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AMERICAN CIVIL RELIGION: AN IDEA WHOSE TIME IS PAST

FREDERICK GEDICKS*

I. INTRODUCTION: THE FAILURE OF AMERICAN CIVIL RELIGION

From the founding of the United States, its citizens have understood loyalty to their country as a religious and not just a civic commitment. The idea of a “civil religion” that defines the collective identity of a nation originates, of course, with Rousseau, who argued that “no state has ever been founded without religion serving as its base.”¹ Rousseau’s argument was adapted to the United States by U.S. sociologist Robert Bellah, who suggested that a peculiarly American civil religion has underwritten government and civil society in the United States.²

I am a civil religion skeptic. Leaving aside the question whether civil religion has truly been a unifying force in the past, it no longer functions like this in the present. Civil religion provides the United States with a national identity, to be sure, but one that now excludes too many Americans. The United States ought to move from its relatively thick civil religious identity to a thinner Rawlsian one dedicated to procedural values of fairness and equity. Professor Silvio Ferrari has suggested, in a wonderful turn of phrase, that “it is hard to fall in love” with procedural values like the rule of law, the “thin theory of the good,” or notice and hearing, and that a civil religion is necessary to bind the hearts of citizens to their country.³ But this argument concedes too much. One can fall in

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1. See JEAN-JACQUES ROUSSEAU, *ON THE SOCIAL CONTRACT* 96, 99 (Donald A. Cress ed. & trans., Hackett Publ’g Co. 1983) (1762).

2. See generally Robert N. Bellah, *Civil Religion in America*, *DAEDALUS*, Winter 1967, at 1 (1967), reprinted in *AMERICAN CIVIL RELIGION* 21 (Russell E. Richey & Donald G. Jones eds., 1974).

3. Silvio Ferrari, Dir., Inst. of Ecclesiastical Law, Keynote Address at the Brigham Young University Conference: “Civil Religion” in the United States and Europe: Four Comparative Perspectives (Mar. 12, 2009).

love with human dignity, with freedom of speech, with equal opportunity, and even with the separation of church and state. The United States can rescue its civil religion by abandoning the religious part, and retaining the civil part—that is, by emphasizing the *civil* rather than the *religion* of “civil religion.”

II. DEFINING CIVIL RELIGION

Professor Bellah defined American civil religion as a set of religious beliefs that are shared by most citizens and are consistent with the particular theologies of the religions that have been historically present in the United States.⁴ Civil religion includes beliefs in the existence of God, in his special blessing of the United States, and in the ultimate accountability of the United States and its people to him.⁵ Bellah maintained that this civil religion has underwritten “the whole fabric of American life,” including its politics.⁶

Evidence of this civil religion is everywhere in American public life. “In God We Trust” is on our money, acknowledgment of our existence “under God” is in our Pledge of Allegiance, and “God Bless America!” is incessantly voiced by U.S. politicians.⁷ Note, however, how these expressions are “religious” without being theologically particular. The “God” of American civil religion is more deist than Christian—supreme, remote, and unitarian, more closely related to order and right than to salvation and love,⁸ like “the Force” in the *Star Wars* movies. American civil religion ties the founding of the United States to the Old Testament without seeming Jewish, and the Civil War to the New Testament without seeming especially Christian.⁹

A critical ambiguity lurks in the concept of “civil religion,”¹⁰ stemming from its combination of “civil order” and “religious order.”¹¹ On the one hand, according to Bellah, civil *religion* is a

4. See Bellah, *supra* note 2, at 28–29.

5. See *id.* at 23–29; see also Lee Canipe, *Under God and Anti-Communist: How the Pledge of Allegiance Got Religion in Cold War America*, 45 J. CHURCH & ST. 305, 306 (2003) (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”).

6. Bellah, *supra* note 2, at 24.

7. See, e.g., *id.* at 22. See generally KATHLEEN E.R. SMITH, *GOD BLESS AMERICA: TIN PAN ALLEY GOES TO WAR* (2003) (describing how images of the U.S. Congress singing “God Bless America” together appeared across the country).

8. See Bellah, *supra* note 2, at 28–29.

9. See *id.* at 30–32.

10. See *id.* at 28.

11. Herbert Richardson, *Civil Religion in Theological Perspective*, in *AMERICAN CIVIL RELIGION*, *supra* note 2, at 161, 161.

set of *religious* beliefs that grounds the identity and self-understanding of the United States as a nation and people.¹² On the other hand, *civil* religion is also a set of *secular* beliefs held with a religious tenacity that performs the same function.¹³

There are, for example, a number of unambiguously secular beliefs that inform U.S. identity and that are held with such fervor that they can be considered functionally religious. U.S. sociologist Will Herberg, who wrote in the 1950s and 1960s, identified as elements of the American civil religion “an intense faith in education” and a dedication to “democracy,” “the Constitution,” “free enterprise,” and “high social mobility.”¹⁴ There is also in this regard the idea of the United States as the “land of opportunity,” as well as the so-called “American dream” of economic and social advancement through hard work.¹⁵ These are not religious ideas, but they are nevertheless articles of American faith. As Professor Herberg observed, this is one way in which civil religion operates: It does not merely “nationalize” religious beliefs, it also “religioniz[es] national life and national culture.”¹⁶ This doubling or reflexive effect is both the strength and the weakness of civil religion, to which I will return at the conclusion of my argument.

III. HISTORICAL “MOMENTS” OF AMERICAN CIVIL RELIGION

Four constitutive “moments” or “times of trial” inform the contents of civil religion in the United States: the Founding, the Civil War, the Cold War, and the Culture Wars.¹⁷ Each of these four events added content and complexity to the American civil religion.

12. See Bellah, *supra* note 2, at 24.

13. See SANFORD LEVINSON, CONSTITUTIONAL FAITH 4 (1988) (describing “constitutional faith” as the “wholehearted attachment to the Constitution as the center of one’s . . . political life”); cf. Yehudah Mirsky, *Civil Religion and the Establishment Clause*, 95 YALE L.J. 1237, 1249 (1986) (“[C]ivil religion’s focus is not sacral, as is generally the case with religions, but political.”).

14. Will Herberg, *America’s Civil Religion: What it Is and Whence it Comes*, in AMERICAN CIVIL RELIGION, *supra* note 2, at 76, 79; accord Mirsky, *supra* note 13, 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”).

15. See CHARLES R. HEARN, THE AMERICAN DREAM IN THE GREAT DEPRESSION 3, 24 (1976).

16. Herberg, *supra* note 14, at 80.

17. See ROBERT N. BELLAH, THE BROKEN COVENANT: AMERICAN CIVIL RELIGION IN TIME OF TRIAL 1 (Univ. of Chi. Press, 2d ed. 1992) (1975); Bellah, *supra* note 2, at 37–39. Unlike Bellah, I separate the Cold War from the Culture Wars.

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

During the eighteenth century, American colonists spoke of immigration to the 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.¹⁸ Many of the colonists believed that just as the ancient Israelites were God's chosen people, so the settlement of America and the founding of the United States were of particular interest to God and his "providence."

For example, John Winthrop, the leader of the Massachusetts Bay Colony, described its settlement as a "city on a hill" that would be an example of civic righteousness to all nations.¹⁹ The U.S. Declaration of Independence invoked the blessings of "Nature and Nature's God" on the new nation.²⁰ The great seal of the United States still includes the Latin inscriptions, "God has favored our undertaking,"²¹ and "A New Order of the Ages."²² These phrases 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 This self-understanding of the new citizens of the new United States—that the United States was God's newly chosen nation—may explain why George Washington felt free to add the extra-constitutional phrase, "So help me God," to the otherwise secular presidential oath set forth in the U.S. Constitution.²⁴

18. See Bellah, *supra* note 2, at 28–29; Richardson, *supra* note 11, at 171–72. As Professor Chelini-Pont noted, this was also part of the mythology of the French Revolution. Blandine Chelini-Pont, *Is Laïcité the Civil Religion of France?*, 41 GEO. WASH. INT'L L. REV. 765, 771 (2010).

19. ROBERT N. BELLAH, *The Kingdom of God in America: Language of Faith, Language of Nation, Language of Empire*, in THE ROBERT BELLAH READER 285, 286 (Robert N. Bellah & Steven M. Tipton eds., 2006) (quoting John Winthrop, A Model of Christian Charity (1630), in PURITAN POLITICAL IDEAS: 1558–1794, at 75, 93 (Edmund S. Morgan ed., Hackett Publ'g Co., reprt. 2003) (1965)).

20. THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

21. Bellah, *supra* note 2, at 35.

22. Herberg, *supra* note 14, at 80.

23. See *id.*

24. Compare U.S. CONST. art. II, § 1, cl. 8 (expressly prescribing a presidential oath of office that includes no reference to God, religion, or belief), with Matthew W. Cloud, "One Nation, Under God": Tolerable Acknowledgment of Religion or Unconstitutional Cold War Propaganda Cloaked in American Civil Religion?, 46 J. CHURCH & ST. 311, 316 (2004) (describing George Washington's addition as setting a precedent followed by all succeeding presidents except one).

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

If the founding of the United States invoked Old Testament themes, the Civil War and Reconstruction invoked the New Testament, 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 all Americans of the promise of liberty left unfulfilled by the founding.²⁷

Expiation for slavery and national reconciliation are explicit in Lincoln's Second Inaugural Address, especially in its two famous concluding paragraphs:

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, and 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 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 his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations.²⁸

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 themes of Civil War discourse built upon those of the Founding. One of the most memorable lines of the short Gettysburg Address was Lincoln's invocation of the United States as the living exemplar of democratic experiment, for which

25. Abraham Lincoln, U.S. President, Gettysburg Address (Nov. 19, 1863) [hereinafter Gettysburg Address], available at http://avalon.law.yale.edu/19th_century/gettyb.asp; Abraham Lincoln, U.S. President, Second Inaugural Address (Mar. 4, 1865) [hereinafter Second Inaugural Address], available at http://avalon.law.yale.edu/19th_century/lincoln2.asp.

26. See Mirsky, *supra* note 13, at 1238.

27. See FREDERICK DOUGLASS, LIFE AND TIMES OF FREDERICK DOUGLASS 202–15 (photo-reprint 1983) (1881).

28. Second Inaugural Address, *supra* note 25.

the Civil War was a test whether a liberal democracy “conceived in liberty and dedicated to the proposition that all men are created equal” could survive among the nations of the world.²⁹ Lincoln closed by naming the purpose of the war as not just ensuring the survival of the United States, but also ensuring that “government of the people, by the people, for the people shall not perish from the earth.”³⁰

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

The Cold War created an international culture war, in that the Soviet Union challenged not just the military and political power of the United States, but also its identity as a believing and chosen people.³¹ Thus, it was during the Cold War that the U.S. Congress injected God into the Pledge of Allegiance, which had uncontroversially existed in wholly secular form for more than fifty years.³² The Cold War period also saw “In God We Trust” inscribed on U.S. coins and currency and adopted as the national motto (ironically replacing *E Pluribus Unum*, or “Out of many, one”).³³ FBI Director J. Edgar Hoover exhorted parents to take their children to church to inoculate them against communism.³⁴ “Since Communists are anti-God,” Hoover reasoned, taking children to church automatically made them anti-communists.³⁵

The phrase “godless communist” had a real resonance during this era. The Cold War highlighted that some kind of belief in some kind of God was a critical central element of the American civil religion.³⁶ President Eisenhower captured the spirit of the times when he declared, “[American] government has no sense

29. See Gettysburg Address, *supra* note 25.

30. *Id.* Some commentators mark the birth of a uniquely American civil religion by the Civil War, arguing that it was Lincoln’s need to justify the war’s enormous cost in blood and treasure that motivated his biblical rhetoric. See, e.g., Robert J. Delahunty, “*Varied Carols*”: *Legislative Prayer in a Pluralist Polity*, 40 CREIGHTON L. REV. 517, 559 (2007).

31. See generally TOM ENGELHARDT, *THE END OF VICTORY CULTURE: COLD WAR AMERICA AND THE DISILLUSIONING OF A GENERATION* (1995); ELAINE TYLER MAY, *HOMEWARD BOUND: AMERICAN FAMILIES IN THE COLD WAR ERA* (3d ed. 2008).

32. For a perceptive account, see Canipe, *supra* note 5, at 314–19.

33. See Cloud, *supra* note 24, at 326.

34. Canipe, *supra* note 5, at 314.

35. *Id.* (citation omitted).

36. See *id.* 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”); *id.* at 313 (arguing that the equation of Christianity with the United States framed the Cold War as “a life-and-death struggle between godless communism and Christian democracy”).

unless it is founded in a deeply felt religious faith, and I don't care what it is."³⁷ To be American, in other words, was to believe in God, though that belief need not have taken any particular form.

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

The Culture Wars have seen American civil religion at its most reactionary. I discuss them in the present, because there is still no treaty that has ended them. This stage of the civil religion is nostalgic for a supposed age of religious homogeneity and common "Judeo-Christian" values.³⁸ Its strongest reactions are triggered by decisions of the courts that restrict government from sponsoring practices and adopting symbols of the American civil religion, such as prayers, Bible-reading, displays of Christian nativities, Jewish menorahs, and the Ten Commandments, and invocations of God in the Pledge and elsewhere in public life.³⁹

This "secularization" of U.S. government and public life coincided with a dramatic shift in sexual and family values in the United States, such as increased sexual activity among single teens and adults,⁴⁰ invalidation of government restraints on access to

37. Dwight D. Eisenhower, U.S. President-Elect, Address to Directors of Freedoms Foundation (Dec. 22, 1952); in *N.Y. TIMES*, Dec. 23, 1952, at 16; see also Canipe, *supra* note 5, at 313 (quoting President Eisenhower as stating: "Without God, there could be no American form of government, nor an American way of life.").

38. See, e.g., Rocco Buttiglione, Op-Ed., *Of God and Men*, *WALL ST. J.*, Nov. 10, 2004, available at <http://www.opinionjournal.com/extra/?id=110005873> ("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 nominee for president of the European Union until controversy over his public endorsements of the "natural family" of Catholic theology forced him to withdraw. See Graham Bowley, *But Parliament Chiefs Say They Want More Commission Change: Withdrawal of Nominee Eases Crisis for Europe*, *N.Y. TIMES*, Nov. 1, 2004; Craig Smith, *Remark on Homosexuality Delays Seating of European Panel*, *N.Y. TIMES*, Oct. 28, 2004, at A8.

39. See, e.g., *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000) (holding student-led, student-initiated prayer at high school football games violated the Establishment Clause); *Cnty. of Allegheny v. Am. Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U.S. 573 (1989) (holding the placement of a nativity scene in the courthouse violated the Establishment Clause); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963) (holding that teacher-led prayer and Bible reading in public school violated the Establishment Clause).

40. See, e.g., Sandra L. Hofferth et al., *Premarital Sexual Activity Among U.S. Teenage Women over the Past Three Decades*, 19 *FAM. PLAN. PERSPECTIVES* 46, 46-53 (1987); Arland Thornton, *Changing Attitudes Toward Family Issues in the United States*, 51 *J. MARRIAGE & FAM.* 873, 883-89 (1989).

contraceptives,⁴¹ abortion,⁴² the shift to no-fault divorce,⁴³ prohibitions on sex discrimination and the subsequent mass entrance of women into the workforce,⁴⁴ and the normalization of single-parent, same-sex, and other nontraditional family units beyond the so-called "natural" or "nuclear" family.⁴⁵ Cultural conservatives link the secularization of public life with a supposed devolution of U.S. morality and values, arguing that the absence of God in public education and public life leads inevitably to the absence of morality in private life.⁴⁶

IV. THE FORTUNATE IMPROBABILITY 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 U.S. government from the beginning. The U.S. Constitution prohibits most combinations of government and religion, including the imposition of religious tests for government offices or public trusts, the singling out of religious exercise for government burdens, and the endorsement or favoring of particular religions.⁴⁷ It is hard to know whether these constitutional

41. See, e.g., *Eisenstadt v. Baird*, 405 U.S. 438 (1972) (holding state law prohibiting distribution of contraceptives to single women unconstitutional); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (holding state law prohibiting use of contraceptives an unconstitutional invasion of the right to marital privacy).

42. See, e.g., *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52 (1976) (holding certain restrictions on abortions, including requiring spousal or parental consent, as unconstitutional); *Roe v. Wade*, 410 U.S. 113 (1973) (holding state law prohibiting an abortion violated woman's right to privacy emanating from the Due Process Clause).

43. See Thornton, *supra* note 40, at 880-81, 887-90.

44. See, e.g., *Frontiero v. Richardson*, 411 U.S. 677, 688 (1973) (holding statutory classifications based upon sex are subject to "strict judicial scrutiny"); Arland Thornton et. al., *Causes and Consequences of Sex-Role Attitudes and Attitude Change*, 48 AM. SOC. REV. 211, 211 (1983).

45. See Thornton, *supra* note 40, at 875-78, 887-90.

46. See Solomon Katz, *Secular Morality*, in *MORALITY AND HEALTH* 297, 298 (ALLAN M. BRANDT & PAUL ROZIN EDS., 1997); RONALD F. THIEMANN, *RELIGION IN PUBLIC LIFE: A DILEMMA FOR DEMOCRACY* 1-4 (1996).

47. See 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."); U.S. CONST. amend. I ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .").

constraints were the cause or the effect of religious pluralism, but regardless, the United States is now perhaps the most religiously diverse country in the West and among the most religiously diverse in the world.⁴⁸

This 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 citizens may honestly and sincerely subscribe is unlikely. The first development is the dramatic growth of unbelief in the United States over the last two generations, from 2 or 3 percent of the adult population, to between 10 and 15 percent currently.⁴⁹ While unbelievers may not object to the secular aspects of American civil religion, its heavy reliance on belief in God and in America's submission to his judgment obviously excludes them from its religious aspects.

A second development is the equally dramatic growth of U.S. believers who fall outside of the Judeo-Christian tradition, from negligible numbers in the 1950s, to nearly 2 percent of the population today.⁵⁰ 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 a result of U.S. military action abroad, have resulted in substantial numbers of U.S. residents who adhere to Islam or an eastern religion like Buddhism or Hinduism.⁵¹ Although monotheistic and Abrahamic, Muslims remain marginalized by Judeo-Christianity,⁵² as do Hindus, Buddhists, and other practitioners of eastern faiths.⁵³

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 15 and 25 percent of U.S. believers.⁵⁴ Spirituality relativizes the focus of religious worship by turning it inward, away from the metaphysics of transcendent truth.⁵⁵ In so doing, spiritu-

48. See, e.g., DIANA L. ECK, *A NEW RELIGIOUS AMERICA: HOW A "CHRISTIAN COUNTRY" HAS BECOME THE WORLD'S MOST RELIGIOUSLY DIVERSE NATION* 4–5 (2001).

49. See Frederick Mark Gedicks & Roger Hendrix, *Uncivil Religion: Judeo-Christianity and the Ten Commandments*, 110 W. VA. L. REV. 275, 285 (2007).

50. See *id.* at 283 & nn.58–59.

51. See *id.*

52. See, e.g., Canipe, *supra* note 5, at 322–23.

53. See Gedicks & Hendrix, *supra* note 49, at 296–97, 299–300.

54. See *id.* at 286–87.

55. See Frederick M. Gedicks, *Spirituality, Fundamentalism, Liberty: Religion at the End of Modernity*, 54 DEPAUL L. REV. 1197, 1215–19 (2005). See generally CHARLES TAYLOR, *A SECULAR AGE* (2007).

ality has created a class of transdenominational believers who construct their own systems of belief from varying denominational sources, and it has also blurred the meaning of membership among believers who belong to particular religions.⁵⁶ 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 the United States and its citizens must answer to that God for their failure to adhere to divine or transcendent principles whose existence or relevance spirituality de-emphasizes or dismisses.⁵⁷

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 United States.⁵⁸

The growth of unbelief, eastern religions, and postmodern spirituality, therefore, has placed large numbers of Americans outside of the national identity prescribed by American civil religion and the historical narrative it creates for the United States as a 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, exclusionary civil religion is a recipe for oppression, division, and instability.

B. *Sectarianization*

The situation for American civil religion is even worse than religious pluralism might suggest. Not only have 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 are being overrun by radical religious pluralism.⁵⁹ 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 an aspect of the civil religion that has been trans-

56. Gedicks, *supra* note 55, at 1216–19.

57. *See id.* at 1215–19.

58. Gedicks & Hendrix, *supra* note 49, at 288.

59. *Id.* at 288–89.

formed from an inclusive symbol of belief in God into a narrower sectarian symbol of the normative desirability of reestablishing the United States as a politically Christian nation.⁶⁰ This process of “sectarianizing” the American civil religion has narrowed its reach so as to exclude even many Christians and Jews whose beliefs might have formerly placed them comfortably within it.⁶¹

C. *Idolatry*

Pluralism and sectarianization make it unlikely that American civil religion in its current form could function as a source of identity and national unity for the United States. 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.⁶² Theologian Herbert Richardson argued that linking religion with another human activity has two effects, one sociological, the other theological.⁶³ On the sociological side, this linking creates a transcendent meaning for an otherwise temporal human activity, such as politics.⁶⁴ On the theological side, this linking is a way of defining a relation between something in this world and something in the transcendent world, “a way of ‘modeling’ or picturing what God is and our relation to him.”⁶⁵ “So . . . a person who identifies with a political group and its civil religion not only . . . affirms that this group has a transcendent goal and some ultimate value” (the sociological effect), but he or she will tend to ascribe ultimate meaning to the categories of politics—sovereignty, law, justice, and the state (the theological effect).⁶⁶ In short, to relate something secular to the transcendent and the ultimate is also to affirm that the thing is itself transcendent and ultimate.⁶⁷

Conventional understandings of the American civil religion have tended to be sociological, in Richardson’s understanding, in that

60. *See id.*

61. *See id.* at 295–99.

62. *See* LEROY S. ROUNER, *CIVIL RELIGION AND POLITICAL THEOLOGY* 9 (1986); *see also* Steven D. Smith, *Idolatry in Constitutional Interpretation*, 79 VA. L. REV. 583, 610 (1993) (defining “idolatry” as “a practice in which humans take an object of human construction and, by an act of imagination, endow that object with superhuman wisdom, virtue, or power”).

63. Richardson, *supra* note 11, at 162.

64. *See id.*

65. *Id.*

66. *Id.*

67. *See id.*

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.⁶⁸ But Americans have not avoided the theological effect that Richardson describes: 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 too easily taken by its citizens to have God's approval, if they are not the actual consequence of his will.⁶⁹

Ironically and tragically, therefore, American civil religion, which insists on the penultimacy 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.⁷⁰

For all their inspiration, each of the moments of the American civil religion that I have described also included this reflexive and corrupting idolatrous identification of transitory political goals with God and his eternal purposes. The Old Testament tropes of the civil religion facilitated persecution of Native Americans: After all, if Americans were like the ancient Israelites, and the United States like the Promised Land, then Native Americans must have been New World Canaanites, whom the United States was divinely authorized to displace and annihilate.⁷¹ The Civil War era's New Testament identification of Americans with liberation and expiation fatally undermined Reconstruction by facilitating a white Protestant narrative of reconciliation between North and South that sacrificed the interests of African Americans (not to mention those of the Asians, Hispanics, and Catholics who were flooding into the

68. *See id.* at 166-69.

69. *See id.* 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"); *see also* Canipe, *supra* note 5, 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."); *id.* 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 ironic 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.").

70. *See* Bellah, *supra* note 2, at 25.

71. *See id.* at 36; Phillip E. Hammond, *The Sociology of American Civil Religion: A Bibliographical Essay*, 37 *SOC. ANALYSIS* 169, 171 (1976).

United States during the nineteenth century).⁷² The Cold War's equation of unbelief with communism not only facilitated the persecution of loyal unbelievers, it also alienated generations of leftist U.S. believers and normalized attacks on social and political difference.⁷³ Finally, the Culture Wars' equation of moral order with the sectarian values of conservative Christianity has turned apparently secular civil rights questions into pitched religious-moral battles between the forces of good and evil.⁷⁴ The current conflict over same-sex marriage in the United States is an excellent example of a conflict over secular rights that has acquired the sense of an apocalyptic battle, as the legislature periodically reminds us in Utah.⁷⁵ As Richardson observed, sometimes the danger to the political process is not from citizens who care too little, but from those who care too much.⁷⁶

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."⁷⁷ As the history of American civil religion repeatedly illustrates, however, this generates the very problem of state idolatry that civil religion seeks to prevent.⁷⁸ As Richardson concluded:

72. See Richardson, *supra* note 11, at 168–69, 176–78; see also Eric Foner, *Rights and the Constitution in Black Life During the Civil War and Reconstruction*, 74 J. AM. HIST. 863 (1987).

73. See, e.g., Bellah, *supra* note 2, 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 5, at 311 ("In Cold War America, to be different was to be dangerous."); Clyde Wilcox, *Popular Backing for the Old Christian Right: Explaining Support for the Christian Anti-Communist Crusade*, 21 J. SOC. HIST. 117, 119 (1987) (noting that conservative Christians of the 1950s opposed "Medicare, sex education, and other liberal programs" on anti-communist grounds).

74. See Gedicks & Hendrix, *supra* note 49, at 305.

75. See Rosemary Winters, *Buttars: Gays "Greatest Threat to America"*, SALT LAKE TRIB., Feb. 18, 2009 (quoting Utah State Senator 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"). Buttars declined to apologize for his remarks. Robert Gehrke, *Buttars: "I Don't Have Anything to Apologize For"*, SALT LAKE TRIB., Feb. 20, 2009.

76. See Richardson, *supra* note 11, 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.").

77. *Id.* at 164 (citing Bellah, *supra* note 2, at 25–26).

78. *Id.* at 164–65 ("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.").

[T]he 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 best and highest aspirations that American politics most 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.⁷⁹

V. CONCLUSION: 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 crèches and Jewish menorahs are inevitably followed by other religious minority efforts to seek government participation in the celebration of their holidays, followed in their turn by anti-establishment lawsuits when governments refuse.⁸⁰ "Nondenominational" prayer at government events and in public schools has 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 marginal religious minorities such as Wiccans, Mormons, or Humanists are excluded, as they often are.⁸¹ Finally, it has become impossible for federal and state governments to

79. *Id.* at 165; accord Delahunty, *supra* note 30, at 559–60 ("The recognition that American civil religion originated in the political and strategic needs of the Civil War yields a truer understanding of its nature. . . . American civil religion has freely appropriated Jewish and Christian language, themes, and imagery to its own use, thus concealing the extent to which the true object of its worship is the American nation . . .").

80. See, e.g., *Separation of Church and State Comm. v. City of Eugene*, 93 F.3d 617 (9th Cir. 1996) (holding that placement of Latin cross on public land violated Establishment Clause); *Harvey v. Cobb County*, 811 F. Supp. 669 (N.D. Ga. 1993) (holding that placement of Ten Commandments in courthouse without accompanying secular items violated Establishment Clause), *aff'd*, 15 F.3d 1097 (11th Cir. 1994); *State v. Freedom From Religion Found.*, 898 P.2d 1013 (Colo. 1995) (holding that a Ten Commandments monument on public property accompanied by secular symbols did not violate Establishment Clause).

81. See, e.g., *Roberts v. Madigan*, 921 F.2d 1047 (10th Cir. 1990) (holding that Establishment Clause required school to discipline teacher for keeping Bible and religious books on classroom bookshelf); *Sands v. Morongo Unified Sch. Dist.*, 809 P.2d 809 (Cal. 1991) (holding that invocations at public school graduation ceremonies violate Establishment Clause).

accommodate the participation of every version of every U.S. religion in the government's use of religious symbols or practices, even when government is inclined to include them (and it often is not). The span of belief in the United States 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; 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.⁸² 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 references to God in public life are mere acknowledgments that past citizens believed themselves subject to his sovereignty.⁸³ 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 U.S. social and political goals with transcendent or cosmic meaning. In the current political climate, patriotism and national loyalty have become religious ends in themselves—consider "America: Love It or Leave It" and "Never Apologize for Your Country"—even apart from the controversy whether "under God" is religious or secular.⁸⁴ Likewise, citizens in the United States seem to have a compulsion to "solemnize" the meetings and ceremonies of their government with religious ceremonies, a practice that over time has infused them with a sacred character, even when religion is not used to solemnize them. As the Ten Commandments decisions well illustrate, "mere acknowl-

82. See Gedicks & Hendrix, *supra* note 49, at 289–94.

83. See, e.g., John E. Thompson, *What's the Big Deal? The Unconstitutionality of God in the Pledge of Allegiance*, 38 HARV. C.R.-C.L. L. REV. 563, 578 (2003); Keith Werhan, *Navigating the New Neutrality: School Vouchers, the Pledge, and the Limits of a Purposive Establishment Clause*, 41 BRANDEIS L.J. 603, 626 (2003); see also Adam Liptak, *Full Appeals Court Lets Stand the Ban On "God" in Pledge*, N.Y. TIMES (Mar. 1, 2003); Adam Liptak, *Subsidiary Issue Enters Pledge Case*, N. Y. TIMES (Oct. 23, 2002).

84. See Delahunty, *supra* note 30, at 560 ("American civil religion borrows so heavily from the language and cadences of traditional faiths, many Americans see no conflict or distinction between the two. Many Americans equate dying for their country with dying for their faith. In America's civil religion, serving country can be coequal with serving God.") (quoting HARRY S. STOUT, *UPON THE ALTAR OF THE NATION: A MORAL HISTORY OF THE CIVIL WAR* xviii (2006)).

edgment" of religion by government is never "mere"; it consistently ends not only in endorsement of religion, but in sanctification of the government's goal of recognizing religion.⁸⁵

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 could 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. Summum* is an excellent example of the religious majoritarian bias that inheres in American civil religion.⁸⁶ The Court upheld the city's decision to install a monument of the Ten Commandments donated by a service organization in a local park despite the city's refusal to install a comparable monument that an obscure Utah religious minority proposed to donate.⁸⁷ The decision left the city of Pleasant Grove free (for the present) to endorse Christianity, even to label itself an officially Christian or Judeo-Christian city, without constitutional consequences under the Speech Clause.⁸⁸ Justices Scalia and Thomas, moreover, have already voiced their opinion that Pleasant Grove may religiously define itself however it wishes under the Establishment Clause, without any obligation to balance that message of religious endorsement with one of religious inclusion or neutrality.⁸⁹

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 particularly important or common symbol of Latter-day Saint

85. See Gedicks & Hendrix, *supra* note 49, at 292–97.

86. 129 S. Ct. 1125 (2009).

87. See *id.* at 1138.

88. See *id.* at 1131 ("The Free Speech Clause restricts government regulation of private speech; it does not regulate government speech.").

89. See *id.* at 1140 (Scalia, 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 1141 (Souter, J., concurring in the judgment) ("The interaction between the 'government speech doctrine' and Establishment Clause principles has not . . . begun to be worked out.").

identity or belief. They are, on the other hand, a powerful symbol of Christian identity for evangelical Protestants⁹⁰—the same Protestants who deemed Mitt Romney unfit for the presidency because he belongs to a “cult,”⁹¹ and who underwrote federal persecution of polygamist Mormons in nineteenth century Utah.⁹² Pleasant Grove’s vindication of American civil religion was not so much a victory for Mormons as it was for the conservative Christians who control American civil religion and who refuse to recognize Mormons as Christians.

C. “Secular” Civil “Religion”

Henry David Thoreau once remarked, “I would remind my countrymen that they are men first, and Americans at a late and convenient hour.”⁹³ 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 citizens at a late and convenient hour. If as believers we 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.

This is particularly true of Latter-day Saints. Certain of our beliefs, such as the divine inspiration of the U.S. Constitution,⁹⁴ and the imperative of “honoring, obeying, and sustaining the law,”⁹⁵ make us particularly susceptible to this temptation. We excommunicated a German Latter-day Saint for anti-Nazi underground activities during World War II, condemned the Reverend Martin Luther King, Jr. and the civil rights movement for law

90. See Gedicks & Hendrix, *supra* note 49, at 294–97; James W. Watts, *Ten Commandments Monuments and the Rivalry of Iconic Texts*, J. REL. SOC’Y, 2004, at 3–6, <http://moses.creighton.edu/JRS/pdf/2004-13.pdf>.

91. See Frederick Mark Gedicks, *Truth and Consequences: Mitt Romney, Proposition 8, and Public Reason*, 61 ALA. L. REV. 337, 357–58 & n.96, 361 n.113 (2010).

92. SARAH BARRINGER GORDON, *THE MORMON QUESTION* 230–33 (2002).

93. Bellah, *supra* note 2, at 40.

94. See THE BOOK OF MORMON: THE DOCTRINE AND COVENANTS OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS 101:80.

95. See Joseph Smith, 4 History of the Church of Jesus Christ of Latter-Day Saints 541 (1908) (1851), available at http://scriptures.lds.org/en/a_of_f/1.

breaking, and counseled support of authoritarian and totalitarian regimes during the Cold War.⁹⁶ If ever a people needed to beware the temptation of government idolatry, it is us.

There is nevertheless a portion of American civil religion worth saving, one that really can bind us together as a people and a nation. That portion is the *civil* component of the civil religion. As I mentioned at the outset, I disagree here with Professor Ferrari's assessment that only religion can "warm the heart."⁹⁷ Let me close with an observation and a story that illustrate what I mean.

The observation relates to the election of Barack Obama as President of the United States. I never expected election of an African-American president in my lifetime, much less one with a Muslim father and an African name. There are no doubt other countries in which a person of color, the child of a minority religious immigrant, could become president or prime minister. There are not many, however, and the United States is one of them. We have many defects as a nation, as Europeans well know, but the election of President Obama is something that all Americans can be proud of. More important for the question of American civil religion, his election confirms something important about the United States: Here there are possibilities that exist in few other countries.

The story is about one of my favorite students. This student was born in the Middle East and came to the United States with her family as a political refugee when she was only eight years old. Once she arrived, she learned English, met the Mormon missionaries, and joined the LDS Church. She later attended Brigham Young University, graduated first in her BYU Law School class, and married a fellow student who became a doctor. She and her husband are now doing important work in an African country—she with efforts to reform the criminal justice system, he with efforts to address the AIDS epidemic.

Like the election of Barack Obama, this story makes me proud to be an American. It encapsulates the possibilities that the United States presents, even to an immigrant girl who did not speak English and who today still belongs to a minority religion. The story is patriotically inspiring without requiring religious belief for the inspiration. It is this "civil" of the civil religion that we must preserve in the United States, even as we leave behind the "religion" of this self-same civil religion.

96. See Frederick M. Gedicks, *The "Embarrassing" Section 134*, 2003 BYU L. Rev. 959, 960, 961–62 & nn.9–10.

97. See Ferrari, *supra* note 3.