

Essay

AMERICAN CIVIL RELIGION: AN IDEA WHOSE TIME HAS GONE

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I. INTRODUCTION: THE OXYMORON OF AMERICAN CIVIL RELIGION

The idea of civil religion is closely associated with Rousseau, whose *Social Contract* argued that “a State has never been founded without religion serving as its base,” and then went on to consider the kind of religion that properly grounds the civil order.² American sociologist

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² JEAN-JACQUES ROUSSEAU, *ON THE SOCIAL CONTRACT* bk. IV, ch. 8, at 99 (Hackett, Donald A. Cress trans. & ed. 1983).

This was also the view in Britain and the American colonies at the time that Rousseau wrote. See Frederick Mark Gedicks & Roger Hendrix, *Uncivil Religion: “Judeo-Christianity” and the Ten Commandments*, ** W. VA. L. REV. ***, 279 & nn.17-20 (2007).

Robert Bellah adapted Rousseau to an insightful and provocative argument about civil religion in the United States. The *American* civil religion, declared Bellah, is a set of general religious beliefs shared by most Americans and consistent with the particular theologies of most “American” religions. It includes beliefs in the existence of God, in his special inspiration or blessing of the United States, and in his ultimate sovereignty over it—that is, in the ultimate accountability of the United States and its people to God.³ This civil religion, he maintained, has underwritten the development of American institutions and provided “a religious dimension for the whole fabric of American life,” including its politics.⁴

³ See Bellah, *Civil Religion*, *supra* note #, at 23-25, 28-29 ; *see also* Wil Herberg, *America’s Civil Religion: What It Is and Whence It Comes* [hereinafter Herberg, *America’s Civil Religion*], in *AMERICAN CIVIL RELIGION*, *supra* note #, at 76, 77, 78-79 (suggesting that elements of the American civil religion include belief in a Supreme Being, understanding of national issues in terms of morality and high ideals, high valuation of religion, and a redemptive understanding of the origin and history of the United States); Yehuday Mirsky, *Civil Religion and the Establishment Clause*, 95 *YALE L.J.* 1237, 1252 (1986) (listing as themes of American civil religion “a sense that there is some sort of transcendent principle of morality to which this polity is, or ought to be responsible,” “a reverence for American religious folkways,” and “a belief that Destiny has great things in store for the American people”).

⁴ See Robert N. Bellah, *Civil Religion in America*, in *AMERICAN CIVIL RELIGION* 21, 24 (Harper & Row, Russell E. Richey & Donald G. Jones, 1974) [hereinafter Bellah, *Civil Religion*] (reprinting Robert N. Bellah, *Civil Religion in America*, 96 *DAEDALUS* 1 (Winter 1967)); *see also*

Invocations of the civil religion are everywhere in American public life: “In God We Trust” is on our money, acknowledgment of Americans’ existence “under God” is in the Pledge of Allegiance, and “God Bless America!” is invariably voiced by American presidents and other officials and politicians on solemn occasions.⁵ And yet, Bellah argues, much of American civil religion seems to be genuinely “religious” without being theologically particular. For example, as I will elaborate, American civil religion ties the founding of the American republic to the Old Testament without seeming in any sense Jewish, and the American Civil War to the New Testament without seeming deeply Christian.⁶ Similarly, the “God” of American civil religion is much more deist than sectarian–unitarian, remote, and “much more related to order, law, and right than to salvation and love.”⁷

A critical ambiguity lurks in the concept of “civil religion,” related to its combination of

Lee Canipe, *Under God and Anti-Communist: How the Pledge of Allegiance Got Religion in Cold War America*, ** J. CH. & STATE 305, 306 (****) (defining civil religion as “the use of commonly-accepted religious sentiments, concepts, and symbols by the state for its own purposes’ and, one might add, its own self-understanding”) (quoting Richard V. Pierard, *One Nation Under God: Judgment or Jingoism?*, in CHRISTIAN SOCIAL ETHICS 81, ** (Baker Book House, Perry C. Cotham ed. 1979)).

⁵ Bellah, *Civil Religion*, *supra* note #, at 22.

⁶ See Bellah, *Civil Religion*, *supra* note #, at 28-29.

⁷ Bellah, *Civil Religion*, *supra* note #, at 28.

the ideas of “civil order” and “religious order.”⁸ The significance of this ambiguity is magnified in the United States, where most combinations of government and religion are rendered problematic by the Religious Test, Establishment, or Free Exercise Clauses.⁹ On the one hand, civil religion can be understood as a set of *religious* beliefs that order civil life by grounding the identity and self-understanding of the United States as a nation. But on the other hand, civil religion can be also understood as a set of *secular* beliefs held with a religion-like fervor that perform the same function.¹⁰

⁸ Herbert Richardson, *Civil Religion in Theological Perspective*, in AMERICAN CIVIL RELIGION, *supra* note #, at 161, 161 (“The concept of civil religion unites two terms: the civil order and the religious order.”).

⁹ U.S. CONST., art. VI, cl. 3 (“[N]o religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.”); *id.*, amend. I (“Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.”). The Supreme Court has held that both Clauses also restrict the states. *See* *Torcaso v. Watkins*, (1961) (applying the norm of the Religious Test Clause against the states through the Establishment Clause); *Everson v. Board of Educ.*, 330 U.S. 1 (1947) (incorporating the Establishment Clause against the states through the Due Process Clause of the Fourteenth Amendment); *Cantwell v. Connecticut*, (1940) (same with respect to the Free Exercise Clause).

¹⁰ *Cf.* Mirsky, *supra* note #, at 1249 (“[C]ivil religion’s focus is not sacral, as is generally the case with religions, but political.”). *See generally* SANFORD LEVINSON, *CONSTITUTIONAL FAITH* (Princeton University Press, 1988).

In fact, there are a number of unambiguously secular beliefs that inform American identity that are held with such fervor that they are functionally “religious.” Wil Herberg identified “an intense faith in education,” and a dedication to “democracy,” “the Constitution,” “free enterprise,” and “upward social mobility” as elements of American civil religion.¹¹ While these are not religious ideas, they are nonetheless obvious articles of American faith. As Herberg insightfully observed, this is exactly what one may expect from a civil religion: It does not merely “nationalize” or “politicize” religious beliefs, but also “religioniz[es] national life and national culture.”¹²

Bellah believed that high levels of individual religious commitment in the United States, together with the diffuse theological character of the American civil religion, made it possible for the civil and the religious to be meaningfully combined in America without doing violence to either order;¹³ Herberg was more skeptical. It is hard to say which was the more plausible

¹¹ Herberg, *American Civil Religion*, *supra* note #, at 79; *accord.* Mirsky, *supra* note #, at 1252 (including as themes of American civil religion “a faith in democracy as a way of life for all people and a concomitant belief in an American mission to spread it the world over,” and “a sense of civic piety, that exercising the responsibilities of citizenship is somehow a good end in itself”)

¹² Herberg, *America’s Civil Religion*, *supra* note #, at 79.

¹³ *See, e.g.,* Bellah, *Civil Religion*, *supra* note #, at 34-35 (“The American civil religion was never anticlerical or militantly secular. On the contrary, it borrowed selectively from the religious tradition in such a way that the average American saw no conflict between the two.”).

position in the 1950s and 1960s when both did their formative work on civil religion. In the contemporary United States, however, Herberg makes more sense, especially from the point of view of minority religions. Conditions in the contemporary United States expose civil religion as the attempt to combine two orders, the civil and the religious, that cannot and ought not be combined..

I begin with a short description of four historical “moments” or eras that were particularly important to the formation of American civil religion: the Founding, the Civil War, the Cold War, and the Culture Wars.¹⁴ Three factors now threaten the viability of American civil religion: Religious pluralism and the rise of cultural conservatism in the contemporary United States make civil religion practically impossible,¹⁵ and civil religion’s tendency to devolve into state idolatry makes it normatively unattractive, especially for minority religions.¹⁶ American civil religion is thus incoherent at best, and oppressive at worst.¹⁷

II. HISTORICAL “MOMENTS” OF AMERICAN CIVIL RELIGION

Bellah identified three constitutive “moments” or “times of trial” for civil religion in the United States: the Founding, the Civil War, and the American response to the injustices brought

¹⁴ *See* Part II.

¹⁵ *See* Parts III-A & -B.

¹⁶ *See* Part III-C.

¹⁷ *See* Part IV.

on by the U.S. reaction to the Cold War that emerged after World War II, and to the cultural conflicts that began in the 1960s.¹⁸ From the perspective of four decades later, we can now see that the Cold War and the Culture Wars were different events, and so I will analyze them separately. Each of these four events—the Founding, the Civil War, the Cold War, and the Culture Wars—added layers of content and complexity to the American civil religion.

A. *The Founding: The United States as Old Testament Israel*

At the founding, the United States had a well-developed sense of itself as an “Old-Testament” nation.¹⁹ In the eighteenth century, it was common to compare immigration to the American colonies as a flight from Old World corruption to New World paradise, a distant echo of the exodus of ancient Israel from idolatrous Egypt to the Promised Land.²⁰ As the Israelites were the chosen people, so were the settlement of America and the founding of the United States of particular interest to God and his “providence.” Indeed, this was an especially common trop in American writing of the colonizing and founding periods.

John Winthrop, for example, framed the settlement of the Massachusetts Bay Colony as

¹⁸ ROBERT BELLAH; THE BROKEN COVENANT: AMERICAN CIVIL RELIGION IN TIME OF TRIAL ** (197*); Bellah, *Civil Religion*, *supra* note #, at 37-39..

¹⁹ Bellah, *Civil Religion*, *supra* note #, at 28-29; Richardson, *supra* note #, at 171..

²⁰ Bellah, *Civil Religion*, *supra* note #, at 29-30; Richardson, *supra* note #, at 171.

the construction of a “city on a hill,” to be an example of (political) righteousness to all nations.²¹ The Declaration of Independence invoked the blessings of “Nature and Nature’s God” on the new nation. The great seal of the United States included (and still includes) the Latin inscriptions, *annuit coeptis*, variously translated as “He [*i.e.*, God] has smiled upon our beginnings,” or “He has favored our undertaking,” and *novus order seclorum*, “a new order for the ages.”²² These phrases both point to the idea, widespread among the founders, that the United States was a new political order that would flourish under God’s benevolent protection.²³ The national self-understanding that the United States was God’s newly chosen nation may explain why George Washington, known more for rectitude than piety, would swear on the Bible and unilaterally add the extra-constitutional phrase, “So help me God,” to the constitutionally prescribed oath.²⁴

²¹ [Richardson, *supra* note #, at 171-72].

²² Bellah, *Civil Religion*, *supra* note #, at 35; Herberg, *America’s Civil Religion*, *supra* note #, at 80; *see also id.*. (The new venture favored by God “is America in American’s civil religion: a new order, initiated under God, and flourishing under his benevolent providence.”)

²³ Herberg, *America’s Civil Religion*, *supra* note #, at 80.

²⁴ *See* U.S. CONST., art. III, § 1, cl. 8 (expressly prescribing presidential oath of office that includes no reference to God, religion, or belief); Matthew W. Cloud, “*One Nation, Under God*”: *Tolerable Acknowledgment of Religion or Unconstitutional Cold War Propaganda*

B. *The Civil War: The United States as New Testament Redeemer*

If the founding era invoked the Old Testament themes, the Civil War and Reconstruction invoked the New, specifically in the form of liberation and atonement. These themes are obvious in the political rhetoric of Abraham Lincoln, who never joined a church but delivered the most memorable sermons of American civil religion in his time. Lincoln's two most famous speeches, the Gettysburg Address and the Second Inaugural Address,²⁵ framed the meaning of the Civil War in terms of national expiation for slavery, reconciliation of North and South,²⁶ and realization by the newly freed slaves and, indeed, all Americans, of the promise of liberty left unfulfilled by at founding.

The Gettysburg Address made clear that by 1863, the Civil War had become a struggle

Cloaked in American Civil Religion, 46 J. CH. & ST. 311, 316 (2004).

As President, Washington also declared a national day of prayer and thanksgiving "to Almighty God." Jefferson declined to continue the practice, citing the Establishment Clause.

²⁵ Abraham Lincoln, Gettysburg Address (Nov. 19, 1863), *available at* http://avalon.law.yale.edu/19th_century/gettyb.asp (last visited Feb. 23, 2009) [hereinafter Gettysburg Address]; Abraham Lincoln, Second Inaugural Address (Mar. 4, 1865), *available at* http://avalon.law.yale.edu/19th_century/lincoln2.asp (last visited Mar. 1, 2009) [hereinafter Second Inaugural].

²⁶ *See* Mirsky, *supra* note #, at 1238.

for liberation of the slaves, and not merely for preservation of the Union. It opens and closes by identifying the purpose of the Civil War with the ideals of the founding, declaring that the United States was “conceived in liberty” and “dedicated to the proposition that all men are created equal,” and calling on Americans to renew their commitment to “government of the people, by the people, for the people.”²⁷ Expiation for slavery and national reconciliation are explicit in Lincoln’s Second Inaugural Address. After cautiously implying that slavery and slave-holding are sins,²⁸ Lincoln then speculates that perhaps God gave to both “North and South this terrible war as the woe due to those by the offense” of slavery came.²⁹ He concludes with the themes of atonement and reconciliation for which this speech is justly famous:

Fondly do we hope, fervently do we pray, that this mighty scourge of war may speedily pass away. Yet if God wills that it continue until all the wealth piled by the bondsman’s two hundred and fifty years of unrequited toil shall be sunk, until every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said, “the judgments of the Lord are true and

²⁷ Gettysburg Address, *supra* note #; *see also* Bellah, *Civil Religion*, *supra* note #, at 31 (noting that by the time of the Gettysburg Address, Lincoln still conceptualized the Civil War as being fought “to save the Union,” but “not for America alone, but for the meaning of America to the whole world”).

²⁸ *See* Second Inaugural Address, *supra* note # (Noting that both North and South “read the same Bible” and “pray to the same God,” Lincoln wondered at the strangeness of men who “should dare to ask a just god’s assistance in wringing their bread from the sweat of other men’s faces, but let us judge not, that we be not judged.”).

²⁹ Second Inaugural Address, *supra* note #.

righteous altogether.

With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and among all nations.³⁰

The themes of the American civil religion spawned by the Civil War did not displace the themes of the Founding so much as they built upon them. As Christians believe that the New Testament fulfilled the Old, so the New Testament themes of Civil War discourse built upon the Old Testament themes of the Founding. Thus, at Gettysburg Lincoln did not forget that the United States remains the living exemplar of democratic experiment, characterizing the Civil War as a test whether a nation “conceived in liberty and dedicated to the proposition that all men are created equal” can survive among the nations of the world, and closing not just with the call to preservation of democratic government, but naming its purpose as ensuring that democratic government “shall not perish from the earth.”³¹

As we know, Civil War Reconstruction failed, and thus full atonement and liberation failed as well, until the Civil Rights movement took up these themes in the 1960. Even today, the debt to slavery might not be fully paid as, in Bellah's words, its “incalculable consequences

³⁰ Second Inaugural Address, *supra* note #.

³¹ Gettysburg Address, *supra* note #.

still stalk the land.”³²

C. *The Cold War: The United States against Godlessness*

Certain aspects of the Cold War created a nascent international culture war, in that the Soviet Union presented not just a challenge to the U.S. international military and political hegemony that emerged from World War II, but also a challenge to the American civil religion, specifically its belief in God and his special care for America. Thus, it was during the Cold War that our existence as a nation “under God” was added to the Pledge of Allegiance, despite its common invocation in an unambiguously secular form for more than 50 years.³³ The Cold War period also saw “In God We Trust” inscribed on American coins and currency and adopted as the national motto (replacing *E Pluribus Unum*, or “Out of Many, One”).³⁴ President Eisenhower’s fractured opinion that American “government makes no sense unless it is founded on a deeply felt religious faith, and I don’t care what it is.”³⁵ Similarly, the FBI Director at this time, J. Edgar

³² BELLAH, *THE BROKEN COVENANT*, *supra* note #, at **.

³³ For a perceptive account, see Canipe, *supra* note #, at 314-319. The author of the Pledge, Rev. Francis Bellamy, was, ironically, a socialist minister. See Cloud, *supra* note #, at 322.

³⁴ See Cloud, *supra* note #, at 326.

³⁵ ***, N.Y. TIMES, Dec 23, 1952, at **; see also Canipe, *supra* note #, at 313 (“Without God, there could be no American form of government, nor an American way of life.”) (quoting

Hoover, exhorted parents, “Since communists are anti-god, encourage your children to go to church.”³⁶ These comments and slogans highlighted the centrality of belief in the United States, as compared to the centrality of unbelief in the Soviet bloc, thus nicely dovetailing with the phrase, “godless Communist,” that was then in vogue.

The Cold War highlighted that generic belief in some God was a critical central element of the American civil religion.³⁷ This aspect of the civil religion confirm the thesis of Herberg’s path-breaking *Protestant - Catholic - Jew*, published in the 1950s, which argued that to be American was to believe in God, though that belief need not take any particular form. In other words, one could become a true American without giving up one’s religious identity as a Protestant, a Catholic, or a Jew.

D. *The Culture Wars: The United States against Moral Relativism*

President Eisenhower).

³⁶ Canipe, *supra* note #, at 314 (quoted in William Lee Miller, *Piety Along the Potomac*, RPTR., Aug. 17, 1954, at 28).

³⁷ See Canipe, *supra* note #, at 312 (describing the “implicit connection between Christianity and anti-communism” in cold-war America, in which “religion and patriotism (which at the time was virtually synonymous with anti-communism) simply represented two sides of the same coin”); Canipe, *supra* note #, at 313 (arguing that the equation of Christianity with America framed the Cold War as “a life-and-death struggle between godless communism and Christian democracy”).

The Culture Wars saw American civil religion at its most reactionary. This stage of the civil religion was, and to a large extent remains, nostalgic for a supposed age of religious homogeneity and common “Judeo-Christian” values.³⁸ Its strongest reactions continue to be triggered by decisions of the Supreme Court that restricted government from sponsoring practices and adopting symbols of the American civil religion. Banned practices include public school prayer and Bible-reading, as well as moments of silence in public schools designed to encourage school prayer. Carefully regulated symbols included Christian nativities, Jewish menorahs, and monuments of the Ten Commandments; government appropriation of these symbols is prohibited unless their religious content is neutralized by other, unambiguously secular symbols displayed in the vicinity. Still other symbols and practices, such as invocation of God in the Pledge, on U.S. money and coins, and in political speeches (as in, “God Bless America”), are constitutionally permitted, but only as vestigial leftovers from a more pious age, having been long emptied of meaningful theological content by incessant repetition and cynical misuse.

The “secularization” of American government and public life by the federal courts

³⁸ See, e.g. Rocco Buttiglione, *Of God and Men*, WALL ST. J., at ** (In the 1960s, both Europe and the United States lived through a cultural era that belittled traditional values and wanted to prepare the young generation for a world of tomorrow in which individual responsibility, self-sacrifice and other virtues of the past would be needed no more.”). Buttiglione was Foreign Minister of Italy and was the nominee for president of the European Union until the controversy over his public endorsements of the “natural family” of Catholic theology forced him to withdraw.

coincided with a dramatic shift in American sexual and family values, as evidenced by, for example, increased sexual activity among single teens and adults, itself probably related to invalidation of government restraints on access to contraceptives, sexually explicit speech, and abortion; the institution of no-fault divorce; the prohibition of sex discrimination, and the subsequent mass entrance of women into the workforce; and the normalization of nontraditional family units beyond the traditional “natural” or “nuclear” family, including especially families headed by single heterosexual parents who have never been married, and those headed by same-sex couples or individuals. Cultural conservatives have causally linked the court-induced secularization of public life with this supposed devolution of American morality and values, arguing that the absence of God in public education and public life generally leads inevitably to the absence of morality in private life. Cultural conservatives have thus initiated constitutional amendments and other efforts to overturn the courts and again permit the traditional symbols of American civil religion in politics, government, and public life.

III. THE FORTUNATE IMPOSSIBILITY OF AMERICAN CIVIL RELIGION

Three factors now threaten the viability of American civil religion: Religious pluralism and the rise of a sectarian religious conservatism in the contemporary United States make civil religion practically improbable, and civil religion’s tendency to devolve into state idolatry makes it normatively unattractive, especially for minority religions.

A. *Religious Pluralism*

Pluralism was written into American government from the beginning, and the

Constitution now prohibits both federal and state governments from imposing religious tests for government offices or public trusts, singling out religious exercise for government burdens, and endorsing or favoring particular religions. It's hard to know whether these constitutional constraints were the cause or the effect of religious pluralism in the United States but regardless, it is now perhaps the most religiously diverse country in the West, and among the most religiously diverse in the world.

This religious diversity places the viability of American civil religion in serious question. Three recent demographic developments suggest that the maintenance of a civil religion to which all or nearly all Americans may honestly and sincerely subscribe is unlikely. First is the dramatic growth of unbelief in the United States over the last two generations, from two or three percent of the adult population, to between ten and fifteen percent currently. While unbelievers may not object to the secular aspects of American civil religion, the heavy reliance of American civil religion on belief in a God and America's proper submission to his judgment clearly excludes them from its religious aspects.

A second development is the equally dramatic growth over the same period of American believers who fall outside of the Judeo-Christian tradition, from negligible numbers in the 1950s, to between three and four percent of the population today. The relaxation of racial quotas for persons of color in U.S. immigration law in the 1960s, together with the influx of refugees from Asia and the Middle East as the result of U.S. military action abroad, has resulted in substantial numbers of American residents who adhere to Islam or an eastern religion like Buddhism or Hinduism. Although monotheistic and Abrahamic, Muslims remain marginalized by Judeo-

Christianity,³⁹ as do Hindus, Buddhists, and other practitioners of eastern faiths.

Finally, even belief that formally falls within the traditional confines of Judeo-Christianity has been transformed by the postmodern spirituality movement, which is variously estimated to affect between fifteen and twenty-five percent of American believers. Spirituality relativizes the focus of religious worship by turning it inward, away from the metaphysics of transcendent truth. In so doing, spirituality has created a class of transdenominational believers who construct their own systems of belief from varying denominational sources, and blurred the meaning of membership among believers who belong to particular religions. Although spirituality has little difficulty with the vaguely unitarian and deist God of American civil religion, the tenor of the movement is in some tension with the notion that America and Americans must answer to that God for their failure to adhere to divine or transcendent principles whose existence or applicability spirituality de-emphasizes or dismisses. Perhaps most important, spirituality wholly rejects the secular aspect of American civil religion, denying that, say, the Constitution, or democracy, or capitalism, have any transcendent significance.

One can reliably estimate, therefore, that the national identity defined by contemporary American civil religion now excludes between one-quarter and one-third of all Americans. That is, between one-quarter and one-third of all Americans cannot subscribe to the national identity that American civil religion ascribes to Americans, or to the historical narrative that the civil religion creates for the American nation. A civil religion that excludes such a large portion of the population cannot function as a stabilizing force that unifies the nation; to the contrary, an exclusionary civil religion is a recipe for oppression, division, and instability.

³⁹ See, e.g., Canipe, *supra* note #, at 320-21.

B. *Sectarianization*

But the situation for American civil religion is even worse than religious pluralism might suggest. Not only have American religious demographics overflowed the boundaries of American civil religion, but cultural conservatives—primarily Christian evangelicals and conservative Catholics—are attempting to shrink the boundaries of American civil religion even as they're being overrun by radical religious pluralism. Over the last generation, cultural conservatives have appropriated the symbols and practices of American civil religion and infused them with sectarian meaning. The Ten Commandments controversies are only the most recent example of a symbol of the civil religion that has been transformed from an inclusive symbol of belief in God and submission to his judgment, into a much narrower symbol of the normative desirability of establishing the United States as a politically Christian nation. This process of “sectarianizing” the American civil religion has narrowed its reach so as to exclude even Christians and Jews whose beliefs might have formerly placed them comfortably within it.

Pluralism and sectarianization make it impossible for the American civil religion in its current form to function as a source of American identity and national unity, and thrown into serious question whether any other American civil religion can possibly function in this way.

C. *Idolatry*

Even if it were still possible to conceive of the American civil religion or, at least, some American civil religion, as an inclusive and unifying force, it would still be unattractive on normative grounds, for it inevitably leads to idolatry—the sanctification of the state and its goals.

Theologian Herbert Richardson has persuasively argued that the use of civil religion to give transcendent meaning to a nation's identity and history inevitably results in sanctification of everything the nation does.⁴⁰ Linking religion with another human activity, observes Richardson, has two effects, one sociological, the other theological.⁴¹ "On the sociological side, this linking is a way of constructing, through appropriate symbols and rituals, an ultimate meaning and direction for a particular human activity."⁴² "On the theological side, this linking is a way of affirming an analogy, or special relation, between something in this world and ultimate reality; a way of 'modeling' or picturing what God is and our relation to him."⁴³ Thus, Richardson concludes, "a person who identifies with a political group and its civil religion not only thereby affirms that this group has a transcendent goal and some ultimate value (the sociological aspect), but he will also tend to think that the categories of politics—sovereignty, law, justice, the state—are especially appropriate for describing ultimate reality (the theological aspect)."⁴⁴ In short, to relate something secular to a transcendent and ideal dimension is also to

⁴⁰ Richardson, *supra* note #.

⁴¹ Richardson, *supra* note #, at 162.

⁴² Richardson, *supra* note #, at 162.

⁴³ Richardson, *supra* note #, at 162.

⁴⁴ Richardson, *supra* note #, at 162.

affirm that the thing is, in some way, connected to a transcendent truth or reality.⁴⁵

Conventional understandings of the American civil religion have tended to be sociological—as, indeed, my own discussion has been up to this point—in that they emphasize the use of religion to give transcendent meaning to the founding and history of the United States and to the identity of its citizens as Americans. But there is also the theological effect: By linking the founding and history of the United States and the identity of its citizens with belief in a God who gives them special care and attention, the actions of the United States are taken to have God’s approval, if they are not the actual consequence of his will.⁴⁶

⁴⁵ Richardson, *supra* note #, at 162.

⁴⁶ See Richardson, *supra* note #, at 163 (By linking worldly activities to God, “we not only ascribe finite characteristics to what is infinite, we also claim infinite characteristics for what is finite.”); accord Canipe, *supra* note #, at 307 (“The danger for Christians rests in the temptation to identify the ‘God’ of American civil religion with the God of Jesus Christ—to reverse, in effect, the sacred-to-secular trajectory of civil religion by taking the symbols, rituals, and language of civil religion and endowing them with Christian theological significance. The danger, in other words, is idolatry.”); Canipe, *supra* note #, at 320 (“The deeply rooted religious instinct that connects God in the Pledge of Allegiance with the God of the New Testament is the same one that now calls upon God to bless America in its ‘war on terrorism.’ This instinct may be understood as an inversion of American civil religion, a reading of Christian theological significance into words intended to further the purposes and self-understanding not of the church but of the state.”).

Ironically and tragically, therefore, American civil religion, which insists on the pentultimate of the state against the ultimate sovereignty of God, leads to the ultimacy of the state by sanctifying its goals as divinely willed or approved. As Bellah himself concedes, a deep political and cultural theme in the United States is the individual and collective obligation to do God's will on earth.⁴⁷ From here it is only a small step to idolatry—the displacement of God with the state and its goals as the object of worship.⁴⁸ Idolatry is doubly corrupting: It not only distorts the civil religion, but it diminishes the force of denominational religion as well.⁴⁹

Each moment of the American civil religion that I have described includes this reflexive and corrupting identification of America's political goals of the moment with God and his divine purposes. The Old Testament tropes of the civil religion facilitated persecution of native Americans: After all, if Americans were Israel, and America the promised land, then native Americans must have been Canaanites whom Americans were divinely authorized to displace

⁴⁷ Bellah, *Civil Religion*, *supra* note #, at 25.

⁴⁸ Herberg, *supra* note #, at 87 (“To see America's civil religion as somehow standing above or beyond the biblical religions of Judaism and Christianity, and Islam, too, as somehow including them and finding a place for them in its overarching unity, is idolatry, however innocently held and whatever may be the subjective intentions of the believers.”).

⁴⁹ Herberg, *supra* note #, at 87 (“Because they serve a jealous God, [Judaism and Christianity] cannot allow any claim to ultimacy and absoluteness on the part of any thing or any idea or any system short of God.”).

and annihilate.⁵⁰ The Civil War era's New Testament identification of Americans with liberation and expiation fatally undermined Reconstruction by facilitating the imposition of a white Protestant narrative of reconciliation that sacrificed the interests of African Americans (not to mention Asians, Hispanics, and Catholics) in order to embrace the defeated (and largely Protestant) southern whites.⁵¹ The Cold War's equation of unbelief with communism not only facilitated the persecution of unbelievers loyal to the United States, it also alienated generations of leftist American believers, and normalized general attacks on social and political difference.⁵² And finally, the Culture Wars' equation of moral order with the sectarian values of evangelical and conservative Christianity has turned apparently secular civil rights questions into pitched

⁵⁰ See Bellah, *Civil Religion*, *supra* note #, at 36 ("The theme of American Israel was used, almost from the beginning, as a justification for the shameful treatment of the Indians so characteristic of [American] history.").

⁵¹ See Richardson, *supra* note #, at 168-69, 176-78.

⁵² See Bellah, *Civil Religion*, *supra* note #, at 36 ("The civil religion has not always been invoked in favor of worthy causes. On the domestic scene, an American-legion type of ideology that fuses God, country, and flag has been used to attack non-conformist and liberal ideas and groups of all kinds."); Canipe, *supra* note #, at 311 ("In Cold War America, to be different was to be dangerous."); e.g., Clyde Wilcox, *Popular Backing for the Old Christian Right: Explaining Support for the Christian Anti-Communist Crusade*, 21 J. SOC. HIST. 117, 119 (Autumn 1987) (noting that conservative Christians of the 1950s opposed "Medicare, sex education, and other liberal programs" on anti-communist grounds).

religious-moral battles between the forces of good and evil, as our own Utah State Senator Buttars reminded us only last month.⁵³ As Professor Richardson observed, sometimes the danger to the political process is not from citizens who care too little, but from the ones who care too much.⁵⁴

⁵³ See Rosemary Winters, *Buttars: Gays 'greatest threat to America'; familiar ground: the senator says the movement is 'the beginning of the end and worse than Sodom and Gomorrah,'* S.L. TRIB., Feb. 18, 2009 (quoting and reporting Utah State Sen. Chris Buttars as having characterized gays and lesbians as “probably the greatest threat to America,” comparable to “Muslim radicals,” and worse than “Sodom and Gomorrah” because that “was localized. This is worldwide”) (internal quotation marks omitted). Buttars declined to apologize for his remarks, declaring that he had “nothing to apologize for.” Robert Gehrke, *Buttars: 'I don't have anything to apologize for,'* S.L. TRIB, Mar. 2, 2009 (internal quotation marks omitted).

⁵⁴ See Richardson, *supra* note #, at 163 (“Just as a person who plays chess or football with ‘religious seriousness’ has lost so much sense of proportion that he actually ruins the game, so people who approach politics as if ultimate moral and religious issues were at stake may also be destroying the political process itself. Sometimes things go better if we value them less.”).

Richardson attributes this attitude, in part, to the Old Testament themes of the civil religion: “In that the Old Testament is so vivid to many Americans, they acquiesce easily in the notion that true religion must be civil religion They believe that religion must have, first of all, *political relevance.*” Richardson, *supra* note #, at 172.

Bellah himself argued that the center of American civil religion is its affirmation that “civil power stands under the sovereignty of God,” and that the United States “must judge its own acts in the light of divine righteousness.”⁵⁵ But as the history of American civil religion repeatedly illustrates, this generates the very problem of state idolatry that civil religion seeks to prevent.⁵⁶ Thus, as Richardson concluded,

the more earnestly anyone strives to attain a transcendent and divine ideal, the more likely he is to regard himself and his strivings as righteous. [] It is, ironically, the ‘best’ politics in America that always becomes idolatrous, for it is through its highest a best aspirations that American politics must reduces the discrepancy between the ‘is’ and the ‘ought,’ thereby identifying its strivings with what it believes should be and making itself the norm of judgment on itself. In this way, American civil religion always tends to generate the very situation it seeks to prevent.⁵⁷

IV. CONCLUSION: AMERICAN CIVIL RELIGION AND RELIGIOUS MINORITIES

A. *Pluralism, Sectarianization, and Idolatry in Supreme Court Decisions*

The Supreme Court’s decisions relating to religious elements of the American civil religion reflect the problems of pluralism, sectarianization, and idolatry. Efforts by government to defend government displays of Christian creches and Jewish menorahs are inevitably followed

⁵⁵ [quoted from Richardson, *supra* note #, at 164].

⁵⁶ Richardson, *supra* note #, at 165 (“It is structurally inevitable that if we seek to limit human power by requiring that it imitate a divine exemplar, we actually generate the very state of affairs we are seeking to avoid.”).

⁵⁷ Richardson, *supra* note #, at 165.

religious minority efforts to seek government participation in the celebration of their holidays, followed in their turn by anti-establishment lawsuits when governments refuse.

“Nondenominational” prayer at government events and in public schools has also proved unworkable, not only entangling government in supervising or otherwise controlling the content of such prayers, but again, inevitably ending in controversy and litigation when religious minorities such as Wiccans or Mormons are excluded, as they often are. It has become impossible for federal and state governments to accommodate the participation of every version of every American religion in the government’s use of religious symbols or practices, even when government is inclined to so (and it often isn’t). The span of American belief is simply too broad for religiously neutral accommodation to work.

Sectarianization is at work in these decisions as well. There is considerable irony (or cynicism) at work in the Ten Commandments cases in particular, as inside the courtroom lawyers argue for the secular meaning of the commandments, while outside the courtroom Christian conservatives hold prayer vigils asking God to intercede and preserve the divine influence on government and law symbolized by the Commandments. The explosion of theologically charged criticism of the Ninth Circuit’s short-lived invalidation of “under God” in the U.S. Pledge of Allegiance also belies the conservative argument that this is a mere historical acknowledgment that past Americans believed themselves subject to the sovereignty of God. As we have seen, the sovereignty of God remains a potent component of American civil religion, one that is intensely promoted by contemporary Christian conservatives.

Finally, one sees the idolatry into which the civil religion has devolved from its effort to imbue American social and political goals with transcendent or cosmic meaning. Patriotism and

national loyalty become a sanctified religious ends in themselves—“America: Love It or Leave It”—even apart from whether “under God” is considered religious or secular. Likewise the widely felt need to “solemnize” the meetings and ceremonies of American government has allowed them to take on a sacred character even when religion is not used to solemnize them. As the Ten Commandments decisions well illustrate, “mere” acknowledgment of religion by government is never “mere”; it consistently ends not only in endorsement of religion, but in sanctification of the government goal of acknowledging religion.

B. *The Dangerous Irony of Religious Minority Support for Civil Religion*

It almost never makes sense for religious minorities to support manifestations of American civil religion, even when that support would be honest and sincere. Civil religion is an ideology and a practice that is controlled by social and political majorities; minorities can participate, but it is always at the sufferance and within the limits prescribed by majorities.

The Supreme Court’s recent decision in *Pleasant Grove City v. Sumnum* is an excellent example.⁵⁸ As many of you know, the Court upheld the city’s decision to install a monument of the Ten Commandments donated by the Eagles in a local park, despite the city’s refusal to install a comparable monument by an obscure Utah religious minority. Doctrinally, the decision was an extension of the increasingly controversial government speech doctrine, which holds that the government is not subject to viewpoint- or content-neutrality restrictions when it speaks for itself. Thus, the city of Pleasant Grove is free, for the present, to endorse Christianity, even to label itself an officially Christian city, without constitutional consequences under the Speech

⁵⁸ Slip Op., 2009 WL 454299 (U.S. Feb. 25, 2009).

Clause.⁵⁹ Indeed, Justices Scalia and Thomas have already voiced their opinion that Pleasant Grove may religiously define itself however it wishes, without any obligation to balance that message of religious endorsement with one of religious inclusion or neutrality.⁶⁰

There are multiple ironies in an overwhelmingly Mormon city like Pleasant Grove having chosen to brand itself by with a potent symbol of the American civil religion. Latter-day saints accept the Ten Commandments as scripture, but the Commandments are not a potent or important or even a common symbol of Latter-day Saint identity or belief. They are, on the other a powerful symbol of Christian identity for evangelical Protestants—the same Protestants who deemed Mitt Romney unfit for the Presidency because he belongs to a “cult,” and the same

⁵⁹ *Id.* at *5 (“The Free Speech Clause restricts government regulation of private speech; it does not regulate government speech.”).

⁶⁰ *See id.* at *14 (Scalia, J., joined by Thomas, J., concurring) (“The city can safely exhale. Its residents and visitors can now return to enjoying Pioneer Park’s wishing well, its historic granary—and, yes, even its Ten Commandments monument—without fear that they are complicit in an establishment of religion.”).

Other justices were less sanguine about a potential Establishment Clause violation. *See id.* at *13 (Stevens, J., joined by Ginsburg, J., concurring) (declaring that the city had implicitly endorsed the message that the Eagles had intended to convey by donating the monument); *id.* at *15 (Souter, J., concurring in the judgment) (“The interaction between the ‘government speech doctrine’ and Establishment Clause principles has not . . . begun to be worked out.”).

Protestants who underwrote federal persecution of polygamist Saints in nineteenth century Utah. Pleasant Grove's vindication of American civil religion is a victory, not for Mormons, but for the conservative Christians who control the civil religion, and who deem Mormons not Christian.

Indeed, Latter-day Saints are particularly susceptible to the national idolatry that inevitably accompanies civil religion. LDS scripture declares that the founders were divinely inspired in drafting the Constitution, and that the United States is a "land of promise," "favored above all other nations." One of our fundamental articles of faith declares that we honor, obey, and sustain the law, which some members took to justify condemnation of the civil rights movement, anti-war protests, and even anti-Nazi resistance. If ever a people needed to be wary of civil religion, it is us.

* * *

Henry David Thoreau once remarked, "I would remind my countrymen that they are men first, and Americans at a late and convenient hour."⁶¹ Thoreau meant to emphasize that consistency with patriotic or nationalist values was hardly sufficient to define moral goods or rights; indeed, the truly moral person is often required to dissent from government action and even the government itself to defend those values and be true to his or her conscience.

I would amend that to say, we ought to be believers first--and, here at BYU, Latter-day Saints first--and citizens at a late and convenient hour. If believers are truly committed to the sovereignty of God, we cannot risk the corruption of his kingdom with political expedience, nor the infusion into politics and government of narrow religious values that cannot be compromised and to which too much of the country cannot or does not subscribe. We should all, therefore,

⁶¹ Bellah, *Civil Religion*, *supra* note #, at 40.

celebrate the passing of American civil religion.