensive could mean that the belief system dictates how one ought to live each and every aspect of one's life. However, the *Africa* court itself denies that comprehensiveness in this sense is relevant to a determination of religiosity:

> It could be argued that [the petitioner's] views are in a sense comprehensive, since, according to his testimony, his every effort and thought is attributable to and explained by his 'religious' convictions. [Members of petitioner's community] 'are practicing our religious beliefs all the time,' even when running, eating, and breathing. The notion that all of life's activities can be cloaked with religious significance is, of course, neither unique [to the case at bar] nor foreign to more established religions. Such a notion by itself, however, cannot transform an otherwise secular, one-dimensional philosophy into a comprehensive theological system.[178]

Although the court rejects the contention that religious comprehensiveness ought to be interpreted to mean religious tenets pervade and determine the entire mode of life of its adherents, a third possible meaning of comprehensiveness is suggested by the petitioner in the above quoted language, *i.e.*, that the system in question provides a comprehensive ethos or way of life, cloaking every aspect of its adherents' daily lives with religious significance.

Third, the Third Circuit fails to specify what types of structural, formally identifying, external characteristics are relevant to its definition of religion and why. The court states that the putative religion before it lacked special services, official customs, and holidays.[179] However, the court also noted that the absence of such indicia may not be

177. *Id.* at 1035.
178. *Id.*
179. *Id.* at 1036.

determinative.[180] Here, Geertz's approach seems helpful. Geertz does not specify particular elements that all religions have. Rather he points to arenas through which adherents synthesize their beliefs and experiences. Such arenas include opportunities to learn, communicate, display, portray, enact, realize, and materialize the adherent's ethos and world view. Such arenas may include ritual practice, discourse regarding authoritative precepts, community formation and maintenance, and institutional structures.

In addition to clarifying the Third Circuit's own criteria, Geertz's approach offers two additional dimensions of religion. First, he suggests that religions are systematic patterns of symbols. This prong would be helpful to courts in identifying whether the beliefs or practices form a part of a cultural pattern that orients the claimant within her experiences, explaining the nature and meaning of her world within it. Second, the aura of factuality prong of Geertz's definition accords with concerns of the court that religious beliefs be the product of a sincere and meaningful conviction. Geertz's understanding of this dimension of religion is useful because it offers particular criteria that courts may turn to in evaluating a petitioner's sincerity: whether there is evidence of powerful, pervasive, and long-lasting moods and motivations occasioned by the symbol system in question. Accordingly, an appropriation of Geertz's five-prong analysis seems to provide a more precise and more complete definition of religion for constitutional purposes.

V. CONCLUSION

In the foregoing analysis I have sought to identify three conceptual difficulties to defining religion and to offer an approach to overcoming these difficulties by appropriating and adopting the definition of religion developed by anthropologist Clifford Geertz. Geertz's approach suggests the possibility of avoiding many of the conceptual difficulties implicated by both the modern challenges to defining religion in the academy and the Court's earlier attempts to define religion. Although not of universal applicability in a post-modern sense, this approach offers a definition of religion well-suited to the context of American constitutional jurisprudence. His definition is reasonably content-neutral, flexible, and yet capable of being applied with preci-

180. *Id.* at n.21 (citing Malnak v. Yogi, 592 F.2d 197, 209 (3d Cir. 1979) and Stevens v. Berger, 428 F. Supp. 896, 900 (E.D.N.Y. 1977) ("Neither the trappings of robes, nor temples of stone, nor a fixed liturgy, nor an extensive literature or history is required to meet the test of beliefs cognizable under the Constitution as religious.")).

sion. Another important feature of Geertz's approach is his silence with regard to the nature and source of religious authority. This silence provides courts with a definition of religion that lends itself to a discussion of the nature and meaning of religious freedom without stipulating a particular account of the proper relation of religion and state. Finally, this approach is also compatible with the Supreme Court and appellate court precedents that seek to interpret the meaning of religion by analogy. However, drawing upon a Geertzian account of religion would provide courts with clear indicia to structure and guide such analogical analyses.