

The Final Prejudice

Atheists may be the most unpopular minority, but law offers few answers.

BY ILYA SOMIN

Recent decades have seen a major increase in public acceptance of minorities such as African-Americans, Jews, and homosexuals. But one minority lags behind all others—those who do not believe in God.

Half of Americans have a negative view of atheists. Similar percentages categorically refuse to vote for atheists for public office and believe that it is impossible for them to be moral people. Courts in some states routinely discriminate against them in child-custody battles.

Yet this prejudice against atheists is unjustified, and sometimes it causes real harm.

THE MOST UNPOPULAR

Numerous polls show that hostility toward atheists is more widespread than that toward any other minority group. Recent Pew surveys found that far more people have a “mostly” or “very” unfavorable view of atheists than of any other religious or ethnic group. In particular:

Percent with a “Mostly” or “Very” Unfavorable View of Certain Groups

Atheists	50 percent
Muslims	31 percent
Evangelical Christians	17 percent
Catholics	14 percent
Hispanics	13 percent
Asians	12 percent
Jews	10 percent
Blacks	8 percent

Similarly, recent Gallup and Pew surveys inquired if Americans would vote for a “well-qualified” candidate for president if such a person were nominated by their party and yet belonged to certain groups. The results:

Percent Unwilling to Vote for “Well-Qualified” Candidate of Their Party Who Belongs to Certain Group

Atheist	50 percent
Muslim	38 percent
Homosexual (1999 data)	37 percent
Evangelical Christian	15 percent
Woman	12 percent
Jewish	10 percent
Black	6 percent
Catholic	5 percent

It is striking that surveys consistently reveal that many more people have a negative view of atheists than of Muslims, even in the aftermath of Sept. 11. Survey data may be skewed by the unwillingness of some to reveal racist or anti-Semitic views. Even so, it is still noteworthy that few have similar inhibitions about expressing prejudice against atheists.

Hostility toward atheists is not confined to any one group, such as religious conservatives. A recent survey shows that 43 percent of Republicans believe that atheists “do not at all” share their vision of America, but so do 36 percent of Democrats, and even 25 percent of those who say they rarely or never go to church.

IS THE PREJUDICE JUSTIFIED?

A common defense of hostility toward atheists is the claim that atheists lack moral values. A 2004 poll indicates that 51 percent of Americans believe that “[i]t is necessary to believe in God in order to be moral and have good values.”

It is indeed sometimes appropriate to show hostility toward people because of their reprehensible beliefs, as in the case of Nazis or Communists. But we generally reject such categorical hostility toward entire religious groups such as Jews, Catholics, or Muslims. The same principle should apply to atheists.

Indeed, atheism, unlike some religions, is actually compatible

with a very wide range of views on moral and political issues. Atheism is not a comprehensive world view, but merely a denial of the existence of God.

It is simply not true that atheism implies a rejection of moral values. There are numerous ethical theories, including Kantianism, Confucianism, and utilitarianism, that do not require belief in God. Studies show that atheists have lower crime rates and lower rates of social pathologies such as teen pregnancy than theists do, and that atheists are on average less likely to hold racist views.

Nor is there any evidence that majority-atheist nations such as Japan and the Czech Republic suffer from unusually serious social problems as a result. These data do not prove that atheists are somehow morally superior to theists, but they do refute the claim that atheists are uniquely immoral.

American atheists are a relatively affluent group that has not in recent decades suffered much from systematic discrimination. Historically, discrimination against American atheists has had a less severe impact than that against African-Americans or homosexuals. Even the controversial issue of government display of religious symbols has only a minor impact on the day-to-day lives of most atheists. There are several ways, however, in which widespread anti-atheist prejudice causes real harm.

Perhaps the most important is discrimination in child-custody cases. In a recent article, UCLA law professor Eugene Volokh documented numerous instances where atheist parents or even relatively nonobservant theists lose out in child-custody disputes because of judicial bias.

In these cases, judges explicitly stated in published opinions that they favored the parent who was more observant or provided more religious training (often in the form of church attendance) to the child. For example, several Mississippi state court decisions favor the more religious of the two parents on the grounds that he or she has superior “moral fitness” for child-raising. Other cases in various states favor religious parents in part because they are willing to provide more “religious education” for the child.

While Mississippi and Louisiana courts are among the most egregious offenders, there have been many similar cases in more liberal states such as Michigan, Minnesota, and Pennsylvania. For every case where a judge states such a holding in a published opinion, there are probably other instances where similar considerations influenced the outcome without being documented.

Courts should hold that religious discrimination in child-custody cases is unconstitutional under the First Amendment’s free exercise and establishment of religion clauses.

Such discrimination violates the establishment clause because it entails state endorsement of one religious belief as superior to another. The state should not be in the business of deciding how much—if any—“religious education” children should have. Under the establishment clause, the Supreme Court has banned much lesser forms of religious coercion of minors, including “forcing” students to hear a religious speaker at an optional high-school graduation ceremony in *Lee v. Weisman* (1992).

Deciding custody based on the amount of religious education a parent offers probably runs afoul of the free exercise clause as well, since it strongarms parents into teaching their children religious beliefs that may run counter to the parents’ own views.

EXCLUSION FROM OFFICE

Perhaps the most striking indication of prejudice against atheists is their almost total absence from political office, even as compared with other relatively unpopular groups.

Despite considerable antagonism toward homosexuals in many quarters, there are currently three openly gay members of Congress, including a conservative Republican. Similarly, there are currently 26 Jewish congressmen and 11 Jewish senators.

Like Jews, atheists have median education levels above the national average. Yet there is not even one openly atheist member of Congress, despite the fact that atheists are at least 3 percent of the population, more than the percentage of Jews and similar to the percentage of homosexuals. Nor has there ever been an openly atheist president, vice president, governor, Supreme Court justice, or member of the president’s Cabinet. While we should not expect proportional representation of atheists, the absence of even one open atheist in high political office is troubling.

Atheists are not politically powerless. They can still influence politicians through their votes and campaign contributions. Nevertheless, there is at least some benefit to having members of one’s own group in positions of political power. If nothing else, atheist politicians may be at least slightly more likely to address issues such as judicial bias against their group.

Moreover, symbolism matters too, even if its importance is often overstated. Few would deny that there would be something wrong with our political system if no Jew or black or Catholic were ever able to attain high public office—even if Jewish, black, and Catholic voters were usually effectively represented by political leaders from other groups.

Finally, we should not ignore the harm to those atheists who might wish to pursue careers in public office but are effectively barred from doing so.

There is probably no legal remedy for the exclusion of atheists from public office. Although Article VI of the Constitution states that “no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States,” this clause has never been interpreted to restrict the discretion of voters at the ballot box or of political parties in nominating candidates.

Moreover, judicial efforts to investigate the reasons behind voters’ decisions would be both impractical and a serious infringement on citizens’ voting rights. Thus, atheists will not achieve political office unless there is a change in public attitudes.

SOCIAL EXCLUSION

Atheists also often suffer from social exclusion. Organizations such as the Boy Scouts have taken considerable flak for their refusal to accept homosexuals. But the Scouts have gotten far less criticism for their rejection of atheists.

There should be no objection to groups limited to people

who share a particular religion, such as an all-Catholic or all-Jewish group. The Scouts, however, accept members of any and all religions but reject all avowed atheists. There is no defensible rationale for such an “anyone but atheists” membership policy.

Out of respect for freedom of association, the government should not force the Boy Scouts and other similar groups to accept atheists. Such coercion is forbidden by the Supreme Court’s decision in *Boy Scouts of America v. Dale* (2000), which upheld the First Amendment right of the Scouts to exclude openly homosexual employees.

But that should not stop us from criticizing the Scouts’ bigotry. The Veterans of Foreign Wars, a leading veterans group, rescinded a similar ban on atheists in 2004. The Scouts should follow their example.

Social exclusion of atheists varies greatly from place to place

and is very difficult to measure. In some areas, atheists still have to hide their views to avoid hostility in situations where believers feel perfectly free to express theirs. While “closeted atheists” arguably don’t suffer as much as closeted homosexuals do, neither is their pain completely trivial. Certainly, few theists would be willing to tolerate a situation where they had to keep their own religious beliefs secret to avoid ostracism.

Although religious discrimination in child-custody cases warrants legal action, the political and social exclusion of atheists cannot and should not be remedied by government coercion. There is no easy solution for America’s most persistent prejudice. But at least the problem should not be ignored.

*Ilya Somin is a law professor at George Mason University. Portions of this commentary first appeared on the legal blog *The Volokh Conspiracy* (www.volokh.com).*